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*This paper complements the OECD report "Lobbysits, Governments and Public Trust: Building a Legislative Framework for Enhancing Transparency and Accountability in Lobbying."*

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## SELF-REGULATION AND REGULATION OF THE LOBBYING PROFESSION<sup>1</sup>

### INTRODUCTION

1. Undue influence-peddling, in which special interests exercise too much sway over public policy for self-serving purposes, and the regulation of lobbying have become major concerns for many modern liberal democracies from Europe to the Americas in recent years. Nation-states that rely on the trust and support of their citizenry for survival are awakening to a startling realisation that they may be losing both. Public confidence in how public policies are being formulated, and in whose interest, has been shaken by the global mismanagement of the financial services sector and by repeated stories of lobbyist corruption.

2. The financial services sector in the United States, for example, spent \$3.4 billion on lobbying the federal government from 1998 through 2008, seeking largely to deregulate the financial industry to their advantage. In 2007 alone, the financial services sector employed a legion of 2,996 lobbyists to ply the industry's interests on Capitol Hill.<sup>2</sup>

3. The financial services industry peddled their deregulatory interests throughout much of Europe as well. As European Internal Markets Commissioner Charlie McCreevy noted:

*“What we do not need is to become captive of those with the biggest lobby budgets or the most persuasive lobbyists: We need to remember that it was many of those same lobbyists who in the past managed to convince legislators to insert clauses and provisions that contributed so much to the lax standards and mass excesses that have created the systemic risks. The taxpayer is now forced to pick up the bill.”<sup>3</sup>*

4. A decade of financial deregulation contributed to the collapse of the financial services sector and created the need for a massive intercontinental “bailout program.” The public – which is now being called upon to pay for the recklessness of the financial services industry and the lack of oversight by regulators – has grown increasingly alarmed that self-serving influence of special interests has been able to penetrate so deep inside the halls of government, ignoring and undermining the interests of the citizenry.

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<sup>1</sup> This paper was written by Craig Holman, Ph.D., Governmental Affairs Lobbyist, Public Citizen; and Thomas Susman, Esq., Director, Governmental Affairs Office, American Bar Association. The authors express their appreciation for invaluable research assistance provided by Meagan Chen and Lucas Tieman. The conclusions reached in this report are those of the authors alone and do not necessarily reflect the opinions of Public Citizen, the American Bar Association or the OECD.

<sup>2</sup> Essential Information, *Sold Out: How Wall Street and Washington Betrayed America* (2009) available at: [http://www.wallstreetwatch.org/reports/sold\\_out.pdf](http://www.wallstreetwatch.org/reports/sold_out.pdf).

<sup>3</sup> Olivier Hoedeman, “Secrecy Prevails Among EU Lobbies,” *Brussels Sunshine* (Mar. 9, 2009).

5. As a result, many western democracies have begun to respond to this loss of public confidence through a variety of means to rein in special interest dominance over public affairs. One such response under consideration among some governments in Europe is “lobbying reform,” including mandatory registration of lobbyists, disclosure of lobbying activity and restrictions on the interaction between lobbyists and government officials.

6. Actual or perceived corruption and undue influence-peddling – and the calls within government for lobbying reform – have not gone unnoticed by the lobbying community. Professional lobbying associations have taken a renewed interest in promoting ethical codes of conduct and in some cases, such as the Public Relations Institute of Ireland, providing extensive ethics training for lobbyists.

7. Government officials, lobbyists and the public alike recognise that undue influence-peddling is a major threat to a democratic form of government based on the principles of equality and popular representation. The question is not whether a problem exists, but what to do about it. The inclination of government is to regulate lobbying. The inclination of the lobbying profession is to assuage actual and perceived corruption through self-regulation and ethics training.

8. Underlying both regulation and self-regulation of the lobbying profession are the concepts of transparency and accountability. Public confidence demands some level of openness in the policymaking arena as reassurance that government is operating in the public’s interest.

9. This research takes a close look at the efforts of the lobbying profession in Europe to address the problem of undue influence-peddling through self-regulation and compares these steps to the regulatory measures taken by some governments. The approaches of self-regulation and regulation are examined for their ability to combat undue influence-peddling and to bring integrity back to government and the profession of lobbying. This analysis proceeds first through a theoretical discussion of the essential nature of lobbying and then documents the regulatory and self-regulatory terrain among member countries of the Organisation for Economic Co-operation and Development (OECD). It is followed by a series of attitudinal surveys of professional lobbyists, lobbying associations and government officials working in the fields of transparency and corruption in the public sector. Finally, an assessment is offered as to how well self-regulation and regulation of lobbying may reach their objectives and whether they could be mutually reinforcing.

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## EXECUTIVE SUMMARY

10. Undue influence-peddling – in which special interests may exercise too much sway over public policy for self-serving purposes – may merely be a problem of perception, or a more serious problem in reality, for a democratic society. Democratic government requires legitimacy to function properly, and legitimacy comes from the trust and support of its citizenry. Any widespread perception of undue influence-peddling in government tears at the very fabric of that legitimacy.

11. In several democratic societies, the rise of the profession of lobbyists – especially lobbyists who are well compensated to represent special interests – has challenged at least the perception of governmental legitimacy. In some nations, such as the United Kingdom, the perception of undue influence-peddling by lobbyists has spurred professional lobbying associations to adopt self-regulatory transparency measures to help assure the public that policymaking is being done in the public's interest. In other nations, such as the United States, the government has imposed mandatory transparency regulations on all lobbyists.

12. This report examines self-regulation and regulation of the lobbying profession in an effort to rein in the perception or reality of undue influence-peddling, with a particular emphasis on European experiences. The authors begin with a theoretical analysis of the nature of lobbying and its value to democratic governance. Lobbying serves a necessary and useful function in democratic governance. Even though the profession is based in the private sector, the purpose of lobbying exclusively is to influence public policies, making it unique from all other private-sector enterprises. Lobbying ultimately serves a governmental function, which cannot be said of any other business. In their role of creating a bridge between the private sector and the public sector, lobbyists and public officials instinctively relate according to the “reciprocity principle,” in which lobbyists providing needed research, gifts or other items of value help create a sense of obligation on behalf of appreciative public officials. This unique nature and relationship between lobbyists and public officials alone warrants special transparency requirements not due others in the private sector.

13. The study documents measures taken by lobbying associations in self-regulating the profession through a series of personal interviews with leaders of the associations in Europe. These interviews unveil an extensive analysis of the history and roles lobbying associations serve in professionalising the practice of lobbying. Some of the professional lobbying associations have refined ethics codes for lobbyists from general concepts to specific behavioural guidelines in an effort to curtail inappropriate influence-peddling. These associations have also dedicated extensive resources to ethics training and education for lobbyists – a role in which the professional associations excel.

14. The research then quickly turns to employing the most comprehensive survey to date of attitudes among European lobbyists toward self-regulation and regulation of the lobbying profession. Many of the results of this survey are surprising, such as finding a marked consensus among lobbyists that transparency of the profession is necessary and constructive, but also some sharp differences on the nature of the “best” lobbying transparency program.

15. Lobbyists in Europe of all stripes – contract lobbyists, corporate lobbyists and non-profit lobbyists – recognise there is a damaging public perception of undue influence-peddling by the lobbying profession. As a result, more than three-fourths of all lobbyists support public transparency of lobbying activities. A large majority of lobbyists support a *mandatory* system of lobbyist transparency. But sharp differences begin to emerge within the lobbying profession over who would

best manage a lobbyist transparency program. Most notably, lobbyists who believe that inappropriate influence-peddling within the profession is a “frequent” or “occasional” problem strongly favour a government-run lobbyist transparency program. Lobbyists who believe that ethical violations are “not often” or “never” a problem in the profession tend to favour a lobbyist transparency program managed by a professional association or by lobbyists themselves.

16. This finding alone highlights the importance of context in evaluating the merits of self-regulation versus regulation of the lobbying profession. Where public cynicism in the integrity of government is not so strong, carefully planned and administered efforts by lobbyists and their lobbying associations to abide by principles of transparent and honest policymaking may well be sufficient. In jurisdictions where public cynicism is more challenging, a stronger set of self-regulations and regulations may be in order to regain the trust of the citizenry. Clearly, the “best model” for establishing transparency and accountability in government to a large extent must be tailor-made for the political realities of each jurisdiction and country.

17. Nevertheless, the authors identify several options for self-regulation and regulation of the lobbying profession that can help achieve the bottom line of reducing the appearance or reality of undue influence-peddling by lobbyists and strengthening the public’s trust in government.

18. Measures that can enhance transparency and accountability through *self-regulation* include:

- Develop and promulgate an ethics code for lobbyists that relies less on general principles of honesty and integrity and more on specific behavioural principles that can help steer lobbyists away from unethical situations, such as restricting the flow of gifts or compensation from lobbyists to public officials.
- Provide extensive, mandatory ethics training as a condition of association membership.
- Enforce compliance to the ethics code through an investigative panel that is reasonably independent of lobbyists and the lobbying associations.
- Establish an association-run lobbyist registry, disclosed to the public through the Internet.

19. While several significant steps can be taken to strengthen self-regulation of the lobbying profession, self-regulation cannot be as widely applied and evenly balanced as government regulation. Regulation of lobbying, if carefully defined and prudently administered, can capture all those who lobby for compensation, regardless of primary occupation, and leave untouched volunteer citizen efforts to shape public policy. The purpose of useful lobbying regulation is to follow the trail of money in politics.

20. In jurisdictions where cynicism in government is growing or already at high levels, or where lobbying is becoming a high-financed profession, government regulation of lobbying addresses many of the problems that self-regulation cannot. Regulatory measures that enhance transparency and accountability include:

- Capture all persons who pass a minimal threshold of paid lobbying activity as “professional lobbyists” in the transparency program, rather than only those who voluntarily join a lobbying association, by carefully defining who must register as a lobbyist and what activity must be disclosed to the public.
- Mandate registration and disclosure of professional lobbyists, their clients and certain financial activity, all records of which are to be made easily available to the public on the Internet.

- Monitor and enforce compliance to the lobbyist registration and disclosure requirements, as well as any other violations of lobbying laws or ethics rules, through a governmental agency that is fully independent of the lobbying profession and demonstrably more inclined to take enforcement actions than the voluntary lobbying associations.
- Extend transparency and accountability measures beyond lobbyists to public officials as well, including restrictions on conflicts of interest, full financial disclosure of investments and properties owned by government officials, and restrictions and disclosure on the “revolving door” between the private sector and the public sector.

## METHODOLOGY

21. This study provides both a theoretical and descriptive analysis of lobbying, focusing on the self-regulation and regulation of lobbying activity in Europe. The study examines the underlying principles and definitions of lobbying and describes the existing framework for self-regulation and regulation of the profession. The types of various self-regulations and regulations of lobbying are charted. Finally, a set of recommendations are offered to help the lobbying profession and government achieve transparency and accountability in policymaking – the primary objectives of reasoned governance in democratic societies.

22. Three different methodologies are employed in the course of this study. The first is a theoretical analysis of the definition and key components of lobbying. This involves a discussion of the basic principles of a democratic society and the role served by lobbying in that society. The evolution of the legal definition of lobbying is provided along with an assessment of its impact on policymaking.

23. In order to examine the history and role of voluntary lobbying associations in professionalising the field, a series of interviews were conducted with leaders of many of the European lobbying and public affairs associations. This analysis of professional lobbying associations crossed the continent, from the United Kingdom to Scandinavia to Germany to Croatia. Additional interviews were conducted with selected governmental officials in Canada and the United States who are in charge of administering their respective lobbyist registries. These additional interviews reveal some insights into the costs and burdens of government-run registries. *See Appendix E, “Persons and Organisations Interviewed in the Course of this Study,”* for a listing of these interviews.

24. Finally, and most importantly, two web-based surveys were conducted: a primary survey of European lobbyists’ attitudes toward self-regulation and regulation of the profession; and a secondary survey of government regulators in Canada and Europe. The primary survey consisted of 16 brief multiple choice questions distributed widely among self-identified lobbyists throughout Europe. A much smaller, secondary survey polled the attitudes of public disclosure offices in national and provincial governments, such as a government’s Office of Ombudsman or a lobbyist Office of Registry, if such office exists. The United States was specifically excluded from the secondary survey because the authors sought to tap the experiences of nations with newer efforts to regulate undue influence-peddling.

25. The primary survey of lobbyist attitudes and the secondary public sector survey were provided as web-based surveys. The primary survey was conducted from February 6 through February 13, 2009. The secondary survey of the public sector was conducted from February 10 through February 23, 2009. The primary survey is attached as Appendix A.

26. The primary survey focused exclusively on the attitudes toward self-regulation and regulation of European lobbyists. But the absence of a comprehensive registration system of lobbyists in Europe renders it impossible to identify the full universe of the lobbying community for sampling purposes. The only practical means available for building an adequate sample pool is to rely on self-identified lobbyists as indicated in their membership with a recognised lobbying or public relations professional association or civic organisation. There are many such associations and organisations at both the national, regional and international levels that publish some or all of their membership. When e-mail contact addresses could be identified for these self-identified lobbyists, they were included in the sample pool. *See Appendix E* for a listing of organisations tapped for building a sample pool for the primary survey.

27. The rate of response to the primary survey was stunning. The authors were able to mine the e-mail addresses of about 1,005 self-identified lobbyists. We received a surprisingly large number of full responses from 189 European lobbyists, amounting to an overall response rate of 18.8 percent. This is the largest response yet for any previous academic survey research on lobbyists' attitudes.

28. Specifically because of the problem in identifying the sample pool of lobbyists in Europe, there have been few such undertakings. The few undertakings that have been conducted relied on a small number of responses. A study by Raj Chari, John Hogan and Gary Murphy, for example, received about 80 responses from lobbyists surveyed, for a 6.5 percent response rate. A follow-up study received a similarly low response rate. An earlier survey of both European and American lobbyists toward regulatory reform by one of the authors of this report also received relatively few responses, from 74 lobbyists representing a response rate of 14.4 percent.<sup>4</sup>

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<sup>4</sup> See Raj Chari, John Hogan and Gary Murphy, "Regulating Lobbyists: A Comparative Analysis of the United States, Canada, Germany and the European Union," *The Political Quarterly* (July-Sept. 2007) at 422-438; Raj Chari, John Hogan and Gary Murphy, "Next Door They have Regulation, But Not Here..." *Canadian Political Science Review* (Sept. 2008) at 125-151; and Craig Holman, "Lobbying Reform in the United States and the European Union: Progress on Two Continents," in Conor McGrath, ed. *INTEREST GROUPS AND LOBBYING* (2009) at 267-292.

