

# Review of the Lobbying Framework in Malta

Recommendations for improving transparency and integrity in lobbying



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# REVIEW OF THE LOBBYING FRAMEWORK IN MALTA

## Recommendations for improving transparency and integrity in lobbying

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*Note that this report will become a chapter in a publication on public integrity in Malta, to be published in 2023.*

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# 1 Introduction

Public policies determine to a large extent the prosperity and well-being of citizens and societies. They are also the main 'product' people receive, observe, and evaluate from their governments. While these policies should reflect the public interest, governments also need to acknowledge the existence of diverse interest groups, and consider the costs and benefits of the policies for these groups. In practice, a variety of private interests aim to influence public policies in their favour. This variety of interests allows policy makers to learn about options and trade-offs and ultimately decide on the best course of action on any given policy issue. Such an inclusive policy-making process leads to more informed and ultimately better policies.

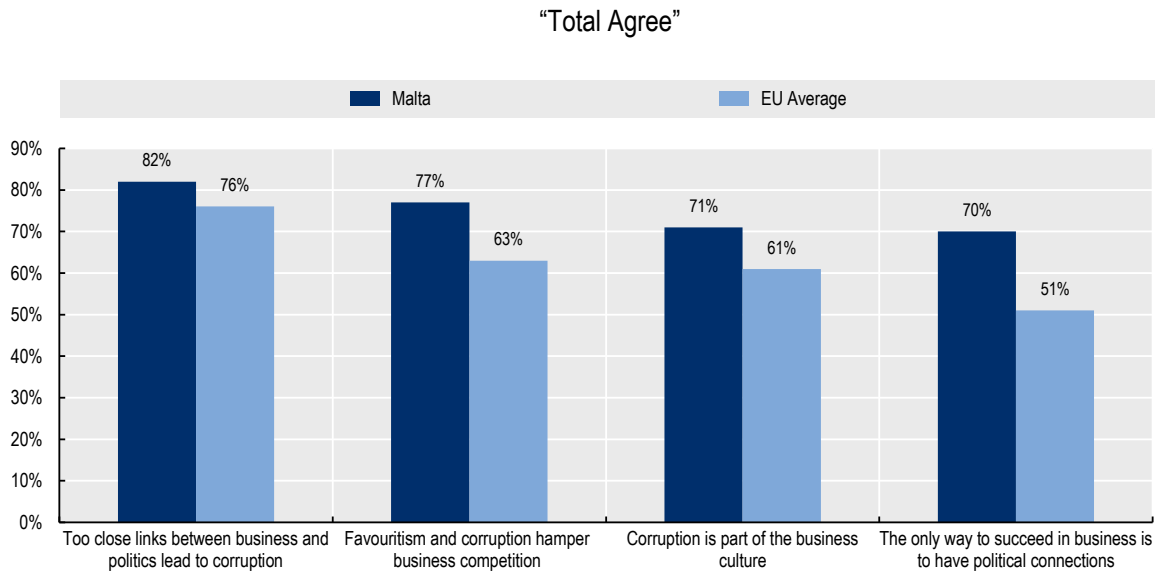
In Malta, one of the primary avenues through which business associations, trade unions and civil society organisations provide input to draft laws and policy proposals is through the social dialogue mechanism. Input pertaining to domestic laws and policies can be made through the Council for Economic and Social Developments, which is an advisory body providing a forum for consultation and social dialogue between social partners and civil society organisations. The Council's main task is to advise the government on issues relating to sustainable economic and social development in Malta, and its functions are regulated under the Malta Council for Economic and Social Development Act (No. 15 of 2001). Input related to laws and policies at the EU level is facilitated via European Service of Malta (Servizzi Ewropej f'Malta or SEM).

Social dialogue mechanisms play a critical role in the policy-making process, and require an effective legislative framework, a commitment to implementation, and appropriate accountability measures to ensure governments comply with the principles of engaging stakeholders effectively. Stakeholders in Malta indicated that these mechanisms operate effectively, and enable interest groups to access government in a transparent manner.

However, social dialogue mechanisms are not the only way in which policies are influenced. While "professional" lobbying – that is, individuals whose formal occupation is to approach government on behalf of specific interests to influence a policy – is not a common occurrence in Malta, different interest groups have access to policy makers outside the social dialogue mechanisms that are currently unregulated and opaque. While the act of lobbying itself is beneficial for society as a whole, because it enables different groups to provide input and expertise to the policy-making process, it has a profound impact on the outcome of public policies. If non-transparent, lobbying poses a risk to inclusiveness in decision making and trust in government, possibly resulting in the dissatisfaction of the public as a whole. Missing or ineffective lobbying regulation may also negatively affect the appetite of (foreign) investors and lower the country's trustworthiness at the international level.

In Malta, non-transparent lobbying is a serious issue. Perception indices show that the perception of undue influence and an opaque relationship between the public and private sectors is significant in Malta. Recent Eurobarometer surveys found that 71% of respondents considered corruption to be a part of the business culture in government, with 70% responding that the only way to succeed in business was through political connections (see Figure 1.1) (European Commission, 2019<sup>[1]</sup>). In all these categories, Maltese respondents are above the EU average, showing that there are higher levels of perceived corruption when doing business in Malta.

Figure 1.1. Maltese perceive that close ties between business and politics lead to corruption



Source: (European Commission, 2019<sup>[1]</sup>).

Similarly, in the most recent Corruption Barometer for the European Union, less than half (48%) of Maltese respondents think that the government takes their views into account when making decisions, and almost half (49%) think that the government is controlled by private interests.

Other institutions in Malta have highlighted the impact of non-transparent lobbying on policy making. For example, a 2018 report by the National Audit Office (NAO) found that undue influence was a factor in awarding high-value energy-supply contracts (National Audit Office, 2018<sup>[2]</sup>). In particular, the NAO found that a 2013 proposal for the construction of a new power station “raised serious concerns regarding the technical specifications for the construction of the power station set by Enemalta, which were influenced, if not dictated, by parties who had a direct interest in this contract” (National Audit Office, 2018<sup>[2]</sup>). The report further stated that the companies involved in putting forward the proposal were later awarded the contract (National Audit Office, 2018<sup>[2]</sup>).

Additionally, the Commissioner for Standards in Public Life has indicated several specific concerns related to lobbying in Malta. These include the concerns about the secrecy in which lobbying takes place – e.g. people do not know who is influencing a decision, and those who take a different view do not have the opportunity to rebut arguments and present alternative views; that some individuals and organisations have greater access to policy makers because of their contacts, because they are significant donors to a political party, or simply because they may have more resources; and that lobbying may be accompanied by entertainment or other inducements, or that there is lack of clarity about who is financing particular activities (Office of the Commissioner for Standards in Public Life, 2020<sup>[3]</sup>).

Recognising the challenges to integrity in decision making posed by the lack of transparency in lobbying, the Government of Malta is taking steps towards introducing regulation. The Standards in Public Life Act empowers the Commissioner for Standards in Public Life “to identify activities that are to be considered as lobbying activities, to issue guidelines for those activities, and to make such recommendations as it deems appropriate in respect of the regulation of such activities”.

The Commissioner for Standards in Public Life (“the Commissioner”) presented in February 2020 a document “Towards the Regulation of Lobbying in Malta: A Consultation Paper” (“Consultation Paper”). The Commissioner outlined a proposal for regulating lobbying activities in Malta, informed by international good practice. This proposal has been welcomed at the international level, including most recently in the compliance report by the Group of States against Corruption (GRECO).

Under the “Improving the integrity and transparency framework in Malta”, the OECD is reviewing the integrity system for elected and appointed public officials in Malta. This report reviews the Commissioner’s proposals to introduce a lobbying framework to Malta and provides recommendations to help the Government of Malta develop the most feasible lobbying regulation. The recommendations are tailored for the specific influence landscape in Malta and aim to improve the proposed framework and close potential loopholes.

This report was reviewed by the OECD Working Party of Senior Public Integrity Officials (SPIO) on 3 June 2022. It was approved by the Public Governance Committee on 1 July 2022 and prepared for publication by the OECD Secretariat. It is part of a larger report that will be released in 2023.

## 2 Setting the legal and institutional framework for transparency and integrity in lobbying

When determining how to address governance concerns related to lobbying, countries need to weigh the available regulatory and policy options to select the appropriate solution. The specific context, constitutional principles, and established democratic practices (such as public hearings or institutionalised consultation practices) need to be factored in.

The OECD Recommendation on Principles for Transparency and Integrity in Lobbying (herein “OECD Lobbying Principles”) emphasise that Adherents should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies (Principle 1). Likewise, the OECD Lobbying Principles state that countries should consider the governance concerns related to lobbying practices (Principle 2), as well as how existing public governance frameworks can support this objective (Principle 3) (OECD, 2021<sup>[4]</sup>).

### Establishing the legal framework

Currently in Malta, measures are in place to address some of the broader risks that could lead to undue influence, including conflict-of-interest and post-public employment. For example, the Standards in Public Life Act, which covers MPs, ministers, parliamentary secretaries and persons of trust, contains measures on conflicts of interest and acceptance of gifts and benefits in the Codes of Ethics for Members of the House of Representatives and Ministers and Parliamentary Secretaries, which are found in the first and second Schedule, respectively. Similarly, Article 4 of the Public Administration Act, which covers public officials, provides for rules on post-public employment, whereas the Code of Ethics contains measures on preventing and managing conflict of interest.

The broader legal framework, as noted above, also includes measures to facilitate public access to decision making. For example, rules pertaining to stakeholder engagement are set out in Malta Council for Economic and Social Development Act (No. 15 of 2001), and measures regulating access to information can be found in the Freedom of Information Act (Chapter 496 of the Laws of Malta).

Despite this existing framework, regulatory gaps remain when it comes to influencing policy makers. As noted above, there is a lack of transparency regarding which interest groups have access to which policy makers, and on what issues. Moreover, there is limited guidance for both public officials and those seeking to influence the policy-making process on how to engage with one another in a way that upholds the public interest.

Recognising this challenge, the Standards in Public Life Act made provisions for further guidance to be issued to regulate lobbying. This entry point is set out in Article 13(1) of the Standards in Public Life Act, which empowers the Commissioner for Standards in Public Life to “issue guidelines” and “make such recommendations as he deems appropriate” with respect to the regulation of lobbying.

### ***The Government of Malta could regulate lobbying through a dedicated law***

The Commissioner for Standards in Public Life has proposed to regulate lobbying through a dedicated law, rather than by issuing lobbying guidelines or amending the Standards in Public Life Act. Given the context in Malta, the proposal to regulate lobbying through a dedicated law has merit on several grounds.

First, the Standards in Public Life Act does not include any provisions that would make rules on lobbying included in it binding. Therefore, issuing guidance through the Standards Act would make the provisions voluntary, thereby undermining their effectiveness. Indeed, experience from OECD members has shown that voluntary methods are insufficient to deal with the challenges posed by lobbying (OECD, 2014<sup>[5]</sup>). For example, a select committee of the United Kingdom House of Commons produced a study in 2009 strongly recommending the adoption of a mandatory lobbying regulation. The report found that efforts at self-regulation fell short of expectations, and that a mandatory regulation was needed to achieve transparency on the extent to which interest groups are able to access and influence decision makers in Government (Box 2.1). The report later led to the adoption of a mandatory lobbying disclosure scheme in 2014.

#### **Box 2.1. The United Kingdom: from self-regulation to mandatory regulation**

In 2008 and 2009, a select committee of the United Kingdom House of Commons produced a study strongly recommending the adoption of a mandatory lobbying regulation. The report found that the conditions were not in place for effective self-regulation of lobbying activities by those who carry out these activities. At the time, many umbrella bodies, such as the Association of Professional Political Consultants (APPC), the Public Relations Consultants Association (PRCA) and the Chartered Institute of Public Relations (CIPR), had codes of conduct for their members and made several commitments to transparency of lobbying activities. These schemes however had inherent flaws:

- First, there was no consistent approach across the sector. Umbrella organisations had diverse views on what constitutes appropriate conduct and some codes of conduct could be seen as the lowest common denominator. In addition, the codes and registration requirements only applied to those who were members of these umbrella organisations. Many law firms and think tanks who were heavily involved in influencing public policies did not participate in these association-run voluntary schemes. Lastly, the situation allowed consultancies to pick and choose the rules that applied to them. In sum, voluntary schemes applied unequally.
- Second, the schemes did not provide an adequate level of transparency because a commitment to voluntary transparency in lobbying is always a relative concept. The report considered that how private interests achieve access and influence are among the trade secrets lobbyists are not willing to disclose voluntarily, and that a degree of external coercion was required to achieve sufficient transparency across the board.
- Third, the complaints and disciplinary processes of the lobbying umbrella bodies were under-used and ineffective. Umbrella organisations had varying enforcement capacities, disciplinary process were scarcely ever used and reprimands were usually the only outcomes for disciplinary breaches.
- Lastly, the three umbrella groups had an in-built conflict-of-interest, in that they attempted to act both as trade associations for the lobbyists themselves and as the regulators of their members' behaviour.

Source: (House of Commons Public Administration Select Committee, 2009<sup>[6]</sup>).

Evidence has also shown that businesses may make high-profile voluntary commitments to address major global challenges such as environmental sustainability, and then contradict these commitments through their less-visible lobbying (Box 2.2).

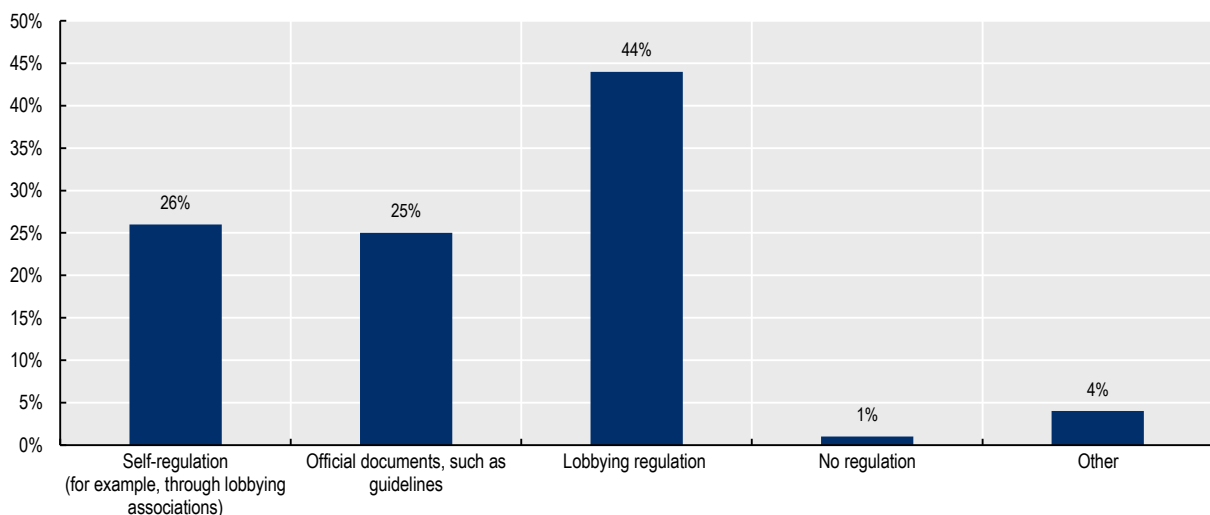
**Box 2.2. Voluntary initiatives and self-regulatory pledges have shown limited impact in the climate policy area and may even be used to lobby against binding climate policy**

Evidence shows that self-regulatory pledges and voluntary corporate programmes by companies may fall short of the impact they claim, and may even be used to mask lobbying efforts to block or delay binding climate policies (Lyon et al., 2018<sup>[7]</sup>). A study found that industry stakeholders in the United States primarily mobilised to maintain the status quo regarding cap and trade systems in 2009 and 2010, but simultaneously joined the cap and trade coalition in order to favourably shape potentially inevitable climate legislation (Grumbach, 2015<sup>[8]</sup>).

Another study showed that participants to the chemical industry’s “Responsible Care” programme actually made less progress in reducing their emissions of toxic chemicals than did nonparticipants (King and Lenox, 2000<sup>[9]</sup>). Chemical industry documents have shown that one of the programme’s main goals was pre-empting tighter regulations (Givel, 2007<sup>[10]</sup>). Lastly, an analysis of the Climate Challenge Program, a former partnership between business and the US Government to encourage electric utilities to voluntarily reduce their greenhouse gas emissions, found that there were no difference in emission reductions overall between participants and non-participants of the programme (Delmas and Montes-Sancho, 2009<sup>[11]</sup>). Similarly, public statements the electric utility industry made indicated that it formed Climate Challenge to avoid new regulations.

Lastly, surveys show that lobbyists themselves are generally supportive of mandatory regulations and public disclosure of lobbying activities. A recent OECD survey of professional lobbyists conducted in 2020 found that lobbyists favoured a mandatory lobbying regulation.

**Figure 2.1. Best means for regulating lobbying activities, according to lobbyists**



Source: OECD 2020 Survey on Lobbying.

Second, those who are lobbied are subject to various integrity standards and transparency requirements, but these regulations are insufficient in their coverage and do not have a specific focus on lobbying. For example, the scope of the current Standards in Public Life Act is limited to select officials, in particular those who are elected or appointed. While there is a case to be made for expanding the scope of the Act (see report on Standards in Public Life Act), the envisioned expansion would still miss key actors, including policy makers in the civil service. Good practice has found that making the provisions applicable across all branches of government is critical, as policy making takes place across a variety of public entities in all branches and levels of government. Moreover, as pointed out by the Commissioner, while the scope of the Act could be expanded through a sub-section to other entities, this would create legal confusion as well as potential gaps with other key legislation (e.g. the Act on Public Administration), in turn undermining implementation of and compliance with the law.

Finally, by setting out a separate law, the provisions of the law would be debated article by article in the House of Representatives. This would ensure that the Act itself, when passed, had undergone proper scrutiny and benefitted from public debate (Commissioner for Standards in Public Life, 2020<sup>[12]</sup>). However, in moving forward with the proposal to regulate lobbying through a separate law, the Commissioner could co-ordinate with the Ministry of Justice, in particular on the proposed reforms to the integrity provisions under the Public Administration Act. As indicated several times throughout the stakeholder interviews, the various regulatory instruments that govern integrity, including integrity in decision making, must be coherent and co-ordinated to ensure there are no overlaps or gaps.

### Assigning responsibilities for implementation

Setting clear and enforceable rules and guidelines for transparency and integrity in lobbying is necessary, but this alone is insufficient for success. Transparency and integrity requirements cannot achieve their objective unless the regulated actors comply with them and oversight entities effectively enforce them (OECD, 2021<sup>[4]</sup>).

To that end, oversight mechanisms are an essential feature to ensure an effective lobbying regulation. All the countries that require transparency in lobbying activities have an oversight entity (OECD, 2021<sup>[4]</sup>). At the same time, all countries with a register on lobbying activities have an institution or function responsible for monitoring compliance. While the responsibilities of such bodies vary widely among OECD member and partner countries, three broad functions exist: 1) enforcement; 2) monitoring; and 3) promotion of the law.

#### ***The Commissioner for Standards in Public Life could be entrusted with responsibilities for overseeing and enforcing the Regulation of Lobbying Act***

The Commissioner has proposed that the operation of key aspects of the Regulation of Lobbying Act and its enforcement should be entrusted to the Commissioner for Standards in Public Life. The Commissioner has also proposed that his office should host and maintain the register of lobbyists and enforce the requirement for lobbyists to register and submit regular returns, as well as enforce the requirement for designated public officials to list communications with lobbyists on relevant matters.

Some stakeholders noted reticence in assigning the Commissioner authority for overseeing the implementation of the Regulation of Lobbying Act. In particular, stakeholders noted that the Commissioner does not have the mandate to oversee conduct of public officials covered under the Act on Public Administration. To these stakeholders, the current set-up would limit the scope of the Regulation of Lobbying Act to only those falling under the Act on Standards in Public Life.

To address this limitation, the Commissioner has, as noted above, recommended to set out the rules on lobbying in a separate regulation in order to enable broader coverage and include those covered by the

Standards in Public Life Act and the Public Administration Act. This legislative underpinning would therefore give the Commissioner the necessary authority. In addition, the Office's existing institutional arrangements make it well-placed to administer the law: it enjoys functional independence and garners broad respect both from the government and society more broadly.

The proposal for the Commissioner's office to be delegated responsibilities for enforcing and overseeing the lobbying regulation aligns with good practice from OECD members. It is not uncommon to assign the oversight body responsible for integrity standards of elected and appointed officials with responsibilities for policies pertaining to those in the civil service as well (such as lobbying). For example, in Ireland, the Standards in Public Office Commission oversees the administration of legislation in four distinct areas, including the Ethics in Public Office Act, which sets out standards for elected and appointed public officials, and the Regulation of Lobbying Act, which regulates lobbying for elected and appointed public officials, as well as officials in the civil service (see Box 2.3).

### Box 2.3. The Irish Standards in Public Office Commission

The Irish Standards in Public Office Commission has supervisory roles under four Acts:

- The Ethics in Public Office Act 1995, as amended by the Standards in Public Office Act 2001, (the Ethics Acts), which sets out standards for elected and appointed public officials. Under these Acts, the Commission processes complaints and examines possible wrongdoing, oversees tax compliance by people appointed to 'senior office' and candidates elected to Dáil Éireann and Seanad Éireann, amongst others.
- The Electoral Act 1997, which regulates political financing, including political donations and election expenses. Under this Act, the Commission provides guidance and advice to stakeholders (e.g. on disclosure of political donations, limits on the value of donations which may be accepted, prohibited donations, limits on election spending), oversees compliance, amongst others.
- The Oireachtas (Ministerial and Parliamentary Activities) (Amendment) Act 2014, which regulates expenditure of public funds to political parties and independents. Under this Act, the Commission reviews the disclosures by party leaders and Independents on how they spend their annual allowance, issues guidelines (e.g. on the parliamentary activities allowance and the Exchequer funding under the Electoral Acts), oversees the Act, amongst others.
- The Regulation of Lobbying Act 2015, which makes transparent the lobbying of public officials. Under this Act, the Commission manages the register of lobbying, ensures compliance with the Act, provides guidance and assistance, and investigates and prosecutes offences under the Act.

Source: (Standards in Public Office Commission, 2021<sup>[13]</sup>; Standards in Public Office Commission, 2021<sup>[14]</sup>).

In order for the Commissioner to effectively carry out an oversight and enforcement role of the lobbying regulation, it will require sufficient financial and human resources. Indeed, the Office of the Commissioner is currently small in number, with only 9 people assisting the Commissioner: six officers/employers and three people on a contract-for-service basis. Although having a small office has been a strength in terms of management, engagement and co-ordination of the staff, it has also been a challenge in terms of ensuring that functions are fulfilled in a timely and efficient manner. In this sense, adding new functions on lobbying would substantially increase the workload of the Office, threatening further its capacity to deliver on its different responsibilities.

Considering this, if the Commissioner is assigned the mandate to oversee lobbying, it is fundamental to ensure that the Commissioner has the appropriate financial and human resources to carry out the new functions effectively. To that end, the Commissioner could undertake a workforce planning exercise, and request the House Business Committee of the House of Representatives for additional financial resources for the coming years (see the Organisational Review of the Office of the Commissioner for more details).

# 3 Ensuring transparency in lobbying

Transparency is the disclosure and subsequent accessibility of relevant government data and information (OECD, 2017<sup>[15]</sup>), and when applied to lobbying, is a tool that allows for public scrutiny of the public decision-making process (OECD, 2021<sup>[4]</sup>). Policies and measures on lobbying therefore should “provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities” (OECD, 2010<sup>[16]</sup>). There are several ways in which transparency can be achieved: first, through clearly defining the terms ‘lobbying’ and ‘lobbyist’ (OECD, 2010<sup>[16]</sup>), and second, by implementing a “coherent spectrum of strategies and mechanisms” to ensure compliance with transparency measures (OECD, 2010<sup>[16]</sup>).

## Clarifying definitions

In line with this good practice, the Commissioner has proposed clear definitions of “lobbying” and “lobbyist”. Moreover, the Commissioner has proposed that two key registers be set up: a Lobbying Register and a Transparency Register. The following reviews these proposals in turn and provides tailored recommendations to strengthen where necessary.

Clearly defining the terms ‘lobbying’ and ‘lobbyist’ is critical for ensuring effective lobbying regulation. While definitions should be tailored to the specific context, both ‘lobbying’ and ‘lobbyists’ should be defined robust, comprehensive and sufficiently explicit to avoid misinterpretation and to prevent loopholes (OECD, 2010<sup>[16]</sup>). Experience from other countries has found that providing effective definitions remains a challenge, in particular because those who seek to influence the policy-making process are not necessarily ‘de facto’ lobbyists. Indeed, avenues by which interest groups influence governments extend beyond the classical definition of lobbying and moreover, have evolved in recent years, not only in terms of the actors and practices involved but also in terms of the context in which they operate (OECD, 2021<sup>[4]</sup>).

To address this challenge, when setting up lobbying regulation, it is critical to ensure that the definition of lobbying activities is broadly considered, and focuses on inclusivity; in other words, aims to provide a level playing field for interest groups, whether business or not-for-profit entities, which aim to influence public decisions (OECD, 2010<sup>[16]</sup>). Box 3.1 provides an overview of OECD member experience in setting out clear, comprehensive and broad definitions on lobbying.

### Box 3.1. Examples of broad definitions of ‘lobbying’ amongst OECD members

#### Australia

“Lobbying activities” means communications with a Government representative in an effort to influence Government decision making. “Communications with a Government representative” includes oral, written and electronic communications.

#### Belgium

Lobbying activities are activities carried out with the aim of directly or indirectly influencing the development or implementation of policies or the Chamber's decision-making processes.

#### Canada

Communications considered as lobbying include direct communications with a federal public office holder (i.e. either in writing or orally) and grass-roots communications. The Lobbying Act defines grassroots communications as any appeals to members of the public through the mass media or by direct communication that seek to persuade those members of the public to communicate directly with a public office holder in an attempt to place pressure on the public office holder to endorse a particular opinion. For consultant lobbyists (lobbying on behalf of clients), arranging a meeting between a public office holder and any other person is considered as a lobbying activity.

#### France

Three types of activities are considered as communications that may constitute lobbying activities: 1. A physical meeting, regardless of the context in which it takes place; 2. A telephone or video conference call; 3. Sending a letter, an email or a private message via an electronic communication service.

#### Ireland

Relevant communications means communications (whether oral or written and however made), other than excepted communications, made personally (directly or indirectly) to a designated public official in relation to a relevant matter.

#### European Union

Activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions, irrespective of where they are undertaken and of the channel or medium of communication used, for example via outsourcing, media, contracts with professional intermediaries, think tanks, platforms, forums, campaigns and grassroots initiatives.

Source: (OECD, 2021<sup>[4]</sup>).

The current proposals set out by the Commissioner clearly and comprehensively defines the terms lobbying and lobbyist (see Table 3.1). These definitions are well adapted to the specific context in Malta. Broad in scope and covering a wide range of actors, the definitions make it possible to implement regulation on lobbying within a context where lobbying as a professional activity is not well-known, decision makers in government are easily accessible, and constituency politics are a key attribute of political life. Indeed, by separately defining “who” (i.e. “designated public officials” targeted by lobbying activities), “what” (i.e. what is “relevant matter”) and “how” (i.e. how the relevant matter turns into influencing – “relevant communication to a designated public official”), the definition enables any activity that fits both the “what” and “how” criteria to be subject to lobbying regulation.

**Table 3.1. Proposed definitions on “lobbying” and “lobbyist” by the Commissioner for Standards in Public Life**

<b>Lobbying</b>	<p>Any relevant communication on a relevant matter to a designated public official, with further delineation of the three core concepts as follows:</p> <ul style="list-style-type: none"> <li>• <b>Relevant communication</b> includes any communication that is made (i) in writing or orally, (ii) on a relevant matter, and (iii) personally – either directly or indirectly – to a designated public official.</li> <li>• <b>Designated public officials</b> include the Prime Minister, ministers, parliamentary secretaries and (if appointed) parliamentary assistants; other members of the House of Representatives; the heads and deputy heads of the secretariats of ministers and parliamentary secretaries; the Principal Permanent Secretary, permanent secretaries and directors-general in the public service of Malta; mayors, other local councillors, and executive secretaries in local councils; chairpersons and chief executive officers in companies owned by the state, government agencies, foundations set up by the government (on its own or in conjunction with other bodies), and other government entities as defined in the Public Administration Act; members of the Executive Council, the Planning Board and the Planning Commission within the Planning Authority; and members of the board of the Environment and Resources Authority.</li> <li>• <b>Relevant matters</b> include the following: (a) the initiation, development or modification of any public policy, action or programme; (b) the preparation or amendment of any enactment, that is to say, law or other instrument having the force of law; (c) the award of any grant, loan or other forms of financial support, and any contract or other agreement involving public funds, land (including concessions of public land) or other resources; (d) the grant of any license, permit or other authorisation; and (e) the award of development permits and the zoning of land. The current proposal also clarifies what relevant matters <i>do not</i> include: communications by public bodies or by public officials in their official capacity trade union negotiations).</li> </ul>
<b>Lobbyist</b>	Any person (natural or legal) who makes a relevant communication on a relevant matter to a designated public official.