## **PRIVATE INTERESTS, PUBLIC CONDUCT: THE ESSENCE OF LOBBYING**

29. A democratic system of government rests on several principles of political legitimacy. One principle is a certain degree of political equality among the citizenry. If one class of citizens is much more powerful and influential than others, then the democratic system is in peril. A second principle is government accountability. Those who govern must be attentive of the needs of the citizens and more or less accountable to the public at large. A third principle is the informed consent of the governed. For citizens to provide their informed consent, there must be a significant level of transparency in government. Just as important, citizens must have a reasonable opportunity to participate in government to have their voices heard. When these principles of equality, accountability, informed consent and participation are muted or lost, the legitimacy of the government will soon fail.

30. The profession of lobbying bears substantial weight on each of these pillars of democratic legitimacy. When exercised properly, lobbying can strengthen accountability in government and the participation of citizens in policymaking. But when lobbying becomes an excessively elite profession, exclusively serving well-financed special interests, it can become quite damaging to the citizen's perception of political legitimacy.

### **Definitions of "Lobbying"**

31. For a term that is so well known and so frequently invoked, one would expect a consensus behind what the term "lobbying" means. There is no such consensus. Political scientists Frank Baumgartner and Beth Leech bemuse in their review of the literature on lobbying that the "word 'lobbying' has seldom been used the same way twice by those studying the topic."<sup>5</sup>

32. Some practitioners in the lobbying profession view lobbying in its most sweeping and elemental forms, as acting to influence the decisions of others, whether personal, business or governmental.<sup>6</sup> Some academic scholars also offer a broad, philosophical definition of lobbying, but focusing on its governmental function. Lester Milbrath, for example, defines lobbying as "the stimulation and transmission of communications, by someone other than a citizen acting on his own behalf, directed to a governmental decision-maker with the hope of influencing his decision."<sup>7</sup>

33. For purposes of this research, the definition of lobbying will focus on efforts to influence the actions of government. Nonetheless, a clear definition can be elusive. Lobbying can be an effort to influence different levels of government (local, national, regional or transnational) or different branches of government (judicial, legislative or executive). It can be carried on by many different actors with very different objectives, such as corporate lobbyists, contract lobbyists, non-profit lobbyists, public relations professionals and even governments attempting to influence each other. Some lobbyists may carry out lobbying activities as incidental to other activities, such as lawyers pursuing the legal interests of their clients or political activists attempting to influence elections. Lobbying can take the form of "direct lobbying" contacts with government officials or as indirect

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<sup>5</sup> Frank Baumgartner and Beth Leech, *BASIC INTERESTS: THE IMPORTANCE OF GROUPS IN POLITICS AND POLITICAL SCIENCE* (Princeton: Princeton University Press, 1998) at 33.

<sup>6</sup> Gael du Bouetiez, a lobbyist and member of SEAP, suggested such a definition before a hearing of the Constitutional Committee of the European Parliament, Brussels, "Will the ETI Deliver?" (Sep. 18, 2006).

<sup>7</sup> Lester Milbrath, *THE WASHINGTON LOBBYIST* (Chicago: Rand McNally, 1963) at 7.

appeals to the general public to influence governmental decisions, generally known as “grassroots lobbying.”

34. Recognising the complexity of the concept of lobbying is essential to the debate about rules and regulation of the profession. The definition will determine who, when and what is subject to any transparency or regulatory regime.

35. One general definition of “lobbying” provided by the Public Relations Institute of Ireland, Chartered Institute of Public Relations and the Public Relations Consultants Association, and which has found considerable support within the institutions of the European Union, is “the specific efforts to influence public decision making either by pressing for change in policy or seeking to prevent such change. It consists of representations to any public officeholder on any aspect of policy, or any measure implementing that policy, or any matter being considered, or which is likely to be considered by a public body.”<sup>8</sup>

36. This is an adequate definition for self-regulatory regimes of the profession, since self-regulation essentially relies on voluntary decisions to join a professional lobbying association or to voluntarily register as a lobbyist with any other entity. The European Commission, with its voluntary lobbyist registry, provides an equally general definition of lobbying as “all activities carried out with the objective of influencing the policy formation and decision-making process of the European institutions.”<sup>9</sup> The European Commission’s definition, though simpler, is in fact more embracing in that it also captures “grassroots lobbying” activity. Either definition is fine under a voluntary system of self-regulation, in which the primary objective of a definition of lobbying is to focus on activity designed to affect public policies.

37. However, when it comes to establishing a government-run transparency program or regulatory regime, especially if the program is mandatory, clarity of definitions will determine the success or failure of the regulatory program. It is absolutely essential to make the definition of “lobbying” and “lobbyist” as objective and empirical as possible.

38. Recent history in the United States reveals how an ambiguous definition can lead to unintended consequences. Despite the fact that the U.S. Congress as early as 1946 intended to set up a mandatory registry of lobbyists at the federal level, an ambiguous definition of “lobbying” left the decision to register a subjective, voluntary choice of lobbyists for nearly 50 years. The early American Federal Regulation of Lobbying Act of 1946 required anyone whose “principal purpose” was to influence the passage or defeat of legislation in Congress to register with the Clerk of the House and the Secretary of the Senate and to file quarterly financial reports.<sup>10</sup>

39. The greatest problem with the early law was that it relied upon a subjective threshold in determining who had to register and provided an ambiguous definition of what information they had to declare. Most lobbyists felt that their primary purpose was something other than influencing Congress – their primary purpose was to practice law, conduct business, or serve some non-lobbying function. Furthermore, a study by *Congressional Quarterly* found that the “Act’s vagueness in 1946 on what

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<sup>8</sup> Public Relations Institute of Ireland, “PRII Positions Papers: Regulation of Lobbying,” at: [http://www.prii.ie/show\\_content.aspx?idcategory=1&idsubcategory=2](http://www.prii.ie/show_content.aspx?idcategory=1&idsubcategory=2).

<sup>9</sup> European Commission, Green Paper on European Transparency Initiative, COM (2006) at 194.

<sup>10</sup> Craig Holman, *Making the U.S. Lobbying Disclosure Act Work as Intended: Implications for the European Transparency Initiative* (2008), available at: <http://www.cleanupwashington.org/documents/makingldawork.pdf>.

constitutes lobbying spending permits pressure groups to decide for themselves what they shall report as lobbying expenditures.”<sup>11</sup>

40. As a result, the U.S. General Accounting Office (GAO) in 1991 found that about 10,000 of the 13,500 individuals and organisations listed as key influence peddlers on Capitol Hill in a book, entitled *DIRECTORY OF WASHINGTON REPRESENTATIVES*, were not registered as lobbyists. Yet, of those listed in the book, a sample survey found that 75 percent had indicated they contacted both members of Congress and their staff, dealt with legislation, and sought to influence Congress or the Executive Branch. The situation in the United States would not improve until the definitions of “lobbying” and “lobbyists” were made much more quantifiable under the new Lobbying Disclosure Act of 1995 (LDA).

41. The Canadian Lobbying Act followed suit by refining the definition of “lobbying” for Canada’s mandatory lobbyist registration program. Though the language in the Canadian Lobbying Act itself is fairly ambiguous, implementing regulations have been adopted to provide objective standards and thresholds for when a person qualifies as a lobbyist and must register. Several thresholds must be met in order for a person to be classified as a lobbyist. Someone is a lobbyist in Canada if that person:

- Communicates with designated public office holders (whom are listed in the regulations) for the purpose of influencing public policy.
- Receives compensation or a salary to make such communications.
- Spends 20 percent or more of employment duties conducting research and preparation for the purpose of facilitating lobbying communications.

**U.S. LDA of 1995**  
**Definition of “Lobbyist”**

- Makes more than 1 lobbying contact with a covered official.
- Receives compensation of \$2,500 for a contract lobbyist, or expends \$10,000 for a lobbying organisation, within 3 months.
- Spends at least 20 percent of work time per client or employer on lobbying activities.

**Definition of “Lobbying Activities”**

Lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

42. An additional note on definition: the last clause of the definition is critical in addressing the “lawyer problem.” Lawyers have a very legitimate stake in protecting lawyer-client confidentiality when it comes to regular litigation or advice. But, under the Canadian Act or the LDA, if a lawyer is conducting substantial lobbying activity on behalf of any single client, the lawyer under must declare the lobbying activity on behalf of that client only. The 20 percent threshold is *per client*. If a lawyer, for example, has 10 clients, nine of whom hired the lawyer to handle their divorces, but one of whom hired the lawyer to lobby, and pays the lawyer a certain amount of compensation for lobbying activity, then the lawyer must register and declare the lobbying activity done on behalf of that single client. This definition both protects lawyer-client confidentiality in the realm of the legal profession, and provides transparency of lobbying activity performed by the lawyer in the capacity as a lobbyist.<sup>12</sup>

43. Several of the regulatory regimes in Europe and elsewhere lack such quantifiable definitions of lobbying and thus face serious challenges in implementation. In Lithuania, for example, a general

<sup>11</sup> *CQ Weekly Report* (Mar. 11, 1960) at 407.

<sup>12</sup> The 20 percent threshold triggering lobbying registration for lawyers and others was devised by Peter Levine, former staffer of Sen. Carl Levin (D-Mich.).

definition of lobbying leaves the decision to register largely discretionary, resulting in only 13 registrants in 2007. In Australia, as well as Lithuania and Poland, the definition of lobbyist only includes those who are hired by a third party to lobby, and thus excludes major segments of the lobbying community who work “in house” at a corporation or non-profit organisation. [The European regulatory systems are addressed briefly below under “Regulatory Regimes in Europe.”]

44. Self-regulatory regimes also rely on clear definitions of lobbying in order to provide guidance to the profession. But the sheer success or failure of mandatory systems to achieve stated objectives depends entirely on very sharp and, preferably, quantifiable definitions to reduce discretion. The more objective the definition, the more it can achieve intended consequences.

### **Lobbying is at a Crossroads**

45. The profession of lobbying today is at a crossroads when it comes to supporting or undermining political legitimacy. While lobbying continues to be a necessary and important part of democratic governance, communicating to the government the concerns of the governed, the profession in many advanced democratic societies has become so closely identified with wealthy special interests that the public’s trust in government in general, and lobbyists in particular, has fallen to dangerous lows. Survey after survey show that many citizens widely believe governments are run by a few special interests and that politicians and lobbyists tend to be untrustworthy.<sup>13</sup>

46. On average, three out of four European citizens surveyed in 2007 agreed that corruption in government is a major problem (75 percent).<sup>14</sup> This is slightly higher than in 2005 when 72 percent felt corruption was a major problem. This viewpoint varies from country to country – with citizens in Greece, Portugal, Hungary and Romania the most critical, and citizens in Denmark, Finland and the Netherlands the least – but the numbers generally have been rising.

47. A recent survey of trust in government in the United Kingdom drives home the concern that some special interest groups wield excessive control over national government.<sup>15</sup> Particularly alarming to some surveyed is the practice of special interest groups and lobbying firms hiring people with personal contacts in the heart of government, such as former members of Parliament, giving the special interests extraordinary influence. In a separate survey, citizens in the United Kingdom believe that local Members of Parliament and councillors, civil servants and government ministers were less likely to tell the truth than family doctors, judges, and police officers. In fact, according to the poll, television news journalists were trusted just as much as a respondent’s local Member of Parliament.<sup>16</sup>

48. An earlier survey in Poland showed that 35 percent of Polish citizens and 19 percent “of parliamentarians believed that bribery could be successful in effecting a change in the law.”<sup>17</sup>

49. The amount of influence certain groups have over governmental officials is also a source of public concern. In a survey published by the Joseph Rowntree Reform Trust, 2,231 people were asked how much influence should be appropriate for particular special interest groups, as opposed to how

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<sup>13</sup> See, for example, Joseph Rowntree Reform Trust, *State of the Nation* (2006); and BMRB Social Research, Committee on Standards in Public, “Survey of Public Attitudes Towards Conduct in Public Life” (2008).

<sup>14</sup> European Commission, “The Attitudes of Europeans Toward Corruption,” Eurobarometer 291 (April 2008).

<sup>15</sup> House of Commons, Public Administration Select Committee, “Lobbying: Access and Influence in Whitehall” (January 5, 2009) at 13.

<sup>16</sup> BMRB Social Research, Committee on Standards in Public Life, “Survey of Public Attitudes Toward Conduct in Public Life” (2008).

<sup>17</sup> Conor McGrath, The Development and Regulation of Lobbying in the New Member States of the European Union,” *Journal of Public Affairs* (2005) at 25.

much influence those groups actually wield. Six percent of those surveyed believe that large companies should have a “great deal of power...over government policies,” but when asked how much influence large companies actually have, 29 percent answered that they had a great deal of influence.<sup>18</sup>

50. Of course, attitudes toward government corruption are affected by many different factors, but the role of professional lobbyists and financially powerful special interests is clearly one such factor. When asked to rate the honesty and ethical standards of people in various professions in a 2008 Gallup poll, lobbyists ranked the lowest in public integrity (5 percent) along with telemarketers and used car salesmen.<sup>19</sup> European lobbyists in turn tend to view civil society and the media as too powerful or untrustworthy.<sup>20</sup>

51. A sharp and damaging ethical schism has emerged in many countries between the lobbying profession and the public.

### “Good” Versus “Bad” Lobbying

52. Despite the popular association of lobbyists with corruption, it would be very difficult for government officials to conduct the public’s business without lobbyists. Lobbyists serve an invaluable function in democratic governance. They provide useful information and expertise to government officials on any given matter. They represent interests that may be adversely and unintentionally impacted by a poorly deliberated public policy. And they translate into understandable terms everything from scientific data to public opinions. Just as importantly, lobbyists then inform their employers and clients of the actions of government officials, helping hold the government accountable and assisting to effectuate compliance with the laws.