Source: (Office of the Commissioner for Standards in Public Life, 2020<sup>[3]</sup>).

The current definition of lobbyist, as defined by the Commissioner, is well-suited to the context in Malta. It enables coverage of a broad range of actors, including those that have not traditionally been viewed as “lobbyists” (e.g. think tanks, research institutions, foundations, non-governmental organisations, etc.).

However, while the proposed definitions regarding “lobbying” are broad in scope, several potential loopholes remain that could, if exploited, weaken the overarching legislation. The following addresses each of the potential loopholes in turn, and provides recommendations to strengthen them.

### ***The Commissioner could strengthen the definition of “lobbying”***

The advent of digital technologies and social media has made lobbying and influence more complex than the way it has been traditionally defined in regulations, usually as a direct oral or written communication with a public official to influence legislation, policy or administrative decisions. The avenues by which interest groups influence governments extend beyond this definition, however, and have evolved in recent years. With regards to the definition of **relevant communications**, the current proposal suggests that the communication may be either written or oral. This however leaves out other forms of communication, like sign language or the use of social media as a lobbying tool. **The Commissioner could include in the definition of a relevant communication indirect forms of lobbying, going beyond direct written or oral communications.** Within the OECD, Canada and the European Union cover such types of lobbying communications. In Canada, lobbyists are required to disclose any communication techniques used, which includes any appeals to members of the public through mass media, or by direct communication, aiming to persuade the public to communicate directly with public office holders, in order to pressure them to endorse a particular opinion. The Lobbying Act categorises this type of lobbying as “grassroots communication.” Similarly, the EU Transparency Register covers activities aimed at “indirectly influencing” EU institutions, including through the use of intermediate vectors such as media, public opinion, conferences or social events (Box 3.2). Moreover, the wording “is made personally (directly or indirectly) to a designated public official” may pose a loophole due to the term “personally”. In the age of the internet and social media, a lobbyist could deliver their message via, for example, targeted advertising. **The wording may be simplified to “is made (directly or indirectly) to a designated public official”.**

### Box 3.2. Indirect forms of lobbying covered in Canada and the European Union

#### Canada

In Canada, paid lobbying through grass-roots communication can require registration under the *Lobbying Act*, even if there is no related direct lobbying. “Grass-roots communication”, also referred to as grass-roots lobbying, is defined in paragraph 5(2) (j) of the *Lobbying Act* as any appeals to members of the public through the mass media or by direct communication that seek to persuade those members of the public to communicate directly with a public office holder in an attempt to place pressure on the public office holder to endorse a particular opinion.

The Lobbying Commissioner considers that appeals to the public may include letters and electronic messaging campaigns, advertisements, websites, social media and platforms such as Facebook, Twitter, LinkedIn, Snapchat, YouTube, etc.

#### European Union

In the European Union, the Inter-institutional agreement between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register defines “covered activities” as: (a) organising or participating in meetings, conferences or events, as well as engaging in any similar contacts with Union institutions; (b) contributing to or participating in consultations, hearings or other similar initiatives; (c) organising communication campaigns, platforms, networks and grassroots initiatives; (d) preparing or commissioning policy and position papers, amendments, opinion polls and surveys, open letters and other communication or information material, and commissioning and carrying out research.

Source: Office of the Commissioner of Lobbying Canada, Applicability of the Lobbying Act to Grass-roots Communications, Bulletin current to 2017-08-02 and last amended on 2017-08-02, <https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/applicability-of-the-lobbying-act-to-grass-roots-communications/>; Transparency Register Guidelines, <https://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?locale=en&reference=GUIDELINES>.

With regards to the definition of **designated public officials**, the proposed list aligns with good practice, however as the influence landscape has advanced, the range of those who can be on the receiving end of lobbying activities has also increased. **To ensure that the definitions remain fit-for-purpose, the list of designated officials could build, to the maximum extent possible, on the lists laid out in Schedules of the Public Administration Act.** In particular, it is recommended that all those from the “List of those posts within the public administration that, due to the nature of their role and responsibilities, are considered to be high-risk positions” (Sixth Schedule of the Public Administration Act) fall under the lobbying regulation. Moreover, it is recommended that in addition to state-owned companies, all companies funded by the state (even partially and in any form) be included. It is recommended that exceptions like state-owned health insurance providers are not introduced in the lobbying regulation.

In order to promote transparency and accountability, it is recommended the list of “designated public officials” be publicly available and kept up-to-date. In Ireland, each public body must publish and keep up-to-date a list of designated public officials under the law; the Standards in Public Office Commission also publishes a list of public bodies with designated public officials (Box 3.3).

### Box 3.3. Requirement to publish designated public officials' details in Ireland

In Ireland, Section 6(4) of the Lobbying Act of 2015 requires each public body to publish a list showing the name, grade and brief details of the role and responsibilities of each “designated public official” of the body. The list must be kept up to date. The purpose of the list is twofold:

- To allow members of the public to identify those persons who are designated public officials; and
- As a resource for lobbyists filing a return to the Register who may need to source a designated public official's details.

The list of designated public officials must be prominently displayed and easily found on the homepage of each organisation's website. The page should also contain a link to the Register of Lobbying <http://www.lobbying.ie>.

Source: Standards in Public Office Commission, Requirements for public bodies, <https://www.lobbying.ie/help-resources/information-for-public-bodies/requirements-for-public-bodies/>.

With regards to the definition of **relevant matter**, the current scope covers communication that concerns (i) the initiation, development or modification of any public policy or of any public programme; (ii) the preparation or amendment of any law; or (iii) the award of any grant, loan or contract, or any licence or other authorisation involving public funds.

For the first category of activities, it is not clear whether the entire policy cycle is covered. In particular, three key phases (policy adoption, policy implementation, and policy evaluation) are not clearly identified. Within each of these stages, there are specific risks of influence, and a number of actors that could be targeted by those intending to sway decisions towards their private interests (see Table 3.2). While the intention could be that the existing term “modification” covers these three phases, **the Commissioner could consider revising the definition to clarify these specific phases.**

**Table 3.2. Risks of undue influence along the policy cycle**

		Agenda-setting	Policy development	Policy adoption	Policy implementation	Policy evaluation
Risk of undue influence on		Priorities	Draft laws and regulations, policy documents (e.g. project feasibility studies, project specifications)	Votes (laws) or administrative decisions (regulations), changes to draft laws or project specifications	Implementation rules and procedures	Evaluation results
Main actors targeted	Legislative level	Legislators, ministerial staff, political parties	Legislators, ministerial Staff, political parties	Legislators, parliamentary commissions and committees, invited experts	-	Parliamentary commissions and committees, invited experts
	Administrative level	Civil servants, technical experts, consultants	Civil servants, technical experts, consultants	Heads of administrative bodies or units	Civil servants	Civil servants, consultants (experts)

Source: (OECD, 2017<sub>[17]</sub>).

The current proposals list a number of exemptions from what would be considered “relevant matters”. In general, an exemption from a definition should be only used in the last resort. Often, an alternative solution can be found for addressing the underlying concern. To that end, the Commissioner could consider revising the exemptions from relevant matters as follows:

- **Communications by an individual concerning his or her own private affairs:** This exemption is in line with best practices in OECD countries, but could be further clarified to specify that it covers individual opinions expressed by a natural person on a relevant matter in a strictly personal capacity, but does not exempt activities of individuals associating with others to represent interests together (Box 3.4).

### Box 3.4. Exemptions on communications by natural persons in OECD countries

#### European Union

In the European Union, the purpose of the Register is to show organised and/or collective interests, not personal interests of individuals acting in a strictly personal capacity and not in association with others. As such, activities carried out by natural persons acting in a strictly personal capacity and not in association with others, are not considered as lobbying activities. However, activities of individuals associating with others to represent interests together (e.g. through grassroots and other civil society movements engaging in covered activities) do qualify as interest representation activities and are covered by the Register.

#### Germany

In Germany, the Act Introducing a Lobbying Register for the Representation of Special Interests vis-à-vis the German Bundestag and the Federal Government (Lobbying Register Act – Lobbyregistergesetz), excludes the activities of natural persons who, in their submissions, formulate exclusively personal interests, regardless of whether these coincide with business or other interests.

#### Ireland

In Ireland, the Regulation of Lobbying Act exempts “private affairs”, which refer to communications by or on behalf of an individual relating to his or her private affairs, unless they relate to the development or zoning of land. For example, communications in relation to a person’s eligibility for, or entitlement to, a social welfare payment, a local authority house, or a medical card are not relevant communications.

#### Lithuania

In Lithuania, Law No. VIII-1749 on Lobbying Activities exempts individual opinions expressed by a natural person with regards to legislation.

#### United States

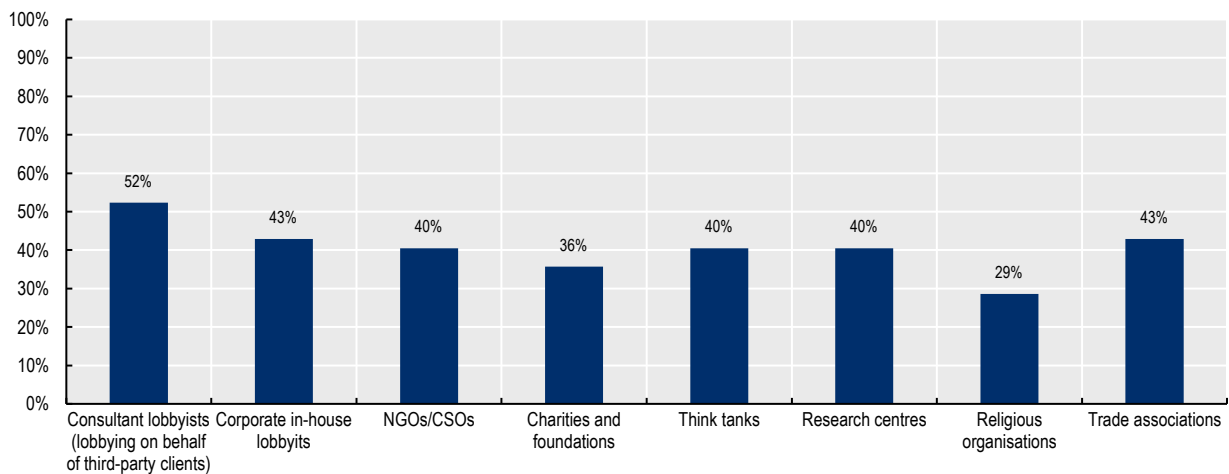
In the United States, communications made on behalf of an individual with regard to that individual’s benefits, employment, or other personal matters involving only that individual with respect to the formulation, modification, or adoption of private legislation for the relief of that individual are not considered as lobbying activities under the Lobbying Disclosure Act.

Source: (OECD, 2021<sup>[4]</sup>).

- **Communications by or on behalf of religious entities and organisations, and political parties:** third-party communications on behalf of religious entities and organisations and political parties should not be exempt, and these subjects must communicate for themselves to have the

communication automatically exempt from lobbying regulation. In 29% of OECD countries, religious organisations are bound by transparency requirements on their religious activities (Figure 3.1). Among the 22 countries that have lobbying transparency requirements, 12 consider the influence communications of religious organisations as lobbying activities, while 10 explicitly exempt them. In order to take into account the specific cultural and social context of Malta, a balance could be found by exempting religious denominations while including the activities of other religious organisations or groups representing religious interests in the scope of the law. In Canada for example, corporations without share capital incorporated to pursue, without financial gain to its members, objects of a religious character are considered as lobbying activities.

**Figure 3.1. Percentage of countries covering different actors through their lobbying transparency requirements**



Source: (OECD, 2021<sup>[41]</sup>).

- Requests for factual information:** exempting “requests for factual information” seems to be perfectly logical and innocent. However, it is not specified whether the exempted communications are requests for factual information by public officials or lobbyists. Such a blanket exemption may open the window for flooding a designated public official with “requests for factual information”, which may amount to massive lobbying campaigns. Based on the suggested exemption, such a campaign would remain undetected and unreported. The exemption could further be clarified in order to avoid any misinterpretations. First, the exception could cover communications by lobbyists made in response to a request from a public official concerning factual information or for the sole purpose of answering technical questions from a public office holder, and provided that the response does not otherwise seek to influence such a decision or cannot be considered as seeking to influence such a decision. In the United Kingdom for example, if a designated public official initiates communication with an organisation and in the subsequent course of the exchange, the criteria for lobbying are met, then the organisation is required to register the activity. It should also be clarified that such an exemption does not apply to appointed experts. The Commissioner had previously highlighted that “attention must be given to the possibility that persons will be engaged as consultants in order to avoid registration as lobbyists and the promotion of certain interests” and that “the consultative process with any such individuals should be adequately registered, minuted and reported”. As such, to address the mentioned concern, the exemption may include on appointed experts. Second, the law could further clarify which requests for information by lobbyists are covered by the exemption, for example when they consist of enquiring about the status of an

administrative procedure, about the interpretation of a law, or that are intended to inform a client on a general legal situation or on his specific legal situation. Several examples are provided in Box 3.5.

### Box 3.5. Exemptions on requests for factual information by lobbyists in OECD countries

In **Belgium**, activities relating to the provision of legal and other professional advice are not covered to the extent that they:

- Consist of advisory activities and contacts with public authorities, intended to inform a client on a general legal situation or on his specific legal situation or to advise him/her on the opportunity or admissibility of a specific legal or administrative procedure in the existing legal and regulatory environment.
- Are advice provided to a client to help ensure that its activities comply with applicable law.
- Consist of analyses and studies prepared for clients on the potential impact of any changes in legislation or regulations with regard to their legal situation or field of activity.
- Consist of representation in conciliation or mediation proceedings aimed at preventing a dispute from arising, brought before a judicial or administrative authority.
- Affect the exercise of a client's fundamental right to a fair trial, including the right of defence in administrative proceedings, such as the activities carried out by lawyers or any other professionals concerned.

In **Canada**, the following activities are not considered as lobbying activities:

- Any oral or written communication made to a public office holder by an individual on behalf of any person or organisation with respect to the enforcement, interpretation or application of any Act of Parliament or regulation by that public office holder with respect to that person or organisation; or
- Any oral or written communication made to a public office holder by an individual on behalf of any person or organisation if the communication is restricted to a request for information.

In **Chile**, any request, verbal or written, made to enquire about the status of an administrative procedure is not considered as a lobbying activity.

In **France**, communications that are limited to factual exchanges that are not likely to have the purpose of influencing a public decision are not considered as lobbying activities:

- When an organisation requests factual information, accessible to any person, to a public official.
- When an organisation asks a public official how to interpret a public decision in force.
- When an organisation sends information to a public official on its functioning or activities, without any direct connection with a public decision.

In **Ireland**, communications requesting factual information or providing factual information in response to a request for the information (for example, a company asking a public servant how to qualify for an enterprise grant and getting an answer) are not considered as lobbying activities.

Source: (OECD, 2021<sup>[4]</sup>).

- **Trade union negotiations:** exempting trade union negotiations can be interpreted broadly and may include also, e.g. lobbying for the lowering of taxes for the employed – a matter where transparency is needed. It is recommended that only those trade union negotiations that directly relate to employment should be exempt from lobbying regulation. In the European Union for

example, the activities of the social partners as participants in the social dialogue (trade unions, employers' associations, etc.) are not covered by the register where those social partners perform the role assigned to them in the Treaties. European social dialogue refers to the planned and/or institutionalised discussions, consultations, negotiations and joint actions involving social partners at EU level. However, employer or labour organisations that hold bilateral encounters with the EU institutions aimed at promoting their own interests or the interests of their members or carry out other activities not strictly related to European social dialogue, which are covered by the Register, do qualify as interest representatives and are eligible to (apply to) be entered in the Register. Similarly, in Ireland, communications forming part of, or directly related to, negotiations on terms and conditions of employment undertaken by representatives of a trade union on behalf of its members are not considered as lobbying activities.

- **Risky communication:** while the reasoning behind exempting communications “which would pose a risk to the safety of any person” is sound, and a similar provision can be found in many lobbying regulations, such an exemption creates a potential loophole in the regulation. It is recommended that this exemption is omitted on the grounds that if a lobbyist feels a communication on a relevant matter towards a designated public official would pose any risk, he or she better not perform such communication.
- **Communications that are already in the public domain:** the widespread use of the internet and the rise of social media, in particular, have blurred the line between what is and what is not in the public domain. Thus, exempting “communications that are already in the public domain” from a lobbying regulation seems to have the potential to create a loophole in the regulation. It is recommended to reconsider the need for such communication being exempt. If the need is confirmed, some other wording could be used to achieve the goal of excluding such communication. For example, the exemption could be limited to information provided to a Parliamentary committee and that are already in the public domain. In Canada, the Lobbying Act exempts “any oral or written submission made to a committee of the Senate or House of Commons or of both Houses of Parliament or to any body or person having jurisdiction or powers conferred by or under an Act of Parliament, in proceedings that are a matter of public record”.
- **Diplomatic relations** (communications by or on behalf of other states and supranational organisations): while many countries also exempt these types of communications, it is recommended to limit this exemption to diplomatic activities. Foreign governments increasingly rely on lobbyists and other forms of influence to promote their policy objectives at national and multilateral levels. The risks involved in lobbying and influence activities of foreign interests are therefore high for all countries, and more transparency is needed on the influence of foreign governments. In Canada for example, consultant lobbyists representing the interests of foreign governments are bound by the same disclosure requirements as other actors specified in the Lobbying Act. Under the EU Inter-Institutional Agreement, activities by third countries are also covered, when they are carried out by entities without diplomatic status or through intermediaries.

### ***The Commissioner could enhance the definition of relevant matters to include appointments of key government positions***

A final area in which the definition of “relevant matters” could be strengthened refers to appointments of key government positions. Indeed, personnel decisions can be a key focus area for lobbyists, as it can be useful to further their policy agenda if a person responsive to their specific interests is placed in the relevant position. Thus, it would be beneficial to include personnel matters as a “relevant matter”. If left unregulated, it would pose a severe threat to any lobbying regulation. If lobbyists make it to have “their person” in the right position, they will roam free through decision-making processes, regulation or not. The risks associated with the possibility of forming a “lobbyist-official coalition” should not be underestimated when

drafting a lobbying regulation. The design should be resilient: it should provide a basic level of protection of decision-making from undue influence even under the scenario of such a coalition being in place.

In France and the United States, the appointment of certain public officials is also considered to be the kind of decision targeted by lobbying activities and thus covered by transparency requirements (Box 3.6).

### Box 3.6. Individual appointment decisions are covered in France and the United States

#### France

The decisions targeted by lobbying activities were specified in Act No. 2016/1691 on transparency, the fight against corruption and the modernisation of the economy (Article 25). They include “individual appointment decisions”.

#### United States

The decisions targeted by lobbying activities are specified in the Lobbying Disclosure Act (Section 3 “Definitions”). They include nominations or confirmations of a person for a position subject to confirmation by the Senate.

Source: (OECD, 2021<sup>[4]</sup>).

## Establishing the Register for Lobbyists and the Transparency Register

A critical element for enhancing transparency and integrity in public decision making are mechanisms through which public officials, business and society can obtain sufficient information regarding who has access and on what issues (OECD, 2010<sup>[16]</sup>). Such mechanisms should ensure that sufficient, pertinent information on key aspects of lobbying activities is disclosed in a timely manner, with the ultimate aim of enabling public scrutiny (OECD, 2010<sup>[16]</sup>). In particular, disclosed information could include which policymakers, legislation, proposals, regulations or decisions were targeted by lobbyists. In establishing such mechanisms, countries should also ensure that legitimate exemptions, such as preserving confidential information in the public interest or protecting market-sensitive information, are carefully balanced with transparency needs (OECD, 2010<sup>[16]</sup>). Mechanisms can take the form of lobbying registers, open agendas, and/or legislative footprints.

### ***The Regulation of Lobbying Act could include provisions that require regular, timely updates to the information contained in both the Register for Lobbyists and the Transparency Register***

In Malta, the Commissioner has proposed two registries: the Register for Lobbyists and the Transparency Register. With regards to the **Register for Lobbyists**, the Commissioner proposes establishing an online, open register that is maintained by the Commissioner. Professional lobbyists, pressure groups (e.g. NGOs) and representative bodies (e.g. chambers and associations) will be required to register their name, contact details, business or main activities, and company registration number (where applicable). Registration will be a prerequisite for engaging in lobbying activities. Lobbyists will also be required to submit quarterly returns with information on respective lobbying activities (e.g. the clients on behalf of whom such activities were carried out; the designated public officials who were contacted; the subject matter of these communications; and the intended results).

The Register for Lobbyists meets two aims: (i) to formalise interactions between public officials and lobbyists; and (ii) to enable public scrutiny on who is accessing public officials, when and on what issues. Indeed, the information required in the returns does enable scrutiny, as information concerning *what* was influenced and the intended results is not only required, but also made public. To strengthen the Register for Lobbyists, the Commissioner could consider requiring that in-house lobbyists register, as they are currently overlooked in the proposals.

The current proposal suggests that lobbyists submit their returns on a quarterly basis. This aligns with good practice in several jurisdictions, including Ireland and the United States. Good practice from other countries has found that requiring more regular communication reports, such as on a monthly basis, can strengthen transparency (see for example the case of Canada in (Box 3.7) To that end, the Commissioner could consider requiring lobbyists to disclose on a quarterly or semestrial basis, as in Ireland or the United States (Table 3.3).

**Box 3.7. Frequency of disclosures on lobbying activities in Canada**

In Canada, lobbyists’ registration is mandatory to conduct lobbying activities. According to the Lobbying Act (R.S.C., 1985, c. 44 (4th Supp.)):

- Consultant lobbyists must register within 10 days of entering an agreement to lobby.
- In-house lobbyists must register when they meet a threshold (“significant part of duties”) and have 60 days to register.

Information must be updated every six months. Additionally, when registered lobbyists meet with a designated public office holder (i.e. senior federal officials), they must file a “monthly communication report”. The monthly communication report, filed no later than the 15th of the month after the communication took place, includes the names of those contacted, the date the communication took place, and the general subject matter of the communication (for example, “Health”, “Tourism”, etc.).

Source: (OECD, 2021<sup>[4]</sup>).

**Table 3.3. Frequency of lobbying disclosures in the United States and Ireland**

	<b>Initial registration</b>	<b>Subsequent registrations</b>
Ireland	Lobbyists’ registration is mandatory to conduct lobbying activities. Lobbyists can register after commencing lobbying, provided that they register and submit a return of lobbying activity within 21 days of the end of the first “relevant period” in which they begin lobbying (The relevant period is the four months ending on the last day of April, August and December each year).	The ‘returns’ of lobbying activities are made at the end of each ‘relevant period’, every four months. They are published as soon as they are submitted.
United States	Lobbyists’ registration is mandatory to conduct lobbying activities. Registration is required within 45 days: (i) of the date lobbyist is employed or retained to make a lobbying contact on behalf of a client; (ii) of the date an in-house lobbyist makes a second lobbying contact.	Lobbyists must file quarterly reports on lobbying activities and semi-annual reports on political contributions.

Source: (OECD, 2021<sup>[4]</sup>).

The second transparency tool – the **Transparency Register** – complements the Register for Lobbyists and obliges ministers, parliamentary secretaries and others heads and deputy heads of their secretariats to list all relevant communications with lobbyists. The Transparency Register would also be freely accessible to the public, and would include details concerning (a) the name of the persons (natural and legal) with whom each relevant communication was held; (b) the subject matter of the communication; (c)

in the case of a meeting, the date and location, the names of those present, and who they were representing; and (d) any decisions taken or commitments made through the communication.

This type of register is often referred to as an open agenda, as it contains a comprehensive public record of influence targeting specific public officials. By providing an additional avenue for transparency, the Transparency Register also addresses the inherent weakness of the Register of Lobbyists. Indeed, regardless of the requirements set out to register and submit information in a timely manner, some actors will avoid identifying and reporting their actions as “lobbying”. Thus, it is crucial that the lobbying regulation contains a separate mechanism for reporting all influence efforts, regardless of the lobbyist/non-lobbyist status of the influencer. To ensure that the Transparency Register enables the necessary public scrutiny, the Commissioner could require that the Transparency Register be regularly updated, either in real-time or on a weekly basis. Furthermore, as noted below, the proposed obligation to record all relevant communications with lobbyists in the Transparency Register could be expanded to Members of the House of Representatives.

As complying with reporting requirements can prove challenging, some countries use communication tools to remind lobbyists and public officials about mandatory reporting obligations. For example, in the United States, the Office of the Clerk of the House of Representatives provides an electronic notification service for all registered lobbyists (OECD, 2021<sup>[4]</sup>). The service gives email notice of future filing deadlines or relevant information on disclosure filing procedures. The Lobbying Disclosure website of the House of Representatives also displays reminders on filing deadlines. In Ireland, registered lobbyists receive automatic email alerts at the end of each relevant period, as well as deadline reminder emails. Return deadlines are also displayed on the main webpage of the Register of Lobbying (OECD, 2021<sup>[4]</sup>). This practice could be considered in the future to facilitate reporting.

It is also recommended that an effective enforcement mechanism be put in place to ensure compliance with this requirement (see section on sanctions below).

***The Regulation on Lobbying Act could include provisions requiring the Commissioner to prepare a regulatory and legislative footprint for specific decision-making processes***

The OECD Lobbying Principles states that governments should also consider facilitating public scrutiny by indicating who has sought to influence legislative or policy-making processes, for example by disclosing a legislative footprint that indicates the lobbyists consulted in the development of legislative initiatives (OECD, 2010<sup>[16]</sup>). Indeed, in addition to lobbying registers and open agendas, several countries provide transparency on lobbying activities based on *ex post* disclosure of information on how decisions were made (see Box 3.8).

### Box 3.8. Thematic analyses on lobbying published by the High Authority for transparency in public life in France

In 2020, the High Authority for the Transparency of Public Life implemented a new platform on lobbying. This platform contains practical factsheets, answers to frequently asked questions, statistics as well as thematic analyses based on data from the register.

For example, the High Authority has published two reports on declared lobbying activities on specific bills, which shed light on the practical reality of lobbying.

Source: HATVP, <https://www.hatvp.fr/lobbying>.

The Regulation on Lobbying Act could include a provision assigning responsibility to the Commissioner for compiling and disclosing a legislative and regulatory footprint on specific decision-making processes, including for example legislation, government policies or programmes, and high-risk or high-dollar value contracts or concessions. In determining what “relevant matters” should be accompanied by a legislative footprint, the Commissioner could consider a risk-based approach. The information disclosed can be in the form of a table or a document listing the identity of the stakeholders contacted, the public officials involved, the purpose and outcome of their meetings, and an assessment of how the inputs received from external stakeholders was taken into account in the final decision.<sup>1</sup> Keeping the Transparency Register up-to-date before a decision-making process enters the next phase or is closed will be instrumental in helping achieve this legislative footprint. Ideally, no decision-making process should be closed before the public have had a reasonable amount of time to review the relevant information in the Transparency Register. For example, before a ministerial bill is submitted for governmental approval or before an Environmental Impact Statement is released for public comment within an EIA procedure.

### ***The Regulation of Lobbying Act could include provisions that further clarify the administration and accessibility of the Register for Lobbyists and the Transparency Register***

A key challenge in implementing transparency registers is ensuring that the collected information can be published in an open, re-usable format. This facilitates the reusability and cross-checking of data (OECD, 2021<sup>[4]</sup>). While it is too early in the process to comment on the actual modalities of the proposed registries, the Commissioner could consider making recommendations that the eventual law on lobbying clarify that the Commissioner will manage the registries, that the data will be accessible and free of charge, and that information will be published in open data format. Box 3.9 contains excerpts from various lobbying laws regarding these parameters.

<sup>1</sup> Details concerning the technical specifications, including on ensuring interoperability of systems, will be further explored in the second part of the project.

### Box 3.9. Ensuring open, accessible lobbying registries

#### Canada

Article 9 of the Lobbying Act:

- (1) The Commissioner shall establish and maintain a registry in which shall be kept a record of all returns and other documents submitted to the Commissioner under this Act (...).
- (2) The registry shall be organized in such manner and kept in such form as the Commissioner may determine.
- (4) The registry shall be open to public inspection at such place and at such reasonable hours as the Commissioner may determine.

#### France

Law on transparency in public life (Article 18-1):

« Un répertoire numérique assure l'information des citoyens sur les relations entre les représentants d'intérêts et les pouvoirs publics. Ce répertoire est rendu public par la Haute Autorité pour la transparence de la vie publique. Cette publication s'effectue dans un format ouvert librement utilisable et exploitable par un système de traitement automatisé, dans les conditions prévues au titre II du livre III du code des relations entre le public et l'administration »

*“A digital directory provides information to citizens on the relations between interest representatives and public authorities. This directory shall be made public by the High Authority for the transparency of public life. This publication is made in an open format that can be freely used and processed by an automated processing system, under the conditions set out in Title II of Book III of the Code on relations between the public and the administration.”*

#### Ireland

Regulation of Lobbying Act of 2015:

9. The Commission shall establish and maintain a register to be known as the Register of Lobbying (referred to in this Act as the “Register”).
10.
  - (1) The Register shall contain—
    - (a) the information contained in applications made to the Commission under section 11, and
    - (b) the information contained in returns made to the Commission under section 12.
  - (2) The Register shall be kept in such form as the Commission considers appropriate.
  - (3) The Register shall be made available for inspection free of charge on a website maintained or used by the Commission.