53. This dichotomy in the role of lobbyists in democratic governance has prompted some observers to distinguish “good lobbying” from “bad lobbying.” American journalist Karl Schriftgiesser once proposed how to distinguish the two:

*“The basic test of the goodness of lobbying is truth.... Lobbying that is not for truth is bad ... [while] lobbying on behalf of the rights of all men as individuals under fair competition to choose, to earn, to own, is ethical. Lobbying against such rights is bad....”<sup>21</sup>*

54. The Woodstock Theological Center attempted to refine Schriftgiesser’s simplistic view with a lobbyist code of conduct.<sup>22</sup> In its two-year project the Woodstock Center pulled together theologians, academics and practitioners to lay down seven principles of ethical behaviour for lobbyists. These principles are:

- The pursuit of lobbying must take into account the common good, not merely a particular client’s interest narrowly considered.

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<sup>18</sup> Joseph Rowntree Reform Trust, *State of the Nation* (2006) at 4.

<sup>19</sup> Gallup Poll, “Lobbyists Debut at Bottom of Honesty and Ethics List,” (Nov. 7-9, 2008).

<sup>20</sup> European Centre for Public Affairs, “Survey: EU lobbyists Wary of Media, Civil Society,” *EurActiv* (March 10, 2008).

<sup>21</sup> Karl Schriftgiesser, *THE LOBBYISTS* (1951) at 230.

<sup>22</sup> Woodstock Theological Center, *THE ETHICS OF LOBBYING: ORGANIZED INTERESTS, POLITICAL POWER AND THE COMMON GOOD* (2002).

- The lobbyist-client relationship must be based on candor and mutual respect.
- A policymaker is entitled to expect candid disclosure from the lobbyist, including accurate and reliable information about the identity of the client and the nature and implications of the issues.
- In dealing with other shapers of public opinion, the lobbyist may not conceal or misrepresent the identity of the client or other pertinent facts.
- The lobbyist must avoid conflicts of interest.
- Certain tactics are inappropriate in pursuing a lobbyist agreement.
- The lobbyist has an obligation to promote the integrity of the lobbying profession and public understanding of the lobbying process.

55. According to the Woodstock Center:

*“If the result of the public policy, for example, is that it supports racial discrimination, or unduly burdens the poor, or leaves children unprotected, or violates civil liberties, or creates unjust distribution of social benefits and burdens, or threatens the environment, then we know it is wrong and must be opposed.”<sup>23</sup>*

56. However noble, these attempts to distinguish “good lobbying” from “bad lobbying” are fraught with normative judgment and may not serve as useful guidance in all, or even most, real-world situations. Few lobbyists, let alone their employers or clients, would agree on what constitutes the “common good.”<sup>24</sup>

57. Nevertheless, inherent in the *process* of lobbying, as opposed to its outcome, is a principle that can help guide appropriate lobbying behaviour – the fact that lobbying activity is a bridge between private interests and public conduct. Unlike all other business or professional activity, the exclusive purpose of lobbying is to affect public decisions of government. Lobbying transcends the private sphere of all other business and professional activity and steps squarely into the public sphere.

58. Other businesses and professions make decisions that usually affect a small or select group of private individuals – buying or selling commodities among consumers or trading services for a willing customer. Lobbying, on the other hand, is not just a private matter. Lobbyists are indeed hired to represent a private special interest or client, but they do so before the public sector. The public policy decisions lobbyists attempt to sway impact, in one way or another, the public generally. A government contract secured by a lobbyist for a private business is paid for by the public. A tax cut engineered by a lobbyist for a paying client affects the size of the public treasury and impacts other public policies. A change in the law won by a lobbyist on behalf of a private party governs all citizens.

59. Lobbyists may represent the private sector but they inevitably impact the public sector. This cannot be said of any other business or profession.

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<sup>23</sup> Id. at 20.

<sup>24</sup> Thomas Susman, “Private Ethics, Public Conduct: An Essay on Ethical Lobbying, Campaign Contributions, Reciprocity, and the Public Good,” *Stanford Law & Policy Review* (2008) at 13-14.

**Cost/Benefit Analysis of Lobbying**

60. It is perhaps impossible to develop an empirical measure of the value returned to employers and clients for each dollar spent on lobbying. But evidence suggests the value returned is indeed substantial.

61. The simple fact that businesses continue to invest heavily in lobbying indicates that the business community sees a net profit in lobbying government. The net profit may be as straightforward as a lucrative government contract or as subtle as an alteration of the tax code or a modification of environmental protection laws. In the United States, where lobbyist financial activity is a matter of public record, businesses, organisations and individuals spent \$3.2 billion in 2008 lobbying the federal government, up 13 percent from the previous year despite the onset of a serious economic recession.<sup>25</sup>

Year	\$ Billions (U.S. Dollars)	Number of Lobbyists <sup>26</sup>
1998	\$1.44	10,690
1999	\$1.44	13,341
2000	\$1.54	12,763
2001	\$1.63	12,077
2002	\$1.81	12,347
2003	\$2.04	13,161
2004	\$2.17	13,403
2005	\$2.42	14,440
2006	\$2.60	14,874
2007	\$2.84	15,329
2008	\$3.23	14,453

*Source:* Center for Responsive Politics

62. Leading the pack of big lobbying spenders in the United States is the financial services industry. Over the decade of 1998 through 2008, the finance sector spent about \$3.4 billion on lobbying the federal government, the most of any sector. In the last year alone, financial services spent nearly a half billion dollars on lobbying, a figure that will most certainly be eclipsed as the sector lobbies intensely to shape the massive financial bailout and economic stimulus programs of the federal government. These data do not include expenditures made by the industry on “grassroots lobbying.”

63. The financial bailout program of the federal government is revealing of the effectiveness of lobbying. While the federal government has infused more than \$700 billion into the financial services and automotive sectors in an attempt to rescue banks and private lenders from their reckless business practices, these same banks and companies spent \$77 million on lobbying the government during

<sup>25</sup> Lobbying in the United States occurs at state and local levels as well as the federal level. To the extent we address lobbying in the United States in this report, we focus on the federal level.

<sup>26</sup> The number of registered lobbyists has been modified by the Secretary of the Senate for each year to exclude registered lobbyists who file no financial activity reports. As a result, the previously high record of about 35,000 registered lobbyists in the United States has been scaled down to the more accurate number of active registered lobbyists recorded here.

administration of the bailout program. They spent another \$37 million on campaign contributions in 2008. That amounts to a 258,449 percent return on their investment.<sup>27</sup>

64. That figure on a return on investment could well be misleading because it is difficult to determine whether the financial services sector got what it wanted or whether the sector would have received the bailout funds regardless of lobbying activity.

65. A more specific indicator of the rate of return of lobbying expenditures comes from a single lobbying firm in the United States. The Carmen Group took in \$11 million in fees in 2004, and produced \$1.2 billion in assistance to its clients – a ratio of about 1:100. The pay-off is large but fairly typical, noted Carmen’s president David Carmen.<sup>28</sup>

### Reciprocity Principle

66. The pay-off of lobbying may be great, but the pay-off is not necessarily an indication of undue influence-peddling. Money spent on lobbying usually can be viewed as an opportunity or educational expenditure – money spent to introduce the company to government officials and to teach these officials of the particular situation of the company and the costs/benefits of a particular public policy or government contract. Even though such benefits clearly favour those who have the money to spend on lobbying to the disadvantage of those who do not, this is not corruption *per se*.

67. Lobbying activity moves into the category of corrupt practices when something of value to the governmental official is exchanged for official favours. The most blatant form of corruption is the outright bribe, which is illegal in all advanced western democracies. But undue influence-peddling by some lobbyists is often far more subtle and not necessarily illegal. Undue influence-peddling frequently follows what is known as the “reciprocity principle.”<sup>29</sup>

68. More than 50 years ago, U.S. Senator Paul Douglas described the essence of undue influence-peddling through reciprocity:

*“Today the corruption of public officials by private interests takes a more subtle form. The enticer does not generally pay money directly to the public representative. He tries instead by a series of favours to put the public official under such a feeling of personal obligation that the latter gradually loses his sense of mission to the public and comes to feel that his first loyalties are to his private benefactors and patrons. What happens is a gradual shifting of a man’s loyalties from the community to those who have been doing him favours. His final decisions are, therefore, made in response to his private friendships and loyalties rather than to the public good. Throughout this whole process, the official will claim – and may indeed believe – that there is no causal connection between the favours he has received and the decisions which he makes.”*<sup>30</sup>

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<sup>27</sup> Center for Responsive Politics, “TARP Recipients Paid Out \$114 Million for Politicking Last Year,” *Capital Eye* (Feb. 4, 2009).

<sup>28</sup> Jeffrey Birnbaum, “Lobbyists Continue to Thrive,” *Washington Post* (Feb. 14, 2006).

<sup>29</sup> Thomas Susman, “Private Ethics, Public Conduct: An Essay on Ethical Lobbying, Campaign Contributions, Reciprocity and the Public Good,” *Stanford Law & Policy Review* 19:1-22 (2008).

<sup>30</sup> Paul Douglas, *ETHICS IN GOVERNMENT* (1952) at 44.

69. The reciprocity principle has its origins in psychology. In 1971, psychologist Dennis Regan conducted a series of behavioural experiments in which subjects were asked to rate the quality of paintings in what they thought was an art appreciation class. Sometimes the subject would be given a soft drink during breaks; other times not. Sometimes the soft drink was offered in a friendly tone; other times it was offered rather rudely. After each trial, the psychologist then tried to sell raffle tickets to the subject. Subjects who received a soft drink bought more raffle tickets than those who did not receive a drink. Even subjects who were offered the drink in a rude manner tended to buy more raffle tickets. A sense of reciprocal obligation was guiding the subjects' behaviour.<sup>31</sup>

70. Psychologist Robert Cialdini examined this study and several others like it. Cialdini noted that for "those who owed a favour, it made no difference whether they liked him or not; they felt a sense of obligation to repay him, and they did."<sup>32</sup> Cialdini further observed that a "person can trigger a feeling of indebtedness by doing us an uninvited favor."<sup>33</sup>

71. Reciprocity frequently is at play in lobbying activity. Lobbyists are fully aware of the value of creating a sense of obligation with a public official. Lobbyists are quick to pick up the tab at lunch or provide public officials with various gifts, small and large. Hosting a reception to honor a public official is an immensely valuable lobbying tool. Even providing needed research, advice or other types of favours can bolster the sense of reciprocity. In several democratic societies, making campaign contributions to a candidate or political party is perhaps the most valuable gift a lobbyist can give to a public official.

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<sup>31</sup> Susman, *op.cit.* at 16.

<sup>32</sup> Robert Cialdini, *INFLUENCE: SCIENCE AND PRACTICE* (2001) at 23.

<sup>33</sup> *Id.* at 30.

## THE NATURE AND ROLE OF PROFESSIONAL LOBBYING ASSOCIATIONS IN SELF-REGULATION OF LOBBYING

72. Throughout most of Europe, professional associations in the fields of public affairs and lobbying are abundant in number and prolific in activity. These associations are prevalent at the national, regional and global levels, frequently overlapping and complementing each other's work. National associations, such as the Public Relations Institute of Ireland (PRII) or the Swedish Public Relations Association (SPRA), are active forces in training lobbyists and promoting ethical standards of behaviour. These national associations, in turn, participate in regional associations, such as the European Public Relations Confederation (CERP), where they share experiences and knowledge through conferences, presentations and studies. Several of these associations stretch well beyond Europe and are transnational in nature, such as the Global Alliance. This network of professional associations helps ensure that vast numbers of lobbyists and political consultants in Europe are tied to, and familiar with, the practices and norms of their colleagues.

73. The European experience stands in stark contrast to the United States, where few such professional associations for lobbyists exist at the state and federal levels. Only one association, the American League of Lobbyists (ALL), enjoys much recognition. But even ALL has a fairly small membership of fewer than 900 members out of an estimated total of at least 60,000 state and federal registered lobbyists.<sup>34</sup> Few of these members participate in the activities of ALL.

74. Much of the difference between the more robust professional associations in Europe and more sanguine associations in the United States can be attributed to the different regulatory environments. A general absence of regulatory constraints makes self-regulatory measures all the more important.

75. In Europe, the associations usually encompass far more than the lobbying profession. They almost always are dominated by other public relations professionals. As discussed earlier, the lack of a clear and uniform definition of "lobbyist" from country to country renders precise numerical comparisons impossible, but public relations professionals significantly outnumber their lobbyist colleagues within most of these associations. Nonetheless, public affairs specialists who communicate with government officials and attempt to influence public policy are well represented in professional public relations associations.

76. A small number of European associations are tailored specifically to the lobbying profession, especially those based in Brussels. The Society of European Affairs Professionals (SEAP) and the European Public Affairs Consultancies' Association (EPACA) are comprised primarily of those attempting to influence official policies of the European Union's governing bodies. In the United Kingdom, the Association of Professional Political Consultants is heavily composed of the lobbying profession as well as other political operatives. The Chartered Institute of Public Relations in the UK has a specific division of the association dedicated to lobbyists, the Government Affairs Group.

77. There are dozens of active professional associations across Europe that address lobbying activity (*see* Appendix E for a sampling of organisations). Many of these associations are the subject of this research. The associations analysed in this research are by no means an exhaustive list of European professional associations that encompass the lobbying profession.

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<sup>34</sup> The Center for Public Integrity identified 39,660 registered lobbyists in 2004 among states that keep such records, at: <http://projects.publicintegrity.org/hiredguns/chart.aspx?act=lobtolog>. The U.S. Secretary of the Senate has identified 15,965 active registered lobbyists at the federal level in 2008.

78. Several of these associations play a particularly active role in educating and training lobbyists and promoting a code of ethics for the lobbying profession. At least two professional associations – the Association of Professional Political Consultants and the Public Relations Consultants Association, both based in the United Kingdom – maintain their own lobbyist registries, made available to the public. Case studies of some of these associations are discussed in greater detail below.

### **Public Relations Institute of Ireland**

79. The Public Relations Institute of Ireland (PRII), based in Dublin, was founded in 1953. PRII is the leading public relations association in Ireland. It has more than 1,100 individual members drawn from public relations and communications professionals as well as the lobbying profession. These individual members come from dozens of different public relations and lobbying firms. The association is affiliated with the European Public Relations Confederation as well as the Global Alliance.