Source: Additional research by the OECD Secretariat.

Regarding the operation of the registries, the current proposal is for the Regulation of the Lobbying Act to oblige ministers, parliamentary secretaries, and the heads and deputy heads of their secretariats to establish a Transparency Register in which they should list relevant information (Commissioner for Standards in Public Life, 2020<sup>[12]</sup>). However, this “distributed” form of the Transparency Register – e.g.

every institution having its own register – would undermine interoperability and reliability, on top of being more costly. Instead, the Commissioner could be assigned responsibility in the Act on Lobbying for administering both the Register of Lobbyists as well as the Transparency Register.

***The Regulation of Lobbying Act could contain clear criteria for withholding data contained in the Register for Lobbyists and Transparency Register***

The current proposals enable the Commissioner the power to withhold from the public any information contained in the Register of Lobbyists and Transparency Register, if the Commissioner considers that it is necessary to do so to prevent it from being misused, or to protect the safety of any individual or the security of the State.

The term “personal data”, seems to be unnecessarily limiting, especially for protecting safety: non-personal data may also put someone in danger, e.g. by providing clues for revealing their identity. It is therefore recommended to omit “personal” and use “data related to a person’s identity”. Further, it is recommended that the State’s interests, not only the security of the State as is currently proposed, be considered, as this concept is broader and gives the Commissioner higher level of flexibility to prevent any sensitive data from being disclosed.

Moreover, the power to withhold any information from the Register for Lobbyists and the Transparency Register must rest solely with the Commissioner for Standards in Public Life. While lobbyists should comply with the required criteria for submitting information, there may be situations in which it is prudent to keep certain information confidential. To ensure transparency, the Regulation of Lobbying Act could provide clear criteria to guide the Commissioner’s determination for when to withhold certain information and on what grounds.

***The Regulation of Lobbying Act could include: (i) binding rules for the selection process of advisory or expert groups, and (ii) transparency into what the outcomes are, how they have been dealt with and how they are incorporated in the resulting decision***

Chairpersons and members of advisory or expert groups (including government boards and committees) play a critical role in government decision making as they can help strengthen evidence-based decision making. However, without sufficient transparency and safeguards against conflict of interest, these groups pose a possible avenue for exerting undue influence in the decision-making process by allowing individual representatives participating in these groups to favour private interests (e.g. by serving biased evidence to the decision makers on behalf of companies or industries or by allowing corporate executives or lobbyists to advise governments as members of an advisory group). Still, transparency over the composition and functioning of advisory and expert groups remains limited across OECD countries (OECD, 2021<sup>[4]</sup>).

In Malta, there are currently more than 170 government boards and 90 committees (Government of Malta, n.d.<sup>[18]</sup>), which provide advice and guidance on policies, plans and practices within and across sectors, having a key impact on laws, policies and government performance. Yet, there is no general rule on the establishment and functioning of government boards and committees, meaning that there is no general provision indicating the common purpose of such boards and committees, their functioning and optimal composition (e.g. who can be appointed as member of a government board and committee, appropriate qualification and conditions for appointment).

To that end, the Office of the Prime Minister could introduce general rules for the selection process of government boards and committees to ensure a balanced representation of interests in advisory groups (e.g. in terms of private sector and civil society representatives (when relevant) and/or in terms of backgrounds), guarantee that the selection process is inclusive, -so that every potential expert has a real chance to participate-, and transparent -so that the public can effectively scrutinise the selection of members of advisory groups-. Moreover, to allow for public scrutiny, information on the structure, mandate,

composition and criteria for selection for all Maltese government boards and committees should be made public. In addition, and provided that confidential information is protected and without delaying the work of these groups, the agendas, records of decisions and evidence gathered could also be published in order to enhance transparency and encourage better public scrutiny.

Along with the composition of advisory or expert groups, the problem of the opacity of their outcomes could be addressed in the Regulation of Lobbying Act. To that end, it is recommended that these outcomes be made public via the Transparency Register (for more on the Transparency Register, see relevant section “Enhancing the transparency of influence on public decision-making”).

Moreover, considering that members of advisory groups come from different backgrounds and may have different interests, it is fundamental to provide a common framework that allows all members to carry out their duties in the general interest. Indeed, in Malta, members of government boards and committees come from the public, private and voluntary sectors. Currently, the Code of Ethics for Public Employees and Board Members, as laid down in the first schedule of the Public Administration Act, provides some general integrity standards for chairpersons and members of standing boards and commissions within the public administration. However, such provisions could be strengthened with specific standards on how to handle conflicts of interest and interactions with third parties.

To that end, the Office of the Commissioner could consider strengthening the rules of procedures for government boards and committees, including terms of appointment, standards of conduct, and procedures for preventing and managing conflicts of interest, amongst others. The Transparency Code for working groups in Ireland may serve as an example for the Office of the Commissioner (Box 3.10).

### **Box 3.10. Transparency Code for working groups in Ireland**

In Ireland, any working group set up by a minister or public service body that includes at least one designated public official and at least one person from outside the public service, and which reviews, assesses or analyses any issue of public policy with a view to reporting on it to the Minister of the Government or the public service body, must comply with a Transparency Code.

The Code prescribes various transparency measures: important information about the body's composition and functioning must be available online, including the body's meeting minutes.

Importantly, if the requirements of the Code are not adhered to, interactions within the group are considered to be a lobbying activity under the lobbying act.

Source: Department of Public Expenditure and Reform, Transparency Code prepared in accordance with Section 5 (7) of the Regulation of Lobbying Act 2015, <https://www.lobbying.ie/media/5986/2015-08-06-transparency-code-eng.pdf>.

# 4 Fostering integrity in lobbying

Apart from enhancing the transparency of the policy-making process, the strength and effectiveness of the process also rests on the integrity of both public officials and those who try to influence them (OECD, 2021<sup>[4]</sup>). Indeed, governments should foster a culture of integrity in public organisations and decision making by providing clear rules, principles and guidelines of conduct for public officials, while lobbyists should comply with standards of professionalism and transparency as they share responsibility for fostering a culture of transparency and integrity in lobbying (OECD, 2021<sup>[4]</sup>).

The 2021 OECD Report on Lobbying found that although all countries have established legislation, policies and guidelines on public integrity, they have usually not been tailored to the specific risks of lobbying and other influence practices. Additionally, considering that lobbyists and companies are under increasing scrutiny, they need a clearer integrity framework for engaging with the policy-making process in a way that does not raise concerns over integrity and inclusiveness (OECD, 2021<sup>[4]</sup>).

## Strengthening integrity standards on lobbying

In Malta, there are different general guidelines on public integrity for public officials, which include some specific provisions aiming at strengthening the resilience of decision-making processes to undue influence. Such guidelines are i) the Code of Ethics for Public Employees and Board Members, ii) the Code of Ethics for Members of the House of Representatives and iii) the Code of Ethics for Ministers and Parliamentary Secretaries.

The Code of Ethics for Public Employees and Board Members is included in the first schedule of the Public Administration Act. The current version of the Code contains specific provisions on interactions with third parties including on the acceptance of gifts and benefits, managing conflicts of interest, and restrictions on employment after leaving office. Additionally, Article 4 of the Public Administration Act sets the values that public employees shall uphold and promote while carrying out functions or duties (i.e. integrity, respect, loyalty, trust, quality, accountability, impartiality and non-discrimination), and establishes post-employment regulations for public employees holding posts that involve regulatory and inspectorate functions. Directive No. 14 on the *Governing Framework for the Management of the Revolving Door Policy for Public Employees* was recently introduced to elaborate on post-public employment, and details the provisions for certain categories of at-risk public officials regarding post-public employment, and establishes a Board to oversee implementation.

The Code of Ethics for Members of the House of Representatives is included in the first schedule of the Standards in Public Life Act, while the Code of Ethics for Ministers and Parliamentary Secretaries is included in the second schedule of the same Act. The current version of the Code of Ethics for Members of the House of Representatives contains some specific provisions on declaration of interests, and acceptance of gifts and benefits. The current version of the Code of Ethics for Ministers and Parliamentary Secretaries sets the values that should guide the behaviour, actions and decisions of ministers and parliamentary secretaries (i.e. sense of service, integrity, diligence, objectivity, accountability, transparency, honesty, justice and respect, and leadership) and contains specific provisions on management of conflict of interest, acceptance of gifts and benefits, and second job restrictions.

However, neither the three codes of ethics or related directives included provisions to address more specific risks of lobbying and other influence practices, including on the proper use of confidential information, pre- and post-employment restrictions, and handling third party/lobbyists contacts. Moreover, the codes of ethics included in the Standards Act do not provide for MPs, Ministers and Parliamentary Secretaries to register and publish information on the gifts received by them or their families, nor to provide key information on liabilities, honoraria and outside sources and amounts of income that could be relevant for identifying potential conflicts of interest and/or sources of undue influence (also see the Report on the Codes of Ethics, forthcoming). Additionally, the codes of ethics included in the Standards Act have been in place for several years and no significant revision has been approved to ensure their cohesion with today's expectations and challenges, including those associated to the rise of digital technologies and social media and the new mechanisms and channels of influence (e.g. NGOs, think tanks, research centres) that have changed the lobbying landscape in recent years (OECD, 2021<sup>[4]</sup>).

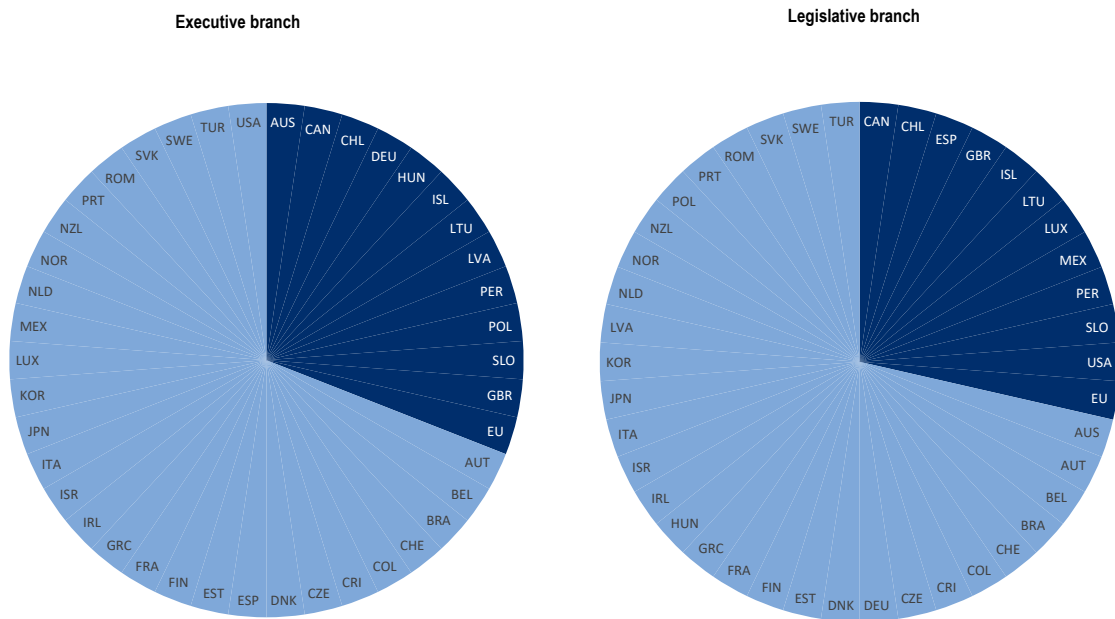
Aware of the existing weaknesses of the public integrity system, the Commissioner has proposed to address the integrity risks through the following measures: i) establishing a Code of Conduct for Lobbyists which should apply to all lobbyists, even those who are not obliged to register in the Register of Lobbyists, ii) imposing restrictions on involvement in lobbying for certain designated public officials for a specified period of time after they cease to hold office, and iii) including provisions on interactions with lobbyists in the codes of ethics of ministers and parliamentary secretaries and Members of Parliament. These proposals will be reviewed in the following subsections, together with specific recommendations to fostering integrity in lobbying in Malta.

***To foster integrity when interacting with lobbyists, the Office of the Principal Permanent Secretary could develop specific principles, rules, standards and procedures for public officials***

To foster a culture of integrity in public organisations and decision making, public officials need clear principles, rules, standards and procedures to engage with lobbyists. Such rules and standards need to guide public officials on their communication and interaction with lobbyists, in a way that bears the closest public scrutiny (OECD, 2021<sup>[4]</sup>). In particular, public officials should cast no doubt on their impartiality to promote the public interest, share only authorised information and not misuse 'confidential information', disclose relevant private interests and avoid conflict of interest (OECD, 2021<sup>[4]</sup>).

Indeed, governments can provide specific standards to give public officials clear directions on how they are permitted to engage with lobbyists. Integrity standards on lobbying may be included in a specific lobbying law, in a lobbying code of conduct, or in the general standards for public officials, such as laws, codes of ethics or codes of conduct. Specific duties and standards of conduct related to lobbying activities for public officials are being developed in several countries, although more efforts are still needed (Figure 4.1).

**Figure 4.1. Specific duties and standards of conduct related to lobbying activities for public officials**



Source: (OECD, 2021<sup>[4]</sup>).

Considering this, the Office of the Principal Permanent Secretary could update the Code of Ethics for Public Employees and Board Members laid down in the first schedule of the Public Administration Act by including provisions on the interactions between public officials/board members and lobbyists. These could be informed by the standards laid out in Directive No. 14. Standards for public officials/board members on their interactions with lobbyists could include the following:

- the duty to treat lobbyists equally by granting them fair and equitable access
- the obligation to refuse meetings with unregistered lobbyists, or at a minimum to check that the lobbyist is registered or intends to register within the specified deadlines
- the obligation to report violations to competent authorities
- the duty to register their meetings with lobbyists (through the *Transparency Register*)
- the obligation to refuse accepting gifts (fully or beyond a certain value)
- the duty to report gifts and benefits received, amongst others.

To develop these provisions, the following could serve as examples of the specific standards for public officials on their interactions with lobbyists developed by other countries (Table 4.1).

Table 4.1. Examples of specific standards for public officials on their interactions with lobbyists

	Document	Standards of conduct on lobbying
Australia	Australian Government Lobbying Code of Conduct	<ul style="list-style-type: none"> <li>A Government representative shall not knowingly and intentionally be a party to lobbying activities by a lobbyist or an employee of a lobbyist who is not on the Register of Lobbyists; or who has failed to inform them that they are lobbyists, whether they are registered, the name of their clients, and the nature of the matters they wish to raise.</li> <li>A Government representative must report any breaches of the Code to the Secretary of the Attorney General's Department.</li> </ul>
Canada	Prime Minister's Guide on Open and Accountable Government (for ministers and ministers of state)	<ul style="list-style-type: none"> <li>(IV.3) The Commissioner of Lobbying may ask designated public office holders, including Ministers and Parliamentary Secretaries, to verify information about lobbying communications that has been registered by lobbyists. Every effort should be made to meet this responsibility using routine records.</li> </ul>
Chile	Law regulating lobbying and the representation of private interests before authorities and civil servants.	<ul style="list-style-type: none"> <li>Lobbied public officials and administrations have a duty to register hearings and meetings with lobbyists, as well as donations and trips made in the exercise of their duties.</li> </ul> <p>Public administrations have a duty to maintain a public register of lobbyists and interest representatives. They must guarantee equal access for persons and organisations to the decision-making process. Public administrations are not required to respond positively to every demand for meetings or hearings; however, if it does so in respect to a specific matter, it must accept demands of meetings of hearings to all who request them on the said matter.</p>
Iceland	Code of Conduct for Staff in the Government Offices of Iceland	<ul style="list-style-type: none"> <li>When interacting with interest groups, staff in the Government Offices of Iceland shall bear in mind that the duties of public administration are primarily towards the public. Staff shall observe the principle of equality when responding to the requests of interest groups.</li> </ul>
Latvia	Cabinet Regulations No. 1 Values of State Administration and Fundamental Principles of Ethics	<ul style="list-style-type: none"> <li>When communicating with lobbyists, public employees shall follow the principles of openness, equality, and integrity. They must ensure all interested lobbyists have equal opportunities to receive information and communicate with the public institution and its employees.</li> <li>Public employees must inform their direct manager or the head of their institution on their meeting with lobbyists, and disclose information on their meetings, including information received from lobbyists.</li> </ul>
Lithuania	Law on Lobbying Activities	<ul style="list-style-type: none"> <li>State and municipal bodies, as well as lobbied public officials must create the conditions for lobbyists to exercise their rights specified in the law when they are registered, to carry out lawful activities and pursue the interests of lobbying clients and beneficiaries, as well as the conditions for the Chief Official Ethics Commission to carry out its supervising functions.</li> <li>Lobbied persons are prohibited from accepting gifts or any other remuneration from lobbyists.</li> <li>The President of the Republic, the Seimas, members of the Government, Deputy Ministers, Governors, Chancellors of Ministries, heads of parliamentary political parties, mayors, members of municipal councils, directors of municipal administrations and their deputies must declare lobbying activities targeting them for each draft legal act, no later than seven days from the start of lobbying activities for the specific draft act (...).</li> <li>Civil servants who participate in the preparation, consideration and adoption of draft legal acts must declare lobbying activities targeting them for each draft legal act to their managers or authorised representatives of the public institution that employ them, no later than seven days from the start of lobbying activities for the specific draft act (...).</li> <li>The President of the Republic, members of the Seimas, the Government, Deputy Ministers, Chancellors of the Seimas, the Government, Ministries, heads of parliamentary political parties, mayors, members of municipal councils, directors of municipal administrations and their deputies shall make their agendas public. Their agendas shall be published on the websites of the legal entities in which they hold office.</li> </ul>
Slovenia	Integrity and Prevention of Corruption Act	<ul style="list-style-type: none"> <li>Public officials may agree to have contact with a lobbyist only after verifying that the lobbyist is entered into the Register. If, during a contact with a lobbyist a conflict of interest arises on the part of the person lobbied, they must refuse any contact with the lobbyist.</li> <li>They must record, within three days, of each meeting with a lobbyist to their superior and to the Commission for the Prevention of Corruption.</li> <li>They must report, within ten days, any attempts to lobby from unregistered lobbyists to the Commission for the Prevention of Corruption.</li> </ul>

Source: (OECD, 2021<sup>[4]</sup>).

Additionally, general integrity standards for public officials can be adapted to sectors or functions in the executive and legislative branches, and to higher and more politically exposed positions (OECD, 2021<sup>[4]</sup>). For instance, elected or appointed political officials such as members of parliament, ministers, and political advisors are central in the public decision-making process. In this sense, setting higher expectations to serve the public interest for politically exposed positions may be necessary to effectively address risks of lobbying and other influence activities.

Aware of the weaknesses of the current codes of ethics of Members of the House of Representatives and ministers and parliamentary secretaries, the Commissioner carried out a revision of such codes of ethics and developed additional guidelines, as a separate exercise in terms of the Standards in Public Life Act. The revised versions of the codes of ethics introduce several provisions on the interactions with third parties including on the acceptance and registration of gifts, the misuse of public resources and confidential information, and management of conflicts of interest (see Box 4.1).

#### **Box 4.1. Provisions on lobbying included in the revision of the codes of ethics of Malta and additional guidelines**

##### **Revision of the Code of Ethics of Members of the House of Representatives and additional guidelines**

- To establish a Register for Gifts, Benefits and Hospitality in which MPs should duly record not only those received but also those bestowed by them (or their family members) to third parties, if such gifts are related to their parliamentary or political activities and have a value of over EUR 250.
- To establish a Register of Interests for the registration of financial and non-financial interests in compliance with the accompanying guidelines; spouses and/or partners as well as other members of MPs' families shall be subject to registration of certain interests.
- MPs who have any interest which is in conflict with the proper exercise of their duties in any proceedings of the House or its committees shall declare that interest in the House at the first opportunity before a vote is taken.

##### **Revision of the Code of Ethics of Ministers and Parliamentary Secretaries and additional guidelines**

- To establish a Transparency Register in which ministers are required to record all relevant communications with lobbyists within seven days.
- To establish a Register for Gifts, Benefits and Hospitality in which ministers should duly record not only those received but also those bestowed by them (or their family members) to third parties, if such gifts exceed the threshold of EUR 250.
- To establish a Register of Interests for the registration of financial and non-financial interests in compliance with the accompanying guidelines.
- Ministers are required to avoid associating with individuals who could place them under any obligation or inappropriate influence.
- Ministers are required to avoid putting themselves in situations in their private lives that may expose them to any undue pressure or influence, and if they find themselves in such a situation they are required to resolve it immediately in a truthful and open manner.
- If Ministers hold meetings with persons who have an interest in obtaining permits, authorisations, concessions and other benefits from the state, they should do so in an official setting in the presence of officials, unless this is impractical on account of justifiable circumstances.
- Ministers shall not conduct official business through unofficial email accounts.

Source: (Commissioner for Standards in Public Life, 2020<sup>[19]</sup>).

The new provisions of the codes of ethics for MPs, ministers and parliamentary secretaries and the additional guidelines developed by the Commissioner cover the main risk areas of the interactions between public officials and lobbyists, including on potential indirect influence through offering incentives such as gifts, benefits and hospitality. To that end, the government could consider updating the codes of ethics for Members of the House of Representatives and Ministers and Parliamentary Secretaries in line with the revised proposals of the codes by the Commissioner, including the additional provisions to address the risks of lobbying and other influence activities previously detailed. The forthcoming report on the revised codes provides details on their further improvements.

Additionally, the proposed obligation to record all relevant communications with lobbyists in the Transparency Register could be expanded to MPs. Indeed, considering that MPs are also being targeted by lobbying activities, they could be covered by the obligation of registering all relevant communications with lobbyists. Such obligation could be included in the revised version of the Code of Ethics for Members of the House of Representatives, to guarantee coherence with other integrity standards. A similar obligation exists in Spain, where the Code of Conduct for members of the Congress and the Senate requires the publication of meetings with third parties (Box 4.2).

#### **Box 4.2. Code of Conduct for members of the Congress and the Senate of Spain**

In October 2020, the Boards of both Houses of the Spanish Parliament adopted a Code of Conduct for members of the Congress and the Senate. The Code requires the publication of the senators' and deputies' agendas, including their meetings with lobbyists:

The members of the Chambers (Congress and the Senate) “must publish their institutional agenda in the corresponding Transparency Portal, including in any case the meetings held with the representatives of any entity that has the status of interest group. (...) each parliamentarian will be responsible for the veracity, accuracy and timeliness of the published information”.

Source: <https://www.congreso.es/cem/01102020-codconductaCCGG>.

#### ***The Office of the Prime Minister could adopt cooling-off periods for elected officials and appointed officials in at-risk positions, and the Commissioner could adopt a cooling-off period for lobbyists***

Despite the existence of strict standards for managing conflicts of interest, one of the main integrity risks and concerns is the revolving-door phenomenon. Indeed, although the movement between the private and public sectors may result in many positive outcomes including the transfer of knowledge and experience, it can also provide an undue or unfair advantage to influence government policies or to benefit a prospective employer, if not properly regulated (OECD, 2021<sup>[4]</sup>). To that end, the 2010 OECD Recommendation on Lobbying states that “[c]ountries should consider establishing restrictions for public officials leaving office in the following situations: to prevent conflict of interest when seeking a new position, to inhibit the misuse of ‘confidential information’, and to avoid post-public service ‘switching sides’ in specific processes in which the former officials were substantially involved” (OECD, 2010<sup>[6]</sup>).

Several OECD countries have established provisions to regulate the revolving-door phenomenon. This includes setting rules of procedure for joining the public sector from the private sector and vice versa, including imposing cooling-off periods to temporarily restrict former public officials from lobbying their past organisations and imposing similar temporary cooling-off period restrictions on appointing or hiring a lobbyist to fill a regulatory or an advisory post. Still, the definition of these provisions comes with several challenges, including finding an adequate balance between codifying rules and restrictions to safeguard

the integrity of public decisions, without unduly affecting individuals' careers or public service efficiency (OECD, 2021<sup>[4]</sup>).

In Malta, the Commissioner has recommended a ban on lobbying their former employer for certain public officials for a set term after they cease to hold office: three years in the case of ministers, parliamentary secretaries and the Principal Permanent Secretary, and one year for members of the House of Representatives, permanent secretaries, directors general, and the chairpersons and chief executive officers of government companies, foundations and other entities. These periods do align with international good practices that regulate movement between the public and private sectors (Box 4.3).

#### Box 4.3. Examples of provisions on cooling-off periods for elected officials and appointed officials in at-risk positions in OECD countries

In **Australia**, Ministers and Parliamentary Secretaries cannot, for a period of 18 months after they cease to hold office, engage in lobbying activities relating to any matter that they had official dealings within their last 18 months in office. Additionally, persons employed in the Offices of Ministers or Parliamentary Secretaries at Adviser level and above, members of the Australian Defence Force at Colonel level or above (or equivalent), and Agency Heads or persons employed in the Senior Executive Service (or equivalent), shall not, for a period of 12 months after they cease their employment, engage in lobbying activities relating to any matter that they had official dealings with in their last 12 months of employment.

In **Canada**, during the five-year period after they cease to hold office, former designated public office holders are prohibited from engaging in any consultant lobbying activities. Similarly, former designated public office holders who are employed by an organisation are also prohibited from engaging in any in-house lobbying activities for this same five-year period.

In the **Netherlands**, a circular adopted in October 2020 – “Lobbying ban on former ministries” – prohibits ministers and any officials employed in ministries to take up employment as lobbyists, mediators or intermediaries in business contacts with a ministry representing a policy area for which they previously had public responsibilities. The length of the lobbying ban is two years. The objective of the ban is to prevent retiring or resigning ministers from using their position, and the knowledge and network they acquired in public office, to benefit an organisation employing them after their resignation. The secretary general of the relevant ministry has the option of granting a reasoned request to former ministers who request an exception to the lobbying ban.

In the **United States**, Section 207 of the U.S. Code imposes a one-year “cooling-off period” on former Members of Congress, officers and covered employees. As a general matter, for one year after leaving office, those individuals may not seek official action on behalf of anyone else by either communicating with or appearing before specified current officials with the intent to influence them.

Source: (OECD, 2021<sup>[4]</sup>).

To that end, the Office of the Prime Minister could adopt cooling-off periods for elected officials and appointed officials in at-risk positions. Additionally, the Commissioner could strengthen the provisions to regulate the revolving-door phenomenon by setting out a cooling-off period on appointing or hiring a lobbyist to fill a regulatory or an advisory post, which could be included in the specific regulation on lobbying. Other OECD countries have established cooling-off periods for lobbyists, which could inspire Malta in strengthening restrictions to prevent conflict of interest derived from the revolving-door phenomenon (Box 4.4). The forthcoming report on asset and conflict of interest will elaborate further on a risk-based methodology for defining the length of the cooling-off period for different officials.

#### Box 4.4. Examples of provisions on cooling-off periods for lobbyists

In **France**, Article 432 of the Penal Code places restrictions on private-sector employees appointed to fill a post in the public administration. For a period of three years after the termination of their functions in their previous employment, they may not be entrusted with the supervision or control of a private undertaking, with concluding contracts of any kind with a private undertaking or with giving an opinion on such contracts. They are also not permitted to propose decisions on the operations of a private undertaking or to formulate opinions on such decisions. They must not receive advice from or acquire any capital in such an enterprise. Any breach of this provision is punished by two years' imprisonment and a fine of EUR 30 000.

Source: (OECD, 2021<sup>[4]</sup>).

#### ***The Office of the Principal Permanent Secretary could develop guidance to help public officials assess the reliability of information used in policy- and decision-making***

In their interactions with public officials, lobbyists share their expertise, legitimate needs and evidence about policy problems and how to address them (OECD, 2021<sup>[4]</sup>). Although this exchange provides public officials with valuable information on which to base their decisions, lobbyists may sometimes abuse this legitimate process to provide unreliable or inaccurate information to advance their own private interest. Additionally, lobbyists may also indirectly influence policy- and decision-making by supporting and promoting studies that challenge scientific arguments unfavourable to their interests, or highlighting the results of studies financed by their own centres, institutes and other organisations that are favourable to their interests.

To that end, the Principal Permanent Secretary could consider providing guidelines for public officials to help them become aware of the possibility of being indirectly influenced through biased or false evidence, and the need to assess the credibility of sources provided by third parties and used in policy- and decision-making. Some governments have started to provide concrete standards for public officials in assessing evidence provided by third parties, including the Netherlands (Box 4.5).

#### Box 4.5. The Dutch Code of Conduct reminds public officials to consider indirect influence

The Dutch Code of Conduct on Integrity in Central Government reminds public officials to consider indirect ways they may be influenced by special interest groups, for example, by financing research.

“You may have to deal with lobbyists in your work. These are advocates who try to influence decision making to their advantage. That is allowed. But are you always aware of that? And how do you deal with it?”

Make sure you can do your work transparently and independently. Be aware of the interests of lobbyists and of the different possibilities of influence. This can be done very directly (for example by a visit or invitation), but also more indirectly (for example by co-financing research that influences policy).

Consult with your colleagues or supervisor where these situations may be present in your work.

Sometimes it is in the public interest to avoid contacts with lobbyists.”

Source: (OECD, 2021<sup>[4]</sup>).