80. The primary purpose of PRII is education and training on the most effective techniques of public relations and lobbying. The institute offers extensive training seminars and courses, and even offers a diploma for graduation from its own school. Between March and June of 2009, for example, PRII is providing its members with 10 different workshops, ranging from “media interview skills” to “advocacy techniques for the not-for-profit sector.” It hosts an ongoing series of educational forums, luncheons and conferences.

81. In addition, the institute offers its own diploma program. The program consists of seven modules the student must complete: Public Relations in Practice; Media Relations and Media Writing; The Professional Environment; The Business and Government Environment; Specialized Areas of Public Relations; Advanced PR Writing; and Public Relations Campaigns and Presentation Skills.

82. PRII also is a strong promoter of ethical standards in the public relations field generally and the lobbying profession specifically. All members of PRII must subscribe to the ethics Code of Lisbon, Code of Athens and the PRII Code of Practice for Public Affairs and Lobbying with their signature.<sup>35</sup> The Diploma program as well as various workshops address the significance of these codes and instruct students on proper lobbying conduct. The courses are not mandatory, but approximately 20 percent of PRII’s members go through the Diploma program. Many non-members also take the classes.

83. PRII’s own code of conduct for lobbyists was promulgated in 2003, following a controversy over improper influence-peddling by one of the institute’s members. That member voluntarily resigned from the institute and left the profession.<sup>36</sup>

84. The new PRII Code of Conduct recognises that lobbying is a valuable profession for the functioning of democracy. The preamble reads in part:

*The Public Relations Institute of Ireland (PRII) believes that professional public affairs practice and lobbying are proper, legitimate and important activities, which ensure an open two-way communication between national and local government (including the Oireachtas, the entire public service, as well as other*

<sup>35</sup> Interview (telephone) with Gerry Davis, Executive Director of the Public Relations Institute of Ireland (February 13, 2009).

<sup>36</sup> Id.

*bodies funded wholly or mainly from public funds), the institutions of the European Union (EU) and bodies whose activities and interests are governed, regulated, impacted or otherwise influenced by such institutions. Furthermore, PRII believes that the existence of a defined code for the practice of public affairs and lobbying will serve to enhance the integrity of the democratic process.*

85. In addition to mandating lobbyists to adhere to general principles of honesty, accuracy and compliance with all local, national and EU laws and regulations, the code also requires that lobbyists are to “actively disclose, at the earliest possible opportunity, the identity of clients on whose behalf they are making representations on matters of public policy or decision-making ...” The code further prohibits members of any parliament or legislative assembly, including the European Parliament, from simultaneously serving as a lobbyist. Members of the national government, including full-time advisors to the national government, must not provide lobbying services in exchange for compensation.

86. Violations of the code are punishable under the regular disciplinary procedures of PRII. Anyone inside or outside the institute may file a complaint against a member for breach of the lobbying code of conduct. The complaint would be handled in a formal two-stage process. First, an investigative committee is established to determine whether the complaint is without merit. If the investigative committee deems the complaint not to be frivolous, a formal “dispute committee” would then be created and empowered to conduct a trial. The dispute committee consists of one non-member, such as the head of the Chamber of Commerce, and two members of the institute. The accused may be represented by a lawyer. If the dispute committee rules against the accused, sanctions can range from reprimand to expulsion from PRII.

87. Since the initial controversy in 2003, there have been no complaints filed against members so far and no investigations for violations of the code.<sup>37</sup>

88. In the last few years, PRII has not been bashful to call for a government registry of lobbyists, though the institute believes that other regulations of lobbying “would be premature at this time.”<sup>38</sup> As early as 2006, Pat Montague, former president of PRII, said that it was in the interest of democracy that there should be greater openness, transparency and accountability about those who conducted lobbying and about those on whose behalf they were seeking to influence decision-makers.<sup>39</sup>

89. This view was cautiously affirmed by the current executive director of PRII. “The issue of regulation versus self-regulation is a complex question,” said Gerry Davis of PRII. Generally the institute favours transparency of lobbying through a government registry, Davis reiterated, but only if the concepts of “lobbying” and “lobbyist” are carefully and appropriately defined, and that the registry applies across a “level playing field.”<sup>40</sup> An appropriate registry, for example, should not automatically exclude the legal profession under the principle of “lawyer-client confidentiality.”

90. While PRII is ready to accept a government-run lobbyist registry, if properly designed, the Institute proposes a “review group” to study whether further regulations of lobbying activity are appropriate. The review group would be comprised of governmental officials and private interests and would examine the practice of lobbying in Ireland. The group could develop the definition of lobbying

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<sup>37</sup> Id.

<sup>38</sup> PRII position paper, “Regulation of Lobbyists” (2009) at: [http://www.prii.ie/show\\_content.aspx?idcategory=1&idsubcategory=2](http://www.prii.ie/show_content.aspx?idcategory=1&idsubcategory=2).

<sup>39</sup> “PRII Urges Lobbyist Register,” *Sunday Business Post* (March 5, 2006).

<sup>40</sup> Interview (telephone) with Gerry Davis, Executive Director of the Public Relations Institute of Ireland (Feb. 13, 2009).

that serves as the basis for the registry. More importantly, the review group would help develop government guidelines on lobbying activity, presumably based on PRII's code of conduct. "An assessment of how these guidelines are being implemented should then follow, with a view to introducing stricter measures in the event of a failure by lobbyists and those being lobbied to adopt these guidelines."<sup>41</sup>

91. In the meantime, according to PRII, "a register should be established and a system whereby registered lobbyists can access debates in Dail Eireann at any given time should be introduced."<sup>42</sup> The registry of lobbyists, then, should serve as a type of permit system granting easy access to the parliament houses.

92. Recently, the institute also endorsed as "eminently sensible" new rules on how lobbyists pay a visit to members of the parliament houses, the Dail and the Senate.<sup>43</sup> The new parliamentary rules limit the number of lobbyists that members can receive up to four people in their office at a time. The rules also prohibit lobbyists from buttonholing members in the parliament restaurant or other facilities. The rules are intended to prevent large "pressure groups" from lobbying members. PRII noted that lobbyists who belong to the institute lobby in small groups anyway and so would not be affected.

### Swedish Public Relations Association

93. The Swedish Public Relations Association (SPRA), founded in 1950, is the second largest national public relations association in Europe. It boasts of nearly 5,000 individual members. SPRA is associated with the European Public Relations Confederation (CERP), Global Alliance, and the European Public Relations Education and Research Association (Euprera). Margaretha Sjoberg, Secretary-General of the Swedish association, serves as 2009 president of CERP.

94. Much like PRII in Ireland, the Swedish association excels in education and training of lobbyists and other public relations professionals through workshops, seminars and conferences. SPRA offers a 3-day class for all members three times every year, known as the Communication Mentoring Program. One session of the class focuses on ethical conduct. Though the class is voluntary, about 20 to 30 members participate in each round of classes.<sup>44</sup>

95. SPRA conducts extensive research on issues relating to the conduct of lobbying and public relations. The association conducts independent research as well as joint projects with academic institutions and other associations. Every year since 1982 the association has surveyed the public relations community to document the changing demographics of the profession, the work climate, and the prospects for the future of public relations and lobbying. In March 2006, SPRA initiated a research project with Örebro University on lobbying in the European Union, with a primary focus on communication strategies and Swedish actors. Camilla Berggren, former public affairs consultant at European Public Policy Affairs, will present the sponsored doctor's thesis on the subject in 2010.

96. The Swedish association also plays a very active role in promoting strict ethical principles in the practice of lobbying and public relations. After decades of adhering to a general ethics code (Code of Venice), SPRA rewrote its code in 2005 to make it more reflective of the Swedish experience, now called "Professional Standards of the Swedish Public Relations Association." The new code is very

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<sup>41</sup> PRII position paper, "Regulation of Lobbyists" (2009) at: [http://www.prii.ie/show\\_content.aspx?idcategory=1&idsubcategory=2](http://www.prii.ie/show_content.aspx?idcategory=1&idsubcategory=2).

<sup>42</sup> Id.

<sup>43</sup> Hannah Marriot, "Irish Parliament Moves to Bar Uninvited Lobbyists," *PR Week UK* (Aug. 11, 2006) at 43.

<sup>44</sup> Interview (telephone) with Margaretha Sjoberg, Secretary-General, Swedish Public Relations Association (Feb. 12, 2009).

philosophical, committed to defending an “open society ... characterised by freedom of expression and the rights of all people, within legal frameworks, to search for and use information.” It applies the principles of honesty and openness to all its member “professional communicators,” defined as those who conduct professional information and communication tasks, including lobbyists.

97. The code empowers the board of directors of SPRA to appoint an enforcement committee to investigate non-frivolous complaints and to determine whether a violation of the code occurred. If the enforcement committee determines that a violation has occurred, it can issue sanctions ranging from reprimand to expulsion from the association.

98. There has been only one formal enforcement action, taken in 1972. Nevertheless, authorities within the association have conducted additional informal consultations and interviews over the years regarding potential infractions of ethical principles. Most recently, for example, a consultancy firm involved in a failed project in South Africa offered as part of its defence that it was consulting with ethics officials of the Swedish Public Relations Association.<sup>45</sup>

99. Officials at SPRA do not favour any form of government registry or regulation of the lobbying profession beyond existing legal constraints.<sup>46</sup> The new targeted code of conduct, ethics training by the association and informal consultations are believed by leaders of the association to be sufficient to keep lobbying abuses in check in Sweden.

### **Croatian Society of Lobbyists**

100. The Croatian Society of Lobbyists (HDL) is one of the youngest professional lobbying associations in Europe, created in June 2008. HDL currently has 80 members and is growing. Its stated function is to make lobbying activities in Croatia professional, legitimate and legal. HDL supports Croatia's Euro-Atlantic integration and seeks to intensify the participation of Croatian interest groups in European integration processes.

101. HDL is planning to register 15 to 20 members as lobbyists with the European Parliament under the Quaestor program to secure building permits and the European Commission under its voluntary registration system, and they will also join the Society of European Affairs Professionals (SEAP).<sup>47</sup> HDL's web page provides direct links for Croatian lobbyists to register not just with the European institutions but also with the United States.

102. The Croatian Society of Lobbyists enacted a Code of Ethics as an internal self regulatory document. The code is enforced by a Court of Honour of five members that has the authority to investigate any potential lobbying scandals or violations of the code. Sanctions for violations include reprimand by the board of directors, exclusion from HDL, or even public recognition of the violation and violator on the Society's web page, depending on the egregiousness of the violation.<sup>48</sup>

103. In its brief history so far, the Croatian Society of Lobbyists has not encountered any reports of misconduct by its members. However, the Society is not planning to rely on self-regulation of the profession.

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<sup>45</sup> Interview (telephone) with Margaretha Sjoberg, Secretary-General, Swedish Public Relations Association (Feb. 12, 2009).

<sup>46</sup> Id.

<sup>47</sup> Republic of Croatia, News Release, “Croatian Lobbyists Soon to be Registered with European Institutions” (Sep. 12, 2008).

<sup>48</sup> Natko Vlahovic, Secretary General, Croatian Society of Lobbyists, letter to the authors (January 11, 2009). Web page is at: [www.hdl.com.hr](http://www.hdl.com.hr).

104. In the past six months, the Croatian Society of Lobbyists has initiated various activities to promote the lobbying profession and to create a legal framework for governmental recognition. The Society has the strong support of Croatian Vice President Đurđa Adlešić. It has launched a media campaign explaining the advantages of regulating the profession in more than 60 published articles and a dozen TV and radio appearances.

105. On October 20, 2008, the Society organised a roundtable discussing the importance of the lobbying profession that hosted distinguished guests from the Croatian government and Parliament, Kristian Schmidt, deputy commissioner of European Commission Vice President Siim Kallas, SEAP representatives as well as representatives of several non-governmental organisations, labour unions, political parties and the media.<sup>49</sup>

106. Following the conference, the Croatian Society of Lobbyists issued a declaration supporting:

- Creation of a mandatory public register of lobbyists.
- Creation of a bona fide code of conduct for lobbyists.
- Establishment of a legal framework for lobbying activities.

107. Early in 2009, the Croatian Ministry of Justice accepted the Society's initiative and is forming a special work group to study the issue and promulgate a draft for a new lobbying registry and regulations. The work group will consist of representatives from the Ministry of Justice, Ministry of Economy, Croatian Society of Lobbyists members, members of the Croatian Employers Association and non-governmental organisations.<sup>50</sup>

#### **Chartered Institute of Public Relations, Association of Professional Political Consultants and Public Relations Consultants Association**

108. The Chartered Institute of Public Relations (CIPR), the Association of Professional Political Consultants (APPC) and the Public Relations Consultants Association (PRCA) are the three premier lobbying associations in the United Kingdom. They serve similar functions, but with some notable differences. CIPR and PRCA involve a broader spectrum of public relations professionals, while APPC focuses more narrowly on the public affairs sector. CIPR consists of individual members, while APPC and PRCA consist of corporate or organisational members. APPC and PRCA also impose more ethical constraints on its members than CIPR.

109. Founded in 1948 in London, the Chartered Institute of Public Relations is the leading public relations and lobbying association in Europe, with more than 9,000 individual members. It is associated with the European Public Relations Confederation (CERP) and a founding member of Global Alliance. CIPR has a specific division – Government Affairs Group – solely focused on issues concerning the lobbying profession.

110. The Association of Professional Political Consultants was established in 1994 by five independent political consultancies. APPC arose from scandal. In 1994, the *Guardian* uncovered a sensational story of members of Parliament accepting cash and gifts from lobbyists in exchange for official favours. One Minister immediately resigned, admitting that he had taken cash from a lobbyist in exchange for asking specific Parliamentary questions. Within days a second Minister resigned because of the scandals. The affairs forced the lobbying profession to take action to reassure the government and the public about its ethical standards. The result was the creation of APPC and its

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<sup>49</sup> Id.

<sup>50</sup> Id.

code of conduct. The APPC code prohibits lobbyists from engaging in any financial relationship with government officials and requires that all members of APPC register their identities and the identities of their clients, which is now made available on the APPC web page.

111. APPC has 61 organisational members, including many of the largest lobbying and public affairs consulting firms in the UK. Burson Marsteller, Atherton Associates, and Munroe & Foster, for example, have joined the association. The association's membership represents about four-fifths of UK's political consultancy sector, measured by turnover.

112. The Public Relations Consultants Association was formed in 1969 and is the leading trade association in the United Kingdom for the public relations consultancy industry. PRCA has more than 160 organisational members, representing about 70 percent of the UK public relations industry's fee income.

113. While all three associations provide education and training, CIPR specialises in the education function. CIPR supports the training and education of its members through a wide variety of events, ranging from breakfast briefings, dubbed "Freshly Squeezed" meetings, to workshops, seminars and conferences. It provides a series of different industry-recognised degrees in lobbying and public relations. These include: the "Foundation Award" for students and others who are considering public relations and lobbying as a new career option; the "Advanced Certificate" for college graduates in the first few years of a lobbying or public relations career; and the "CIPR Diploma" for those who have been in the profession for some time already and would like to enhance their careers. The Diploma program is now available on-line to be more accessible.

114. All classes are voluntary. In 2007, 784 members of CIPR participated in the association's continuing education programs, or about 9 percent of its membership. More than 150 members have achieved Accredited Practitioner status, completing three years of association-sponsored study.<sup>51</sup>

115. APPC offers three training seminars a year to its members. Participation is voluntary, but the association noted a record attendance of 50 delegates at its March 2007 training seminar.<sup>52</sup> The seminars focus on the code of conduct for lobbyists and public affairs professionals.

116. CIPR has a highly developed and formalised ethics system for lobbyists and public relations professionals. All members are required to pledge adherence to the Code of Professional Conduct with their signature. The Professional Practices Committee of the Institute handles complaints against members of the Institute who may be in breach of the Code.

117. The code emphasises that honest and proper regard for the public interest, reliable and accurate information, and never misleading clients, employers and other professionals about the nature of representation or what can be competently delivered or achieved, are vital components of robust professional practice. However, CIPR's code, unlike ethics codes of many other professional associations, does not require that lobbyists disclose the identities of their clients to those whom they lobby. Furthermore, the code does not prohibit lobbyists from employing members of Parliament or other governmental officials.

118. The CIPR Code of Professional Conduct is viewed as a living document which evolves to stay up to date. Following a consultation with members, it was last reviewed and re-written in March 2000. The resulting changes transformed the code into a document emphasising positive "best practices" rather than a document emphasising negative "thou shall not" commands.

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<sup>51</sup> Chartered Institute of Public Relations, Strengthening the Industry, CIPR Annual Report (2007).

<sup>52</sup> Association of Professional Political Consultants, 2008 Annual Report (May 14, 2008) at: [http://www.appc.org.uk/index.cfm/pcms/site.newsandevents.appc\\_annual\\_report\\_2008](http://www.appc.org.uk/index.cfm/pcms/site.newsandevents.appc_annual_report_2008).

119. The new code empowers CIPR executive officers to initiate investigations into potential violations rather than wait for a formal complaint to be lodged. Any individual or organisation may file a formal complaint against a member of CIPR if they believe the member breached the code of conduct. Each year the association receives about 20 to 30 calls or letters complaining about a member's behaviour. Formal written complaints are much less frequent, about four a year.<sup>53</sup>

120. Most complaints are resolved through conciliation in which the Institute negotiates a voluntary conclusion to a conflict between the complainant and the lobbyist or public relations professional. Conciliation agreements remain confidential.

121. If no conciliation is reached, the complaint is referred to the Complaints Committee for minor offenses or the Disciplinary Committee for egregious abuses. Both committees are composed of people outside the public relations profession. The committees may request written evidence and call witnesses. Both sides in a dispute may be represented by legal counsel. Following the formal hearing, a summary and outcome of the complaint will be made public record. Possible sanctions range from informal advice to public reprimand to expulsion from the association.

122. Over the last five years, formal hearings of the Complaints Committee have been held to consider 10 cases, only one of which was related to lobbying misconduct. Formal hearings of the Disciplinary Committee have been conducted only twice in the last 10 years, resulting in one "severe" reprimand of a member.<sup>54</sup>

123. The code of conduct for the APPC, on the other hand, embodies much of the association's primary function: creating a professional relationship between lobbyists and the government. The APPC code explicitly prohibits lobbyists from providing financial inducements, including employment, to any public official in the United Kingdom, whether elected or appointed. Entertainment and gifts of token value are allowed. APPC member associations cannot reimburse Parliamentarians to serve on their board of directors nor pay Parliamentarians to give a speech at a seminar or conference. These restrictions presumably apply to individual employees of APPC member associations as well, making the reach of the ethics code quite extensive.<sup>55</sup>

124. Most important, and a unique trait shared with only one other professional lobbying association – Public Relations Consultants Association – the Association of Professional Political Consultants runs its own public disclosure registry of lobbyists. APPC members must file reports with the association on a quarterly basis, disclosing the identities and contact information of the lobbying entity, the names of its lobbyists and staff working on the lobbying campaign for that period, and the names of their clients in each three-month period. This registry is provided to the public on the APPC's web page.

125. As discussed in greater detail in the concluding section, APPC is working with CIPR and PRCA in the United Kingdom to create an umbrella professional association encompassing both individual lobbyists and lobbying corporations and associations. The objective of this umbrella association is to impose a similar code of ethics across the entire swath of UK's lobbying professionals who belong to one of the three major lobbying groups. The code of ethics of the umbrella association,

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<sup>53</sup> Interview (email) with Emma Hamilton, Public Affairs Officer, Chartered Institute of Public Relations (Feb. 23, 2009).

<sup>54</sup> Id.

<sup>55</sup> Interview (telephone) with Robbie MacDuff, Chairman, Association of Professional Political Consultants (Mar. 4, 2009).

it is hoped, would include a lobbyist registry for all members of APPC, PRCA and CIPR made available to the public.<sup>56</sup>

126. Under APPC's code of conduct, any person may file an ethics complaint against a member of APPC. The complaint is initially handled by the APPC management committee to determine if it is frivolous. If the complaint is deemed to have some merit, a professional practices panel is appointed to investigate the complaint. The professional practices panel may solicit witnesses or other evidence pertinent to the investigation and conduct formal disciplinary hearings. The panel may sanction violators with reprimand, suspension, remedial action, or expulsion.

127. In APPC, professional practices panel investigations are very rare, but they do happen on occasion. One scandal 10 years ago prompted a panel investigation, and another hearing was scheduled in 2008 to investigate a complaint, but it was cancelled when the complaint was settled in court.<sup>57</sup>

128. Despite the formalised structure for addressing complaints in both associations, the rarity of handling complaints and issuing sanctions against lobbyists has drawn the attention of the Public Administration Select Committee of the House of Commons. The committee analysed the complaints procedures of CIPR as well as two other professional associations in the United Kingdom and concluded:

*“A complaints system that was working would have produced more than three cases in the last 10 years, even if the vast majority of lobbyists were operating ethically and transparently. Reprimands and ‘severe’ reprimands, the only outcomes to have been seen in the two cases decided against members of any of the three umbrella groups (both within CIPR), are not of a kind that would give confidence to any outsider that disciplinary processes are robust.”<sup>58</sup>*

129. In response to increasing calls in the United Kingdom for government to regulate the lobbying profession, CIPR, APPC and PRCA issued a joint press release and guidelines for appropriate lobbying practices for all lobbyists to follow, not just members of the associations.<sup>59</sup> These guiding principles advise lobbyists to be transparent about one's own identity, but not necessarily of the lobbyist's clients, and to avoid offering any financial inducement to government officials for the purpose of attempting “to influence the decision making process.”

130. This last clause of the joint statement appears to be a compromise with CIPR, which does not prohibit the exchange of gifts or compensation between lobbyists and public officials in its ethics code. By limiting the prohibition to the exchange of gifts or compensation *for the purpose* of influencing government officials, the policy simply bans bribery – which is already illegal – rather than banning gifts, compensation or fees that are provided by lobbyists to public officials for “legitimate” purposes and which raise the specter of the reciprocity principle.<sup>60</sup>

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<sup>56</sup> Interview (telephone) with Robbie MacDuff, Chairman, Association of Professional Political Consultants (Mar. 4, 2009).

<sup>57</sup> Public Administration Select Committee, House of Commons, “Lobbying: Access and Influence in Whitehall” (Jan. 5, 2009) at 20.

<sup>58</sup> Public Administration Select Committee, House of Commons, “Lobbying: Access and Influence in Whitehall” (Jan. 5, 2009) at 21.

<sup>59</sup> Gill Morris (APPC), Rod Cartwright (PRCA) and Lionel Zetter (CIPR), Press Release: “Public Affairs Bodies Join Forces and Launch Guiding Principles for All” (Oct. 22, 2007).

<sup>60</sup> Id.

### Society of European Affairs Professionals

131. The Society of European Affairs Professionals (SEAP) has been in existence for more than a decade. It is the largest lobbying association in Brussels, with more than 260 individual members, and focuses on developing professional standards for lobbying the European Union institutions.

132. Though SEAP offers some educational events and training seminars, its emphasis is on developing cooperative relationships between the lobbying community and members and staff of the European Parliament, European Commission and European Council. SEAP works with members and staff of the European Union institutions (EU) advising on proper procedures governing access to the premises and governmental officials. It also provides the networks making that access much easier.

133. To promote standards of professionalism within its ranks, SEAP has adopted its own SEAP Code of Conduct. The code was first adopted in 1997 and has since been modified, most recently in 2009. Recent changes to the Code include creating a procedure to discipline members for violations and, importantly, mandating that all members take a 90-minute training seminar on the content of the code.

134. The ethics code is succinct and non-prescriptive. It lays down general principles of behaviour rather than an exhaustive list of do's and don'ts.<sup>61</sup> The code requires that lobbyists disclose their identities and the identities of whom they represent. It also prohibits lobbyists from offering any financial inducements to staff, officials or members of the EU institutions, which includes a ban on employing current EU officers. Former EU personnel may be employed by a lobbying firm if in compliance with the rules of the EU institution.

135. Complaints for violations of the code of conduct may be filed by anyone, a recent change from the previous system of only allowing complaints to be filed by EU officials and members of SEAP.<sup>62</sup> A complaint must be submitted in writing to the SEAP president, who then turns it over to the code of conduct committee for an investigation. The committee may dismiss the complaint or proceed to a fuller investigation by interviewing the parties involved. If a violation is found to have occurred, the SEAP Board of Directors may issue a private or public written reprimand, suspend the member for three months, or expel the member from the association. The suspension or expulsion would be posted on the SEAP web page.<sup>63</sup>

136. No complaints against a member of SEAP have ever been filed.<sup>64</sup> However, there has been at least one ethics transgression by a member informally negotiated to resolution within SEAP.

137. SEAP lobbied extensively on the European Transparency Initiative, a legislative campaign in the European Commission to establish a lobbyist registry. SEAP opposed a mandatory registry, but was comfortable with a voluntary system of lobbyist registration. The association opposed financial disclosure for lobbyists and the imposition of an ethics code by the government.<sup>65</sup> The final registry of the European Commission conformed to much of what SEAP lobbied. Registration is voluntary; lobbyist names are not reported; only total expenditures of a lobbying entity, such as a corporation,

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<sup>61</sup> SEAP, "SEAP Code of Conduct – FAQ" (September 2007) at: [http://www.seap.eu.org/linkdocs/code\\_faq.pdf](http://www.seap.eu.org/linkdocs/code_faq.pdf).

<sup>62</sup> Interview (email) with Philip Sheppard, Member, SEAP Board of Directors (Feb. 9, 2009).

<sup>63</sup> SEAP, "Procedure for Dealing with Non-Compliance with the SEAP Code of Conduct" (June 2007) at: <http://www.seap.be/linkdocs/code-procedure.pdf>.

<sup>64</sup> Interview (email) with Philip Sheppard, Member, SEAP Board of Directors (Feb. 9, 2009).

<sup>65</sup> SEAP, "SEAP Views on the European Transparency Initiative Green Paper" (July 28, 2006) at: [http://ec.europa.eu/transparency/eti/docs/contributions/26\\_C7\\_ch1\\_SEAP.pdf](http://ec.europa.eu/transparency/eti/docs/contributions/26_C7_ch1_SEAP.pdf).

firm or organisation, are disclosed; and associations may follow their own codes of ethics rather than the code suggested by the European Commission.

### CODES OF CONDUCT FOR LOBBYISTS

138. Lobbyists' codes of conduct can be an invaluable instrument in professionalising the practice of lobbying and gaining greater public confidence in the profession. Ethics codes set ground rules for lobbyists in their relations with public officials, clients, the public, and even other lobbyists, and can help lobbyists avoid representing conflicting or competing interests. Professional codes of conduct are often the least coercive means of regulating lobbyist behaviour. Lobbyist's associations that create and promote these codes attempt to enhance the professional calibre of the lobbying community.

139. Most ethics codes for the lobbying and public relations professions establish four general areas of responsibilities – professional duties, duties toward clients, duties toward mass media and public opinion, and duties toward colleagues and the profession. The Codes of Brussels, Lisbon, Athens, and Venice contain guidelines for all of the duties of a practitioner, as do many of the organisations' own codes of conduct. Each of these codes attempts to address the four areas of responsibilities to a greater or lesser degree. However, distinct differences in the codes arise for those that emphasise moral principles and those that emphasise proper behaviour.

“[t]he fact that public relations has a Code of Ethics is certainly unknown to most users of public relations and will be surprising to many.”

140. A moral code, such as the Athens Code, is “based on the ‘ethical principles’ of public relations, referring to the *Declaration of Human Rights*.” Moral codes tend to distinguish the profession into “good lobbyists” and “bad lobbyists.” As we have seen in the discussion of the Woodstock principles, such a dichotomy of the profession can be simplistic and offer only limited guidance to practitioners in the field. On the other hand, a behavioural code, such as the Code of Lisbon, is concerned with the behavioural standards of the profession. The two codes are not inconsistent, but rather complementary to one another.

141. As we have seen in the discussion of the professional lobby associations in Europe, many of the ethics codes for lobbyists have developed over the years from general and grand principles of morality to more specific behavioural codes of conduct. This trend represents a marked improvement in the relevance of these codes, as the more specific behavioural codes offer concrete guidance to lobbyists on how to conduct business without unwittingly falling into unethical situations.