#### ***The Commissioner could develop and provide additional guidance and increase capacity building and awareness raising activities on lobbying and other influence activities***

Having clear principles, rules, standards and procedures for public officials on their interactions with lobbyists is key, but it is not sufficient to mitigate the integrity risks of lobbying and other influence activities. Raising awareness of the expected rules and standards as well as enhancing skills and understanding of how to apply them are also essential elements to foster integrity in lobbying. Likewise, well-designed guidance, advice and counselling serve to provide clarity and practical examples, facilitate compliance and help avoid the risk of misinterpreting rules and standards (OECD, 2021<sup>[4]</sup>).

Most countries with lobbying transparency frameworks do provide guidance, build capacity and raise awareness of integrity standards and values for public officials (OECD, 2021<sup>[4]</sup>). This may include induction or on-the-job training, disseminating the code of conduct, and issuing posters, computer screen-savers, employee boards, banners, bookmarks and printed calendars (OECD, 2021<sup>[4]</sup>). Training offered by public authorities commonly include guidelines on values and standards, expected behaviour, and concrete examples of good practices, ethical dilemmas and descriptions of potentially problematic situations. Countries where public authorities offer training on interactions with lobbyists include Canada, France, Hungary, Ireland, Lithuania, Slovenia and the United Kingdom.

The majority of countries that have developed specific integrity standards on lobbying also provide guidance on how to apply regulations and guidelines. Assistance may be available online on a dedicated website (e.g. in Canada, France, Lithuania, Slovenia, and the United Kingdom), or by calling a specific hotline or e-mailing a dedicated contact (e.g. in Australia, Austria, Germany, Luxembourg and Poland). Some countries, such as Ireland, provide public officials with both types of assistance through an independent specialised body called the Standards in Public Office Commission (Box 4.6).

#### Box 4.6. Guidance and awareness raising in Ireland by the Standards in Public Office Commission

##### Tailored guidance on lobbying for public officials in Ireland

In Ireland, Article 17 of the Lobbying Act specifies that “the Commission may issue guidance about the operation of this Act and may from time to time revise or re-issue it”, and “may make available specific information to promote awareness and understanding of this Act”.

The website [www.lobbying.ie](http://www.lobbying.ie) contains specific guidance for public officials covered by the provisions of the Law (“designated public officials”), including:

- general guidance for public officials to ensure that they understand how the system works, how they fit into it and how they can assist in supporting implementation of the legislation
- guidance for Members of the Dáil, Members of the Seanad and Members of the European Parliament representing the Irish government
- guidance for Local Authority Members
- guidance on the cooling-off period.

##### Specific hotline or dedicated contact to advise on lobbying issues

The website [www.lobbying.ie/about-us/contact-us/](http://www.lobbying.ie/about-us/contact-us/) contains information details (address, phone number, email and Twitter account) of the dedicated contact within the Standards in Public Office Commission that advises on lobbying issues. People can contact the Commission by telephone, letter, e-mail or by submitting an online enquiry.

Source: <https://www.lobbying.ie/help-resources/information-for-dpos>

In the case of Malta, regulations on lobbying and provisions on the interactions between public officials and lobbyists are a new element of the integrity framework. In this sense, guidance, capacity building and awareness raising activities become fundamental to guarantee the adherence to integrity standards in lobbying and other influence activities. To that end, the Commissioner could develop additional guidance, capacity building and awareness raising activities on lobbying and other influence activities to help build the knowledge, skills and capacity to manage the integrity issues arising. Training activities could include examples of good practices, and ethical dilemmas, with the aim of allowing public officials, through interactive and situational methods, to reflect on key dilemmas and on the consequences of breaching integrity standards (see for example Box 4.7).

### Box 4.7. Capacity building and awareness raising activities on lobbying in OECD countries

#### Training programme carried out by the New York State Joint Commission on Public Ethics

The New York State Joint Commission on Public Ethics (JCOPE) was established as part of the Public Integrity Reform Act of 2011. The JCOPE is responsible for, amongst others, providing information, education, and advice regarding ethics and lobbying laws for State employees, lobbyists and lobbyists clients.

In terms of education and training, the Education Unit of the JCOPE provides a comprehensive and dynamic educational programme for public officers and employees, lobbyists, and clients of lobbyists to ensure that they are fully informed about the State's ethics and lobbying laws, regulations, and guidelines. As part of their education and training programme, the JCOPE Education Unit develops instructor-led trainings on the State's ethics and lobbying laws, designs web-based programming on a variety of topics, and produces a library of written educational materials that are available on the Commission's website (<https://jcope.ny.gov/>).

For instance, aware of the difficulties to navigate the ethics laws, the JCOPE Education Team provides ethics trainings using plain language terms, real world examples and concepts that are easy to understand for State officers and employees on Financial Disclosure Statement (FDS) Filers. The courses consists of online and live instructor-led trainings:

- online ethics training for new FDS filers within three months of becoming subject to the FDS filing requirement;
- two-hour, instructor-led ethics training at regular intervals, or as needed, for FDS Filers to comply with the statutory ethics training deadlines;
- Ethics Seminar for FDS filers who have already successfully completed the instructor-led ethics training and are required to continue their mandatory ethics training requirements.

#### Training for public officials by Slovenia's Commission for the Prevention of Corruption

In its mission to prevent corruption, the Commission for the Prevention of Corruption offers free education and training opportunities for all public sector organisations in Slovenia.

Once a public institution has identified specific needs, such as conflict-of-interest rules, whistle-blower protection, lobbying regulation or any other area in the scope of the commission, the entity may issue a request to the Commission. The request should also highlight the specific ethical dilemmas or concerns of the institution, as well as issues that public officials have encountered in their work.

After careful examination of the needs, issues and concerns, the Commission presents training options and programmes to the requesting institution.

The Commission regularly invites all public officials to attend a seminar organised twice a year by the Administrative Academy. All areas of the Integrity and Prevention of Corruption Act are reviewed, as well as safeguards for integrity in interactions between public officials and lobbyists. The commission is also available at any point to provide ongoing guidance and answer questions.

Source: (OECD, 2021<sup>[4]</sup>; New York State Joint Commission on Public Ethics, 2021<sup>[20]</sup>).

The Commissioner could also consider strengthening its advisory role on lobbying by providing advice on implementation of the lobbying regulation and to help public officials understand the rules and ethical principles of the civil service in combating undue influence. For instance, in France, the High Authority for Transparency in Public Life provides individual confidential advice upon request to the highest-ranking elected and non-elected public officials falling within its scope, and provides guidance and support to their

institution when one of these public officials requests it, within 30 days of receiving the request (OECD, 2021<sup>[4]</sup>).

### ***The Commissioner could consider developing and adopting a Code of Conduct for Lobbyists***

The strength and effectiveness of the policy-making process depends not only on the integrity of public officials but also on the integrity of those who try to influence them. Indeed, companies and lobbyists are critical actors in the policy-making process, providing government with insights, evidence and data to help them make informed decisions. However, they can also at times undermine the policy-making process by abusing legitimate means of influence, such as lobbying, political financing and other activities (OECD, 2021<sup>[4]</sup>). To ensure integrity in the policy-making process, lobbyists (whether in-house or as part of a lobbying association) require clear standards and guidelines that clarify the expected rules and behaviour for engaging with public officials.

The 2010 OECD Recommendation on Lobbying states that lobbyists and their clients should comply with standards of professionalism and transparency in their relations with public officials (OECD, 2010<sup>[16]</sup>). Although different tools can be used to define integrity standards for lobbyists, codes of conduct are the chief support of integrity in the lobbying process. For example, according to the OECD 2020 Survey on Lobbying, 80% of lobbyists surveyed followed a code of conduct (OECD, 2021<sup>[4]</sup>).

Codes of conduct for lobbyists can be issued by different stakeholders. In some OECD countries –like Spain–, lobbyists self-regulate through codes of conduct issued by lobbyists’ employers or lobbying associations, while in other countries –like Australia, Canada and Ireland–, governments directly set standards on general codes of conducts. In some cases, lobbyists follow all three codes of conduct. Although lobbyists self-regulate in some OECD countries, the 2013 OECD surveys on lobbying indicate that governments and legislators consider that self-regulation is not sufficient for alleviating actual or perceived problems of influence peddling by lobbyists (OECD, 2014<sup>[5]</sup>). Moreover, 34% of lobbyists surveyed disagreed, some strongly, with the statement that self-regulation of lobbying is sufficient.

In Malta, the Commissioner has proposed to include a code of conduct for lobbyists in the schedules of the Lobbying Act, which should apply to all lobbyists, not only those who are obliged to register in the Register of Lobbyists. This proposed code of conduct can provide principles by which lobbyists should govern themselves in the course of carrying out lobbying activities, namely: (a) demonstrating respect for public bodies; (b) acting with honesty, integrity and good faith; (c) ensuring the accuracy of information communicated to designated public officials; (d) disclosing information about lobbying activities as required by law, while otherwise preserving confidentiality as appropriate; and (e) avoiding improper influence (such as giving gifts, benefits and hospitality to designated public officials).

Considering that self-regulation may not be sufficient to alleviate actual or perceived problems of inappropriate influence by lobbyists, the Commissioner could develop and adopt a Code of Conduct for Lobbyists. The Code could include provisions regarding the obligation by certain lobbyists to register in a Register of Lobbyists and to submit regular returns about their lobbying activities, as well as appropriate and proportionate sanctions for breaches of the code (see section on sanctions). Box 4.8 provides examples of codes of conduct for lobbyists in other jurisdictions.

### Box 4.8. Codes of conduct for lobbyists

#### City of Ottawa, Canada

The City of Ottawa introduced a 2012 Lobbyist Code of Conduct and a Lobbyist Registry. According to the Code of Conduct, lobbyists are expected to comply with standards of behaviour and conduct in the following matters: 1. Honesty, 2. Openness, 3. Disclosure and identity purpose, 4. Information and confidentiality, 5. Competing interests and 6. Improper influence. For instance, under the topic 3. Disclosure and identity purpose, lobbyists are expected to “register the subject matter of all communication with public office holders that constitutes lobbying under the Lobbyist Registry”

The Lobbyist Registrar is a bilingual online tool found at [ottawa.ca/lobbyist](http://ottawa.ca/lobbyist) that documents lobbying activity within the City of Ottawa. Lobbying must be registered with the Lobbyist Registry within 15 business days of the activity taking place.

#### Ireland

The Standards in Public Office Commission issued a Code of Conduct for persons carrying out lobbying activities, which came into effect on 1 January 2019. The Code sets out several principles by which persons carrying on lobbying activities should govern themselves in the course of carrying out lobbying activities, namely: 1. Demonstrating respect for public bodies, 2. Acting with honesty and integrity, 3. Ensuring accuracy of information, 4. Disclosure of identity and purpose of lobbying activities to public bodies and elected or appointed officials, 5. Preserving confidentiality, 6. Avoiding improper influence, 7. Observing the provisions of the Regulation of Lobbying Act, and 8. Having regard for the Code of Conduct).

#### Quebec, Canada

Complementary to the 2002 Quebec Lobbying Transparency and Ethics Act, the Quebec government issued a Code of Conduct for Lobbyists that establishes standards of conduct and values to which lobbyists must adhere in their communications with public decision makers (elected officials or civil servants): respect for institutions, honesty, integrity, professionalism. Failure to comply with the Code is subject to sanctions.

Source: (Standards in Public Office Commission, 2018<sup>[21]</sup>; OECD, 2022<sup>[22]</sup>).

## Establishing sanctions for breaches of lobbying framework

Lobbying regulations cannot achieve their objectives unless regulated actors comply with them. To that end, they need to specify monitoring and verification activities by oversight bodies, as well as enforcement actions and sanctions for non-compliance. Yet while sanctions can have a deterrent effect, the key to effective regulation is active compliance promotion through a coherent spectrum of strategies and mechanisms. To ensure compliance, and to deter and detect breaches, the OECD Recommendation encourages countries to design and apply a coherent spectrum of strategies and mechanisms, including properly resourced monitoring and enforcement. To that end, countries use several measures through their oversight institutions to promote compliance with transparency requirements, and tend to favour communication and engagement with lobbyists and public officials. Tools include providing a convenient online registration and report-filing system, raising awareness of the regulations, verifying disclosures on lobbying (including delays, accuracy and completeness of the information disclosed, unregistered

activities), sending formal notices to lobbyists to advise of potential breaches, requesting modifications of the information declared and applying visible and proportional sanctions (OECD, 2021<sup>[4]</sup>).

***The Regulation of Lobbying Act could clarify the compliance and enforcement responsibilities of the Commissioner in the area lobbying and ensure he has sufficient resources to carry out these responsibilities***

It is therefore crucial that the proposed Act on Regulating Lobbying first clarifies responsibilities for compliance and enforcement activities. At the OECD level, all countries with a transparency register on lobbying activities have an institution or function responsible for monitoring compliance. Most of these bodies or functions monitor compliance with disclosure obligations and whether the information submitted is accurate, presented in a timely fashion and complete. These functions are usually specified in the relevant lobbying law or regulation. In Malta, the operation of key aspects of the Act and its enforcement would be entrusted to the Commissioner for Standards in Public Life. The Commissioner would host and maintain the register of lobbyists and also enforce the requirement for designated public officials to list communications with lobbyists on relevant matters. This is line with OECD best practices, in countries with similar regulations (Table 4.2).

**Table 4.2. Institutions responsible for the oversight of lobbying regulations in selected OECD countries**

	Oversight entity	Legal framework	Main missions
<b>Canada</b>	Office of the Commissioner of Lobbying	Lobbying Act	<ul style="list-style-type: none"> <li>• Administer the Registry of Lobbyists;</li> <li>• Develop and maintain educational programmes to encourage public awareness of the requirements of the Act;</li> <li>• Verify the information contained in disclosures;</li> <li>• Issue interpretation bulletins with respect to the enforcement, interpretation or application of the Act;</li> <li>• Conduct reviews and investigations to ensure compliance with the Act and the Lobbyists' Code of Conduct</li> </ul>
<b>France</b>	High Authority for transparency in public life	Law on the Transparency in Public Life	<ul style="list-style-type: none"> <li>• Administer the public register of lobbyists</li> <li>• Detect and investigate possible breaches of lobbying rules</li> </ul>
<b>Ireland</b>	Standards in Public Office Commission	Regulation of Lobbying Act	<ul style="list-style-type: none"> <li>• Administer the Regulation of Lobbying Act</li> <li>• Investigate possible breaches of the Act</li> <li>• Prosecute offences</li> <li>• Administer fixed payment notices for late filing of lobbying returns</li> </ul>
<b>Lithuania</b>	Chief Official Ethics Commission	Law on Lobbying Activities and the Transparent Legislative Processes Information System	<ul style="list-style-type: none"> <li>• Administer the Law on Lobbying Activities and the Transparent Legislative Processes Information System</li> <li>• Investigate potential breaches to the Law</li> <li>• Provide lobbyists and public officials with methodological support and recommendations</li> </ul>
<b>United Kingdom</b>	Office of the Registrar of Consultant Lobbyists	Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act	<ul style="list-style-type: none"> <li>• Administer the statutory Register of Consultant Lobbyists</li> <li>• Monitor compliance with the provisions of the Act</li> <li>• Investigate information from third parties on alleged non-compliance</li> <li>• Initiate enquiries if the consistency or accuracy of information is in question</li> <li>• Issue formal Information Notices to registrants or non-registrants</li> <li>• Impose civil penalties of up to GBP 7 500, or refer the latter to the Director of</li> <li>• Public Prosecutions for potential criminal prosecution</li> <li>• Impose civil and criminal penalties for non-compliance</li> </ul>

Source: (OECD, 2021<sup>[4]</sup>).