142. One of the first public relations codes was established by the Public Relations Society of America. The code, which took effect in 1951, was a compromise between those who were “striving for ideal if not idealistic behaviour and those who wanted no Code at all.”<sup>66</sup> The code, as anticipated by many, was modified over the past 58 years in efforts to keep up with changing times. Additionally, the value of any code largely depends on knowledge of its principles by practitioners. As one of the founders of the original code stated: “[t]he fact that public relations has a Code of Ethics is certainly unknown to most users of public relations and will be surprising to many.”<sup>67</sup>

<sup>66</sup> Homer Calver, “Now that we have a Code –”, *Public Relations Journal* (Feb. 1951) at 3.

<sup>67</sup> Id.

143. The Code of Venice was established in May 1961 by the International Public Relations Association (IPRA). The code, named for the site of the meeting place, “aimed at establishing accepted standards of professional ethics and behaviour in the field of public relations to be adhered to by all members of the Association worldwide.” The Code of Venice began the movement from moral principles into setting standards for appropriate behaviour. It has served as a basis for other codes of conduct, such as the Code of Athens, the Code of Lisbon, and the Code of Brussels.

144. The Code of Venice is also the first to address all four areas of general principles. The code establishes appropriate behaviour for conduct towards employers and clients, conduct towards the public and media, and conduct towards colleagues. Additionally, it establishes definitions of personal and professional integrity, personal integrity being “the maintenance of both high moral standards and a sound reputation,” and professional integrity being adhering to professional rules and laws of government.

145. The Code of Athens, informally known as the International Code of Ethics, was adopted by IPRA and the European Public Relations Confederation (CERP) in 1965, and was later modified in Teheran in 1968. The Code of Athens, authored by Lucien Matrat of France, is based on the United Nations’ *Universal Declaration of Human Rights*. It attempts to address intercultural issues, encouraging public relations practitioners to avoid insult or insensitivity to members of any culture. Since the code is based on a UN document, the IPRA was later recognised by the UN and is currently a roster group, consulting for the agency’s Economic and Social Council.

146. An additional code of conduct to which many public relations associations adhere is the Lisbon Code. The Lisbon Code, or the European Code of Professional Conduct in Public Relations, was adopted at the General Assembly of the CERP in April 1978 in Lisbon. The code, similar to the Athens Code, derives from the *Universal Declaration of Human Rights*. While the Athens Code relates to the needs of people, the Lisbon Code outlines basic ethic rules, such as showing “honesty, intellectual integrity, and loyalty.” The Lisbon Code has many similarities to the Venice Code, outlining specific obligations toward clients and employers, public opinion and information media, fellow practitioners, and the profession itself.

147. The newest of the grand codes, the Brussels Code, is an extension of the Athens and Lisbon Codes, adopted in 2006 by the IPRA. The Brussels Code specifies conditions for the ethical practice of public affairs and relations. Among the topics specified are integrity, transparency, dialogue, accuracy, falsehood, deception, confidentiality, influence, inducement, conflict, profit, and employment. The Brussels Code may also be seen as a compromise between the moral and behavioural codes, combining the two to create comprehensive guidelines for public relations professionals to follow.

148. More recently, professional lobbying associations and public relation associations in Europe have been refining codes of conduct to address specific concerns of the lobbying profession. The Society of European Affairs Professionals (SEAP), for example, drafted its own SEAP Code of Conduct in 1996, when the organisation was founded. Subsequent revisions have been made throughout the years, including the imposition of sanctions on whoever fails to abide by the code of conduct, the harshest being expulsion from the SEAP with public notice on the society’s website. Additionally, SEAP requires that its members undergo a 90-minute seminar about the code.

149. One of the larger public relations associations in Europe is the Public Relations Institute of Ireland (PRII). PRII has a Code of Professional Practice, which is a condition of membership. Uniquely, the Code of Professional Practice is specifically related to the quality of public policy. The first area, conduct towards the public, requires that the member shall “not seek to improperly influence the decision-making processes of government.” In this aspect, the PRII Code of Professional Practice is much more specific than general ethics codes, which often simply state that the practitioner has a duty towards the public, to keep them informed. Since lobbying is mostly unregulated by the government of Ireland, the PRII attempts to fill the void and oversee the activities of lobbyists,

assuring the public that their influence is both ethical and professional. Additionally, the PRII code requires that lobbyists will reaffirm their commitment to the Code of Lisbon and the Code of Athens.

150. PRII's Code of professional Practice was adopted in 2003 as a means to make the ethics rules more tailored toward the profession of lobbying. It is largely a behavioural code that spells out appropriate behaviour by lobbyists toward government officials, toward the public and toward clients and employers. It requires that lobbyists disclose their clients when making lobbying contacts with public officials, and prohibits members of legislative assemblies from soliciting or accepting lobbying employment simultaneously. The Code also requires that lobbyists recuse themselves from matters in which there may be a conflict of interest with the client or employer.

151. As was noted above in the discussion of professional lobbying associations, a small number of lobbyist codes of conduct have become quite specific in prescribing proper behaviour for the profession. The code for the Association of Professional Political Consultant (APPC) in the United Kingdom, for example, prohibits lobbyists from giving gifts or employment to government officials. The APPC code deals to some degree with the behavioural phenomenon of the "reciprocity principle." It recognises that gifts and the exchange of money from lobbyists to public officials often create an obligatory working relationship, which can set the stage for undue influence-peddling, either in the public's perception or in fact.

"a well functioning, self-regulatory system ... is more efficient because alleged contraventions can be examined quicker and cheaper."

152. The stronger lobbyist ethics codes – the codes that provide some meaningful and concrete guidance on how to conduct lobbying – include a series of prescriptions of ethical behaviour that attempt to ensure a professional relationship between lobbyists and public officials. These norms attempt to steer

lobbyists away from conflicts of interest and the perception of receiving official favours in exchange for things of monetary value. The behavioural principles identified in some of the lobbyist ethics codes that help achieve these objectives include:

- Requiring the information conveyed to public officials is accurate and honest.
- Mandating that lobbyists promptly disclose their clients and interests they represent to public officials.
- Prohibiting simultaneous employment as a lobbyist and a public official, which could raise serious conflict of interest issues, both in perception and in reality.
- Banning gifts above a *de minimis* value, fees, employment or other compensation from a lobbyist to a public official.
- Requiring that lobbyists recuse themselves from matters in which a conflict of interest arises with a client or employer, unless such conflict is fully disclosed and all parties agree that it is manageable.
- Making ethics training a condition of membership in the association.
- Establishing a reasonably independent mechanism for monitoring and enforcing compliance to the ethics code.

153. A lobbyist code of conduct is a critical pillar of self-regulation of the profession. As Huub Evers notes: “a well functioning, self-regulatory system will prevent most government interventions ... and is more efficient because alleged contraventions can be examined quicker and cheaper.”<sup>68</sup>

154. But it is not clear how effective these codes are in practice. Some surveys suggest that many public relations officers within an association may be unaware of its ethics code. In 2005, a significant survey was published by Leipzig University’s Chair of Public Relations and Communication Management on behalf of Bundesverband deutscher Pressesprecher (BdP).<sup>69</sup> One of the major findings of the study showed that only half of the respondents were aware of any codes of ethics, such as the Code of Lisbon and Code of Athens. The survey showed a lack of knowledge of widely accepted ethical opinions. Moreover, 82 percent of the respondents stated that press officers must not lie, “but also agree that it is tolerable to keep quiet about important issues.” About 11 percent believe that a lie on behalf of their organisation’s interest is legitimate, while only 6 percent believe one must always “tell the absolute truth.”

155. More recently, the annual survey of members of the Swedish Public Relations Association presented mixed results as to how useful its code of conduct is to most members of SPRA. The 2007 survey showed that slightly more than half of its members (57 percent) were aware of the association’s professional code of conduct. A majority of those aware of the code felt that they benefit from its principles in their daily work, to a greater or lesser extent. Only 16 percent of those aware of the code felt its principles were very useful in guiding their daily work, 67 percent felt the code was somewhat useful, and 17 percent said the code was not at all useful.<sup>70</sup>

156. The ultimate effectiveness of any ethics code for lobbyists depends not just on whether the principles are pertinent to the conduct of lobbying, but also on the extent of ethics training provided to lobbyists as well as the mechanisms in place to monitor and enforce compliance to the code.

157. Selected ethics codes for the profession are provided in the appendices to this study. The Code of Lisbon is provided as Appendix B, the Brussels Code as Appendix C, and the APPC code as Appendix D.

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<sup>68</sup> Bart Pattyn, ed. *MEDIA ETHICS* (2001) at 267.

<sup>69</sup> European Public Relations Education & Research Association, *Newsletter* (Oct. 2005).

<sup>70</sup> Swedish Public Relations Association, “Info 2007: Member Survey” (October 2007).

## LOBBYIST REGULATORY REGIMES IN EUROPE

158. Unlike in the United States and Canada, there are few government regulatory regimes for the lobbying profession in Europe. The few that do exist in Europe tend to be limited in scope and reach. European countries with some form of regulation include Germany, Hungary, Lithuania and Poland, along with the permanent pass registration system of the European Parliament and the voluntary registry established by the European Commission.

159. In Germany, the registry is voluntary and is not designed as a lobbyist registry *per se*. Instead, it is primarily a registration system for issuing passes to enter the parliamentary buildings. The registry is only of organisations seeking access to the parliamentary buildings rather than individuals and does not include any financial information, who is participating in lobbying on behalf of an association, or what issues the organisation lobbies. Additionally, the registry only applies to the Bundestag, not the Bundesrat.

160. The registry was established as a requirement of Annex 2 of the Rules of Procedure. It calls for registered groups to disclose the associations' name and seat in the union, the composition of the board and management, the general interest of the group, the number of members, names of the associations' representatives, and the address of its office at the seat of the Bundestag and of the federal government. The list of associations, as written in Annex 2, is to be published each year in the *Federal Gazette*.

161. The Bundestag can "also invite organisations that are not on the register to present information on an *ad hoc* basis."<sup>71</sup> Therefore, the register does not provide a barrier for lobbyists. The Bundestag is also "of the view that many people should participate in the substantive elaboration of bills, but responsibility for enacting bills must be assumed by those elected for this purpose, hence the nature of invitations to those not on any register."<sup>72</sup> Legislative proposals are currently being considered for establishing a full regulatory system of the lobbying profession in Germany, but prospects for passage are uncertain.<sup>73</sup>

162. In Hungary, a voluntary lobbyist registry has been in place since 1994. To join the lobbyist registry, lobbyists may not have a prior criminal record and they must have a college degree. The application for a person must include the applicant's name and address, the applicant's mother's name, the applicant's place and date of birth, the applicant's official certificate of criminal history issued within the past three months, and a copy of the college diploma or a certified Hungarian translation if it was issued abroad.

163. A business or firm wishing to join the lobbyist register must provide the name and address, the names and addresses of the authorised representatives, a copy of proof of the establishment of the business or firm, and the names of persons authorised to lobby on behalf of the business or firm. A lobbying license is then issued, and this information is made public record.

164. Registered lobbyists submit a quarterly report regarding their lobbying activities. Lobbyists disclose the executive decisions that were the target of the lobbying activities, an indication of the

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<sup>71</sup> Raj Chari, John Hogan and Gary Murphy, "Regulating Lobbyists: A Comparative Analysis of the United States, Canada, Germany and the European Union," *The Political Quarterly* (July-Sept. 2007) at 423.

<sup>72</sup> Id.

<sup>73</sup> Interview (telephone) with Ulrich Müller, Director, LobbyControl (March 5, 2009).

concrete objectives of lobbying activities relating to a specific bill, a list of means used in connection with the case, names of officers of the executive decision-making body, the number of lobbying contacts, and any gifts provided, their individual value, and the name and position of the person affected. The registry also makes this information available to the public.

165. The Hungarian lobbyist registry is maintained by the Central Office of Justice. As of January 2009, there were 228 lobbyists registered in Hungary.

166. Lithuania's Lobbyist Register began in 2001. The lobbyist's registration program only applies to contract lobbyists who attempt to influence the legislative branch and specifically exempts in-house lobbyists for non-profit groups and other entities. Contract lobbyists file an application to be recorded in the register and to lobby the government. The application provides the full name, phone number, place of residence, and place of work in the last year; name, registration number, and address of the head office if a legal person is applying; information about employees of a lobbying organisation who will be performing lobbying activities, including full name, telephone numbers. Many of the same qualifications to be a lobbyist in Hungary apply in Lithuania.

167. Lobbyists in Lithuania submit an annual report of their lobbying activities to the registry. In addition to name, address, phone number, and certificate number, a registered lobbyist must also present his or her income from lobbying activities, expenditures on lobbying activities, and the title of an effective or draft legal act influenced by the lobbyist. The reports are published in the *Official Gazette* of Lithuania. In 2007, there were 13 registered lobbyists in Lithuania, of which 11 were active.<sup>74</sup>

168. Public cynicism in the integrity of the Polish government, followed by a sensational scandal dubbed the "Rywin's affair, which exposed a number of irregularities in the lawmaking process, paved the way for a mandatory lobbyist registry in 2006.<sup>75</sup> The Polish Lobbyist Registry is maintained by the Minister of the Interior and Administration. The Polish registry, like Lithuania's registry, applies primarily to contract lobbyists. However, Poland's law does apply to those who lobby both the legislative and executive branches of government. The registry is public information, accessible through the Public Information Bulletin of the Minister of Interior and Administration. Unusually, and perhaps appropriately, annual reports on lobbying contacts are submitted by government officials themselves.

169. Registration may be submitted in paper format or online. For entrepreneurs, the application must contain such information as the company name, corporate seat and address of the entrepreneur who will lobby. Non-entrepreneurs must provide the full name and address of the person who wishes to lobby. The register is not free, costing applicants PLN 100.

170. As of 2006, 75 entities had registered. Out of the 75 entities, 45 applications were found to be incomplete. Unregistered lobbyists can be fined up to PLN 50,000. As of June 15, 2008, no fines had been imposed on any entities.

<sup>74</sup> Aneta Piasecka, "Lithuania" (2007) available at: [http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Lithuania-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Lithuania-final.pdf).

<sup>75</sup> Organization for Economic Cooperation and Development, Lobbyists, Governments and Public Trust: Building a Legislative Framework for Enhancing Transparency and Accountability in Lobbying (Aug. 2008) at 129-130.