Second, the Act could clarify the types of verification activities conducted and the investigative powers entrusted to the Commission. Verification activities include for example verifying compliance with disclosure obligations (i.e. existence of declarations, delays, unregistered lobbyists), as well as verifying the accuracy and completeness of the information declared in the declarations. Investigative processes and tools include:

- Random review of registrations and information disclosed or review of all registrations and information disclosed;
- Verification of public complaints and reports of misconducts;
- Inspections (off-side and/or on-site controls may be performed);
- Inquiries (requests for further information);
- Hearings with other stakeholders.

In Canada for example, the Office of the Commissioner of Lobbying can verify the information contained in any return or other document submitted to the Commissioner under the Act, and conduct an investigation if he or she has reason to believe, including on the basis of information received from a member of the Senate or the House of Commons, that an investigation is necessary to ensure compliance with the Code or the Act. This allows the Commissioner to conduct targeted verifications in sectors considered to be at higher risk or during particular periods. The Commissioner can ask present and former designed public officials to confirm the accuracy and completeness of lobbying disclosures by lobbyists, summon and enforce the attendance of persons before the Commissioner, and compel them to give oral or written evidence on oath, as well as compel persons to produce any document or other things that the Commissioner consider relevant for the investigation.

The Irish Standards in Public Office Commission, on the other hand, reviews all registrations to make sure that all who are required to register have done so and that they have registered correctly. Depending on the approach chosen in Malta (review of all registrations or random reviews), the minister responsible for the administration of the Act will also need to ensure that the Commissioner has sufficient resources to conduct these activities.

Using data analytics and artificial intelligence can facilitate the verification and analysis of data. In France for example, the High Authority for Transparency in Public Life has now set up an automatic verification mechanism using an algorithm based on artificial intelligence, to detect potential flaws upon validation of annual lobbying activity reports (Box 4.9).

#### **Box 4.9. France is using artificial intelligence to enhance the quality of annual lobbying reports**

In France, registered lobbyists must submit an annual activity report to the High Authority for Transparency in Public Life (HATVP) within three months of the lobbyist's financial year. In analysing the activity reports for the period 1 July 2017 to 31 December 2017, the HATVP noted the poor quality of some of the activity reports, due to a lack of understanding of what should be disclosed. Over half of the 6 000 activity reports analysed did not meet any of the expected criteria. Often, the section describing the issues covered by lobbying activities – identified by their purpose and area of intervention – was used to report on general events, activities or dates of specific meetings.

In January 2019, the HATVP set up various mechanisms to enhance the quality of information declared in activity reports. Practical guidance was provided explaining how the section on lobbying activities should be completed, with a pop-up window presenting two good examples. An algorithm based on artificial intelligence was established to detect potential defects on validation of the activity report, and detect incomplete or misleading declarations.

Source: (OECD, 2021<sup>[4]</sup>).

Cross-checking available information also makes it possible to assess the consistency between data provided from various sources. For example, information within lobbying registries can be cross-checked with political finance contributions or open agendas. Several OECD countries have set up such mechanisms. In the United Kingdom, the Office of the Registrar of Consultant Lobbyists cross-checks lobbyists registered with ministerial open agendas, to monitor and enforce compliance with the requirements set out by the Transparency of Lobbying Act. In the United States, the Supreme Audit Institution (SAI), the Government Accountability Office, relies on the accessibility of databases as well as on the informal exchange of information between entities to cross-check lobbying disclosure requirements and political contributions.

***The Regulation of Lobbying Act could include a gradual system of financial and non-financial sanctions depending on the nature of the breach and applied at the entity level***

Sanctions should be an inherent part of the enforcement and compliance setup and should first serve as a deterrent and second as a last resort solution in case of a breach of the lobbying regulation. As a first step, the Act will need to specify what are the type of breaches that can lead to sanctions. Sanctions usually cover the following types of breaches:

- not registering and/or conducting activities without registering;
- not disclosing the information required or disclosing inaccurate or misleading information;
- failing to update the information or file activity reports on time;
- failing to answer questions (or providing inaccurate information in response to these questions) or co-operating during an investigation by the oversight authority;
- breaching integrity standards / lobbying codes of conduct (OECD, 2021<sup>[4]</sup>).

The 2010 OECD Recommendation provides examples of sanctions and notes that visible and proportional sanctions should combine innovative approaches, such as: public reporting of confirmed breaches, with traditional financial or administrative sanctions, such as debarment, and criminal prosecution as appropriate.

The practice has also shown that a graduated system of administrative sanctions appears to be preferable as countries that have established lobbying rules and guidelines provide for a range of graduated disciplinary or administrative sanctions, such as warnings or reprimands, fines, debarment and temporary or permanent suspension from the Register and prohibition to exercise lobbying activities (OECD, 2021<sup>[4]</sup>). A few countries have criminal provisions leading to imprisonment, such as Canada, France, Ireland, Peru, the United Kingdom and the United States.

In line with 2010 OECD Recommendation and the best practice jurisdictions, the Commissioner has proposed two levels of sanctions – administrative fines and criminal penalties – be imposed by the Commissioner and by the courts, respectively. It is commendable that the proposed discretionary element, as exists within the judicial and administrative system in all jurisdictions, will be entrusted to the Commissioner to award variety of penalties within determined brackets, according to the nature and severity of the breach.

The sanctions should have a sufficient deterrent effect. In many OECD countries, a common challenge identified are sanctions that are likely to be perceived as light by the person concerned. In France for example, the High Authority for Transparency in Public Life concluded that the maximum amount for fines incurred for legal persons (EUR 75 000) is negligible for large companies.

***The Regulation of Lobbying Act could include provisions that enable the Commissioner to send formal notices and apply administrative fines to incentivise compliance***

The OECD Recommendation specifies that comprehensive implementation strategies and mechanisms should carefully balance risks with incentives for both public officials and lobbyists to create a culture of compliance. OECD practice shows that regular communication with lobbyists on potential breaches appears to encourage compliance without the need to resort to enforcement, and helps to create a common understanding of expected disclosure requirements. These notifications can include for example formal notices sent to potential un-registered lobbyists, requests for modifications of information declared in case of minor breaches, or formal notices sent to a lobbyist or a public official to advise of a potential breach (Box 4.10). The Consultation Paper already provides measures going in this direction when it proposes that the Commissioner for Standards in Public Life should be empowered to direct registrants to make corrections or supply missing information, either in their basic data or in their quarterly returns, where this is necessary (failure to comply should give rise to the possible application of sanctions). The proposal of the Consultation paper to notify the person or body of the possible offence and ensure that the person or body is given the opportunity to make representations before the penalty is imposed, is also in line with good practices in OECD countries.

**Box 4.10. Formal notices to encourage compliance in France**

When the High Authority for transparency in public life finds, on its own initiative or following a public complaint, a breach of reporting or ethical rules, it sends the interest representative concerned a formal notice, which it may make public, to comply with the obligations to which he or she is subject, after giving him or her the opportunity to present observations.

After a formal notice, and during the following three years, any further breach of reporting or ethical obligations is punishable by one year's imprisonment and a fine of EUR 15 000.

Source: HATVP, [https://www.hatvp.fr/espacedeclarant/representant-dinterets/ressources/#post\\_4640](https://www.hatvp.fr/espacedeclarant/representant-dinterets/ressources/#post_4640).

Administrative fines also have the potential to incentivise compliance and resolve cases of late returns or registrations. For example, since the entry into force of the Lobbying Act in Ireland, the Standards in Public Office Commission has focused on encouraging compliance with the legislation by engaging with registrants to resolve any non-compliance, including by issuing fixed payment notices for late return filings, before initiating prosecution proceedings (Box 4.11). The Commission concluded that increased communication and outreach activities with registered lobbyists at an early stage of the process reduced the number of files referred for prosecution in 2018. Most lobbyists complied with their obligations, once contacted by the investigations unit.

#### Box 4.11. Ireland's Standards in Public Office Commission has the authority to pursue breaches

The Irish Regulation of Lobbying Act 2015 on enforcement provisions (Part 4) gives the Standards in Public Office Commission the authority to conduct investigations into possible contraventions of the Act, to prosecute offences and to issue fixed-payment notices of EUR 200 for late filing of lobbying returns.

The commission reviews all registrations to make sure that all who are required to register have done so and that they have registered correctly. It can also, by providing notice to a given registrant, request further or corrected information if it considers an application is incomplete, inaccurate or misleading.

The commission established a separate Complaints and Investigations Unit to manage investigations and prosecutions. The unit also sets up procedures to investigate non-compliance in relation to unreported lobbying by both registered and non-registered persons, as well as failure to comply with the requirement to post returns, or a failure to post lobbying activity in a timely fashion:

- **Unregistered lobbying activity** is monitored through open-source intelligence such as media articles, the Register itself, or complaints or other information received by the commission;
- **Late returns by registered persons** are monitored on the basis of the information available on the lobbying register relating to the number of late returns and non-returns after each return deadline. The online register is designed to issue fixed payment notices automatically to anyone submitting a late return on lobbying activities. If the payment is not paid by the specified date, the commission prosecutes the offence of submitting a late return.

As noted in the commission's annual reports, in most cases, receipt of the notice was enough to secure compliance. In 2017, the year the enforcement provisions went into force, no convictions nor investigations were concluded. In 2018, 26 investigations were launched to gather evidence on possible unreported or unregistered lobbying activity, of which 13 were discontinued (in part because the person subsequently came into compliance with the Act) and 13 were ongoing at year's end. The commission noted that the 270 notices issued for the three relevant periods in 2018 were significantly fewer than the 619 issued in 2017, a marked improvement in compliance with the deadlines.

Source: (OECD, 2021<sup>[4]</sup>).

#### ***The Regulation of Lobbying Act could include provisions mandating the transparency of sanctions in a publicly accessible register***

To ensure accountability, all sanctions and beaches could be made public and included in a publicly accessible online register. The publication of certain decisions regarding violations does exist in other countries such as France and Canada. The implementation of such provisions in these jurisdictions has shown that these mechanisms can be particularly effective in promoting compliance.

In particular, the Regulation of Lobbying Act could include provisions that allow the Commissioner to create a list of sanctioned lobbyists and entities. The list would be publicly available and it would be mandatory for decision makers to consult the list to know if any person they communicate with is on that list. Moreover, any communication with a person from that list must be recorded in the Transparency Register, with no exceptions. Also, the Code of Ethics within the Public Administration Act may, for example, forbid public employees from receiving any inputs to their decision-making processes from those penalised under the lobbying regulation. As for promoting political responsibility of designated public officials, the lobbying regulation could prescribe publicising any breaches to make the electorate aware of the acts committed by public officials – and potentially politicians – so that they can make informed voting decisions.

***The Regulation of Lobbying Act could include a provision for judicial review of a decision making or policy that was the outcome of a breach in the lobbying regulation***

Some decision-making processes are so important and have so far-reaching consequences that no imaginable sanctions for either lobbyists or public officials can effectively deter attempts of undue influencing. The National Audit Office proposed in the public consultation on the Consultation Paper that "[t]he Commissioner for Standards in Public Life may deem it appropriate to not only penalise the illicit influence but prohibit it outright and any actions found to be made as a result of the illicit influence deemed null and void" (Office of the Commissioner for Standards in Public Life, n.d.<sup>[23]</sup>). While this is not a current practice in OECD countries, it could be considered as a powerful deterrent for those seeking to unduly influence the policy or decision-making process. If included, this mechanism should be considered a last resort, and involve judicial review.

# Summary of recommendations

## Setting the legal and institutional framework for transparency and integrity in lobbying

- The Government of Malta could regulate lobbying through a dedicated law.
- The Commissioner for Standards in Public Life could be entrusted with responsibilities for overseeing and enforcing the Regulation of Lobbying Act.

## Ensuring transparency in lobbying

- The definitions on lobbying in the proposed Regulation of Lobbying Act could be revised in several key areas.
- The Regulation of Lobbying Act could include provisions that require regular, timely updates to the information contained in both the Register for Lobbyists and the Transparency Register.
- The Regulation of Lobbying Act could include provisions that further clarify the administration and accessibility of the Register for Lobbyists and the Transparency Register.
- The Regulation of Lobbying Act could contain clear criteria for withholding data contained in the Register for Lobbyists and Transparency Register.
- The Regulation on Lobbying Act could contain clear criteria for withholding particular information from the Register for Lobbyists and the Transparency Register.
- The Regulation on Lobbying Act could include: (i) binding rules for the selection process of advisory or expert groups, and (ii) transparency into what the outcomes are, how they have been dealt with and how they are incorporated in the resulting decision.

## Fostering integrity in lobbying

- To foster integrity when interacting with lobbyists, the Office of the Principal Permanent Secretary could develop specific principles, rules, standards and procedures for public officials.
- To mitigate risks posed by the “revolving door”, the Office of the Prime Minister could adopt cooling-off periods for elected officials, appointed officials in at-risk positions and the Commissioner for Standards in Public Life could establish a cooling-off period for lobbyists.
- The Office of the Principal Permanent Secretary could develop guidance to help public officials assess the reliability of information used in policy- and decision-making.
- The Commissioner for Standards in Public Life could develop and provide additional guidance and increase capacity building and awareness raising activities on lobbying and other influence activities.
- The Commissioner for Standards in Public Life could consider developing and adopting a Code of Conduct for Lobbyists.
- The Regulation of Lobbying Act could clarify the compliance and enforcement responsibilities of the Commissioner in the area of lobbying.
- The Regulation of Lobbying Act could include a gradual system of financial and non-financial sanctions depending on the nature of the breach and applied at the entity level.

- The Regulation of Lobbying Act could include provisions that enable the Commissioner for Standards in Public Life to send formal notices and apply administrative fines to incentivise compliance.
- The Regulation of Lobbying Act could include provisions mandating the transparency of sanctions in a publicly accessible online register.
- The Regulation of Lobbying Act could include a provision allowing for decision making or policy outcomes to be rectified if the lobbying regulation was violated.

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