**SURVEY RESULTS: EUROPEAN LOBBYISTS’ ATTITUDES TOWARD SELF-REGULATION AND REGULATION OF THE LOBBYING PROFESSION**

171. While it is widely assumed that professional lobbyists throughout Europe tend to staunchly oppose efforts to create a lobbyist registry and publicly disclose their lobbying activity, this assumption is not borne out by survey results. Most European lobbyists are quite willing to participate in a registry, even a mandatory lobbyist registry, and disclose much of their lobbying activity on the Internet for all to see. In fact, many lobbyists recognise the need for such disclosure to protect the integrity of the profession.

172. Disputes arise primarily over matters of implementation, such as “Who should manage the registry?” and “How much information should be disclosed?” Particular concerns are expressed as to the definition of “lobbyist,” which determines who should be subject to the self-regulations or regulations of the profession.

173. Two separate surveys were conducted for this study: a primary survey of European lobbyists’ attitudes toward self-regulation and regulation of the profession and a secondary survey of government regulators in Canada and Europe. Among the survey respondents in the primary survey, the largest group consists of lobbyists working for a lobbying firm or self-employed, known as “contract lobbyists,” reflecting their larger numbers among professional lobbying associations. Respondents also represent in-house corporate lobbyists and in-house lobbyists for non-profit organisations. The breakdown is as follows:

**Figure 1. Description of Lobbyist Survey Respondents**

**Number of Lobbyist Respondents**

		Lobbyists in Survey
N	Valid	189
	Missing	0

**Employer**

		Frequency	Percent	Valid Percent
Valid	Contract lobbyist	128	67.7	67.7
	For-profit corporation	25	13.2	13.2
	Non-profit organization	36	19.0	19.0
	Total	189	100.0	100.0

**Which Level of Government Do You Lobby Primarily?**

		Frequency	Percent	Valid Percent
Valid	National	97	51.3	51.3
	EU	92	48.7	48.7
	Total	189	100.0	100.0

174. A separate, much smaller survey queried officers in government disclosure offices in Canada and Europe about self-regulation and regulation of lobbyists, as well as the effectiveness of other forms of government regulations for reining in the potential for corruption. Eight public disclosure offices offered their input, only two of which are offices that manage a lobbyist registry. The remainder included such offices as government ombudsmen or ethics officials.

**Lobbyist Survey Results**

175. The European lobbying community has shown a great deal of openness and candor in discussing the practice of lobbying and self-regulation and regulation of the profession – an openness similarly shown in an earlier study.<sup>76</sup>

**Code of Conduct**

176. First and foremost when it comes to self-regulation or regulation of the lobbying profession, a code of conduct for lobbyists is of primary importance. An ethics code is the single most significant pillar in establishing proper norms of behaviour for lobbyists and setting the principles of professional conduct. A lobbyist code of conduct can come in many forms. It can be proffered either as a set of business principles by a company, or as an established ethics code of a lobbying firm or association, or as legal constraints on lobbying activity by a governmental agency.

177. Nearly all respondents (91 percent) indicate that they are subject to a lobbyist code of conduct. As shown in Figure 2, an ethics code of a lobbying association is the most common form of ethics guidance among the respondents. Very few respondents said they are subject to a government code of conduct, even though such a code exists for some of those who lobby the European Parliament (EP) and European Commission (EC). The small number is likely a reflection that the ethics codes for both EU institutions are only applicable to those who voluntarily join the registries. In the European Parliament, it applies only to those who seek permanent passes for easy access to the Parliament. For the European Commission registration is entirely voluntary – as of March 6, 2009, there were 1,126 interest representatives registered<sup>77</sup> – and lobbyists may opt to adhere to their own association’s code instead of the EC code of conduct.

**Figure 2. Subject to a Code of Conduct?**

	Frequency	Percent	Cumulative Percent
Valid association code	117	61.9	61.9
business code	49	25.9	87.8
government code	6	3.2	91.0
NA	5	2.6	93.7
No	12	6.3	100.0
Total	189	100.0	

178. Most respondents indicate that the lobbyist code of conduct provides meaningful guidance on how they conduct day-to-day lobbying activity. A substantial majority (60 percent) of all lobbyists surveyed agree with the statement that “the code provides good principles easily applied to specific situations.” About 25 percent of respondents are a little more ambivalent, agreeing that the code provides good general principles but questioning how often those principles can be applied to real world situations. A small percentage of respondents (7 percent) said the code is too abstract to provide much, if any, meaningful guidance. Just as many respondents (7 percent) offer no answer.

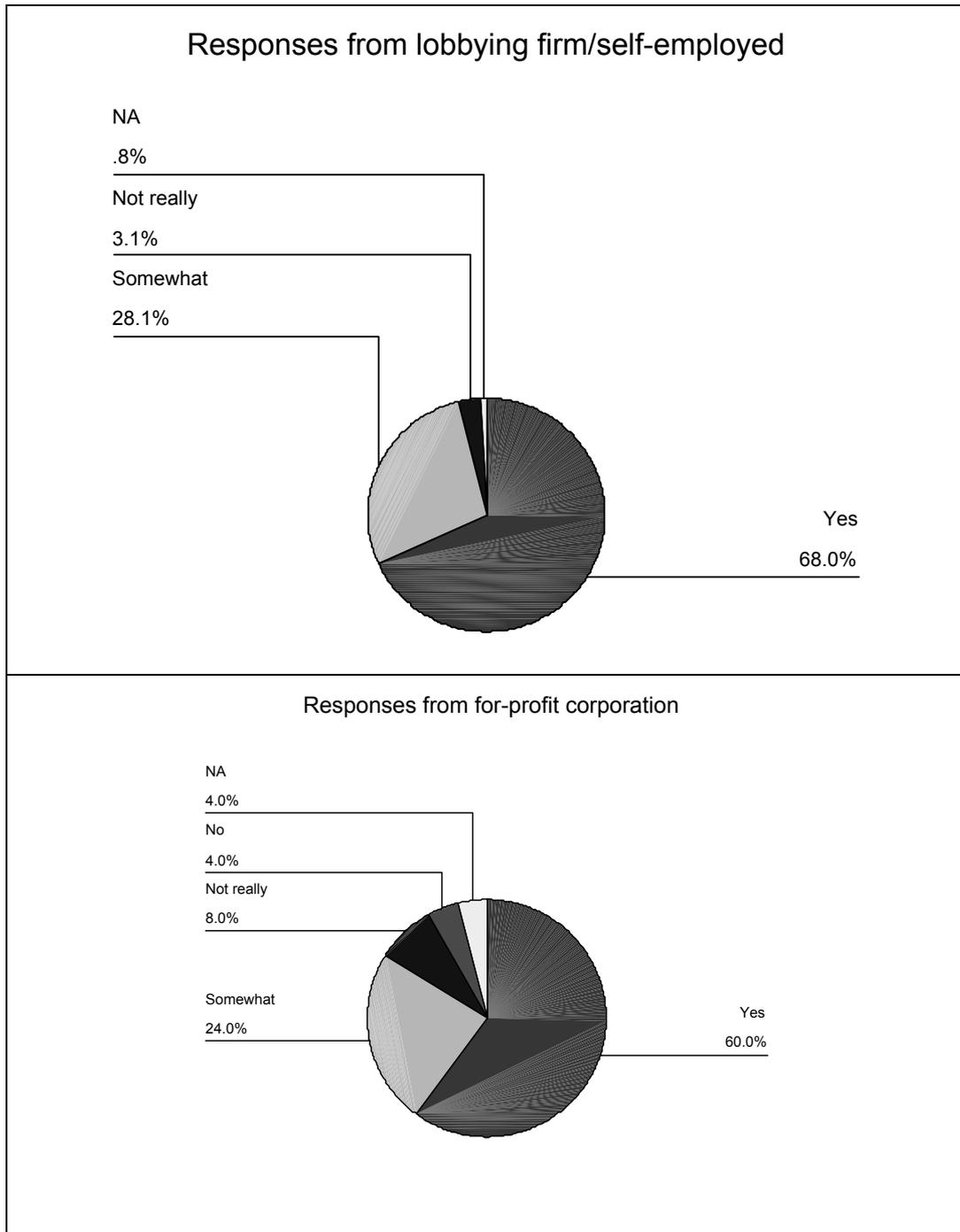
179. Differences in attitudes on the utility of a lobbyist code of conduct are quite evident between contract lobbyists, corporate lobbyists and lobbyists from non-profit organisations, with the latter being particularly skeptical. As shown in Figure 3, while none of the contract lobbyists said that an

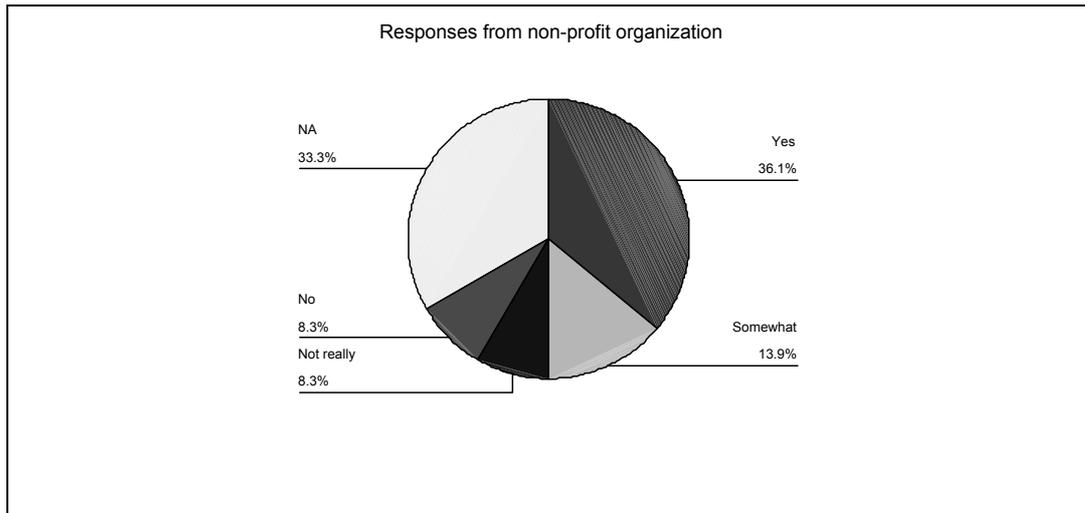
<sup>76</sup> Craig Holman, “Lobbying Reform in the United States and the European Union: Progress on Two Continents,” in Conor McGrath, ed. INTEREST GROUPS AND LOBBYING (2009) at 267-292.

<sup>77</sup> Follow developments of the European Commission Registry of Lobbyists at: <https://webgate.ec.europa.eu/transparency/regrin/welcome.do?locale=en>.

ethics code provides no meaningful guidance at all, 12 percent of corporate lobbyists indicate that a code provides little or no guidance, and about 17 percent of non-profit lobbyists agree. A whopping third of non-profit lobbyists decline to answer, reflecting that many in the non-profit sector have no established lobbyist code of conduct.

**Figure 3. Does the lobbyist code of ethics provide meaningful guidance?**





180. The effectiveness of any lobbyist code of conduct in shaping behaviour invariably depends on the system of “carrots or sticks” to motivate compliance to the code. The options of rewards to encourage compliance or sanctions to discourage violations vary widely from the public sector to the private sector, and also vary widely within the private sector, depending on the particular policies or bylaws of the company or professional association.

181. When it comes to laws in the public sector, compliance is almost always spurred through the threat of penalties for infractions. Compliance to the codes for the institutions of the European Union are notable exceptions. Both the Parliament and Commission use the carrot approach, attempting to reward lobbyist registration and compliance to the codes. In the Parliament, lobbyists may register and agree to comply with the ethics code in exchange for a permanent pass for easier access to the institution. The Commission, on the other hand, provides lobbyist registrants with automatic alerts of pending government business. Earlier research found that few EC lobbyists consider the automatic alerts as much of an incentive to register and comply. About 21.3 percent of lobbyists said the EC automatic alerts are a slight incentive, while 14.9 percent believe it is a significant incentive to register and comply.<sup>78</sup>

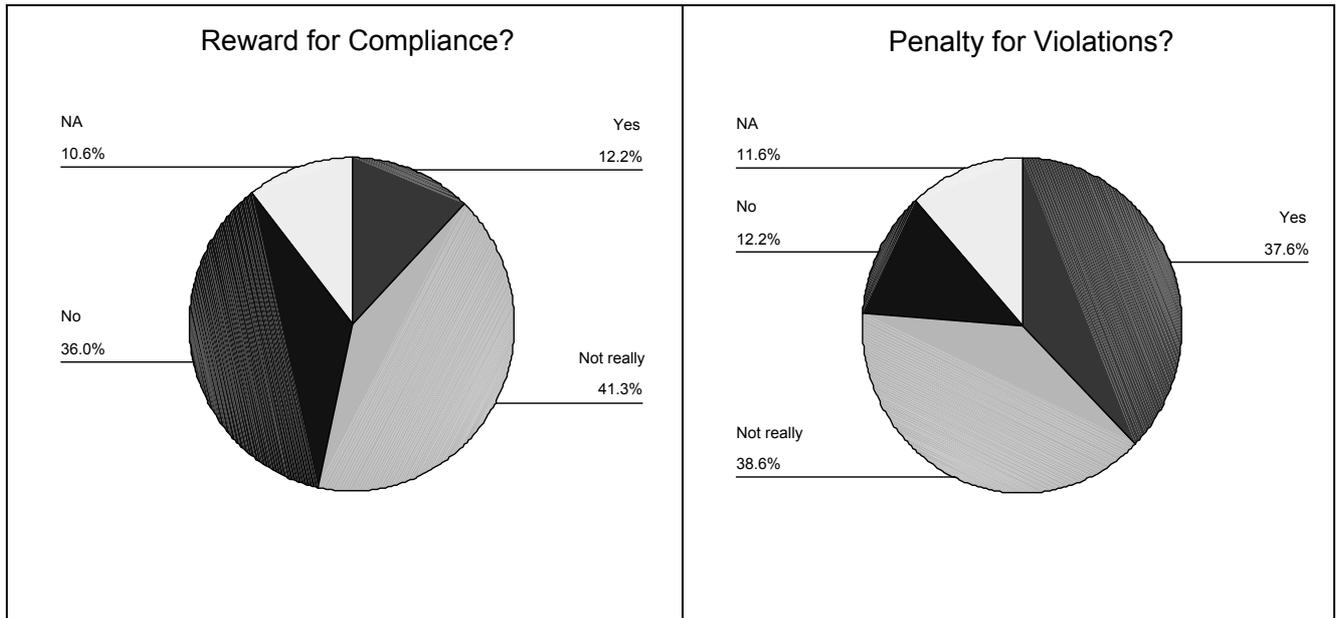
182. When it comes to lobbyist codes of conduct in the private sector, businesses and associations have no legal recourse for punishing violations. They can, however, offer more modest rewards and penalties. One such reward is the privilege to join the association. Several lobbying associations require signed consent to abide by the code as a condition of joining. Another reward may be earning an association-sponsored diploma or certificate. Most often, compliance with the code is sought through the threat of sanctions, such as a reprimand for violations or even expulsion from the association.

183. As shown in Figure 4, few lobbyists feel that rewards to induce compliance to an ethics code are effective (12.2 percent). The vast majority feel that rewards generally provide little incentive. Slightly more than a third of lobbyists (37.6 percent) believe that there are effective penalties in place to deter violations of the code. Over half of respondents (50.8 percent) believe that even the system of penalties for infractions has little or no effect on lobbyist behaviour.

<sup>78</sup>

Craig Holman, op. cit. at 291.

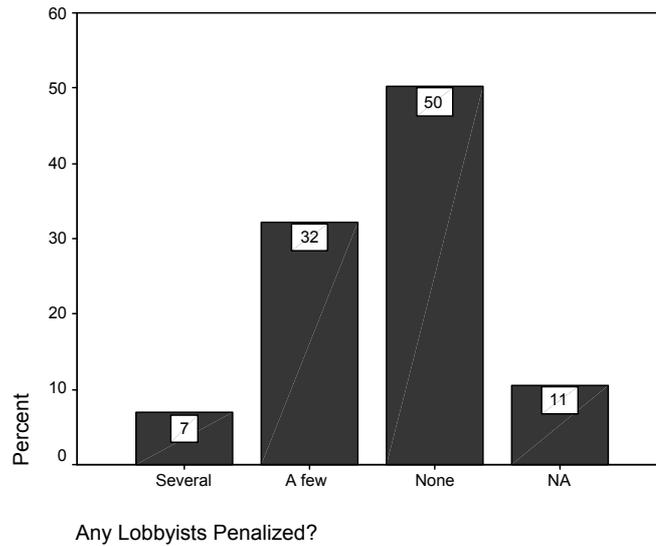
**Figure 4. Are there effective rewards for compliance, or effective penalties against violations, to the lobbyist code of ethics?**



184. Of far greater concern for the principle of self-regulation of lobbying behaviour within the private sector is that a majority of those surveyed are unaware of any lobbyist who has ever been penalised for violating a lobbyist code of conduct. This issue is discussed at greater length in the study's section of interviews and analysis of the operations of individual professional lobbying associations, where it is found that formal and informal disciplinary proceedings are rarely, if ever, conducted by an association against a member.

185. It may well be that confidential disciplinary actions or advice that are not publicly recorded have been offered more frequently within lobbying associations. Even so, only about 6.9 percent of respondents said that they know several instances in which lobbyists have been penalised for violating a code of conduct. A surprising 32.3 percent said they are aware of a few such instances, but most respondents (50.3 percent) said they are unaware of anyone being reprimanded or otherwise penalised for infractions and another 10.6 percent provide no answer (see Figure 5).

**Figure 5. Are you aware of any lobbyists who have been penalised for violating the lobbyist code of ethics?**



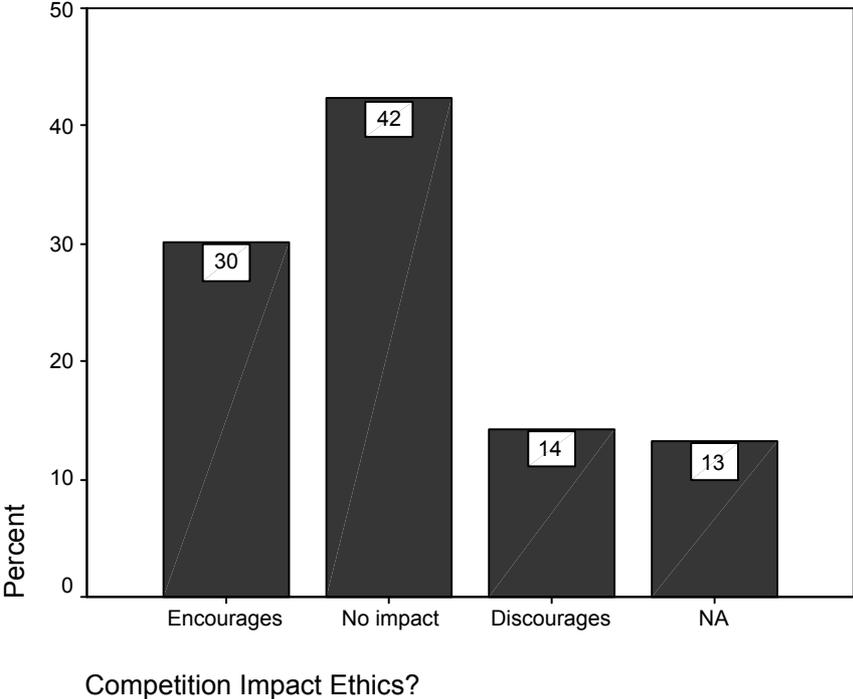
186. With or without a code of conduct, it is sometimes suggested that competition in the marketplace can have a significant impact on the ethical behaviour of lobbyists. It is well known among lobbyists that certain breaches in professional practice, such as providing a governmental official with information that is inaccurate, will take a toll on the credibility and effectiveness of that lobbyist. It is an unwritten rule among lobbyists that if you do not know the answer to a government official’s question, say so with the reassurance that you will find the answer and report back.

187. This raises the possibility that ethical behaviour of lobbyists may also be affected by the marketplace.<sup>79</sup> As lobbyists compete for the attention of government officials, do they grow increasingly attuned to conducting business in an ethical fashion?

188. According to the lobbyists surveyed, that is not usually the case. As shown in Figure 6, 30.2 percent of respondents believed that the marketplace did in fact encourage ethical behaviour among lobbyists. But 56.6 percent of respondents said that competition has no impact on ethical behaviour or, worse yet, may discourage ethical practices. The marketplace may indeed encourage competent conduct, but perhaps it is not as strong a force in encouraging ethical conduct.

<sup>79</sup> One of the largest lobbying firms in the United States, PMA Group, recently disbanded because of ethical and possibly illegal transgressions. PMA made extensive use of the revolving door in recruiting former congressional staffers with close connections to congressional committee chairmen, and made campaign contributions to these same officials, to help secure budget appropriations for its paying clients. Following a raid of PMA offices by the Department of Justice searching for evidence of bribery or other corrupt practices, the public perception of PMA’s practices led to the agency’s demise. Several of the leading members of Congress subject to PMA’s lobbying efforts, and beneficiaries of PMA campaign contributions, are also under scrutiny. Former PMA lobbyists have since received employment with other lobbying firms. Michael Bernard, “Pay to Play: More Revelations Regarding the Connection Between Lobbyists and Lawmakers,” *Associated Content* (March 12, 2009).

**Figure 6. Is competition for business between lobbyists a motive to help ensure ethical lobbying behaviour?**



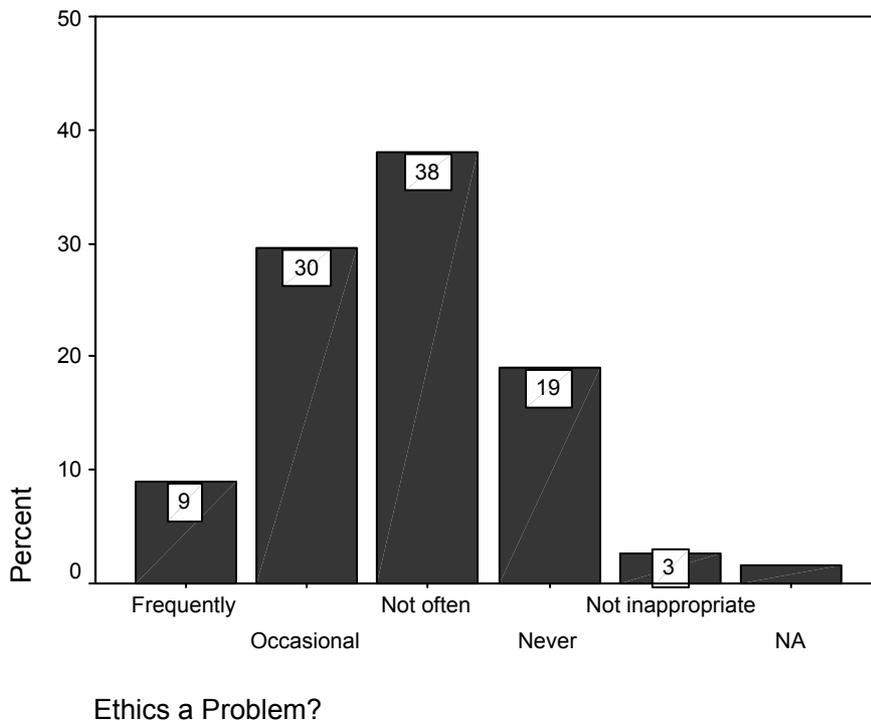
***Actual or Perceived Problem***

189. While the news is awash with stories of undue influence-peddling and corruption by lobbyists, the reality of the practice of lobbying is very likely far less sinister. This does not mean, however, that a problem of inappropriate influence-peddling by lobbyists does not exist. In fact, this survey shows that a substantial percentage of lobbyists themselves believe that there is a problem of inappropriate lobbying behaviour, both in actuality and in perception of the lobbying profession.

190. Respondents were asked: “Generally speaking, do you think inappropriate influence-peddling by lobbyists, such as seeking official favours with gifts or misrepresenting issues, is a problem?” As shown in Figure 7, about 39 percent of all lobbyists surveyed indicate that inappropriate influence-peddling is a “frequent” or “occasional” problem in European politics. Almost as many respondents (38 percent) feel that there is “not really” much of a problem with inappropriate influence-peddling, while only 19 percent believe such behaviour “almost never happens.” A small handful of lobbyists feel that seeking official favours with gifts or misrepresenting issues is not inappropriate lobbying behaviour.

**Figure 7. Generally speaking, do you think that inappropriate influence-peddling by lobbyists, such as seeking official favours with gifts or misrepresenting issues, is a problem?**

		Frequency	Percent	Cumulative Percent
Valid	Frequently	17	9.0	9.0
	Occasional	56	29.6	38.6
	Not often	72	38.1	76.7
	Never	36	19.0	95.8
	Not inappropriate	5	2.6	98.4
	NA	3	1.6	100.0
	Total	189	100.0	

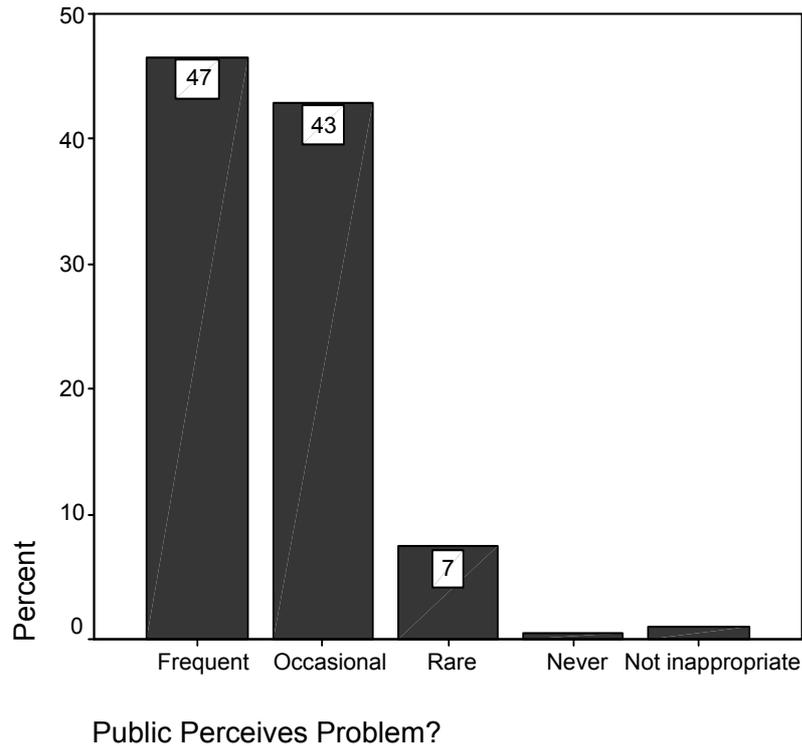


191. While there are clear differences in viewpoint between contract lobbyists, corporate lobbyists and lobbyists for non-profit organisations on this issue, significant elements within each sector believe a problem exists. Among contract lobbyists, 30.5 percent believe inappropriate influence-peddling is a frequent or occasional problem, 44 percent of corporate lobbyists believe so, and 63.9 percent of non-profit lobbyists believe it is a problem. About 23.4 percent of contract lobbyists believe inappropriate influence-peddling almost never happens, 12 percent of corporate lobbyists believe so, and 8.3 percent of non-profit lobbyists believe such behaviour almost never happens.

192. Attitudes among all categories of lobbyists shift heavily toward the “frequent problem” and “occasional problem” end of the scale when asked: “Does the public perceive that there is a problem of inappropriate influence-peddling by lobbyists?” As shown in Figure 8, only about 8 percent of all lobbyists surveyed believe that the public does not perceive a problem in the ethical behaviour of lobbyists.

193. Though this finding of a negative public perception of the lobbying profession may be obvious, it is important nonetheless. One challenge for the lobbying profession is to reasonably ensure that lobbying activity will be conducted in an open and ethical manner, so that the integrity of the profession is maintained. This way, lawmakers and other governmental officials can seek consultations with lobbyists with confidence. A second challenge for the lobbying profession, and every much as critical, is to help gain the public’s confidence that governmental decisions are being made in a fair and honest manner – that the integrity of government is maintained. The perception problem is likely to be the most formidable.<sup>80</sup>

**Figure 8. Generally speaking, do you think the public perceives that there is a problem of inappropriate influence-peddling by lobbyists, whether or not there is a problem in actuality?**



**Transparency in Lobbying Activity**

194. Transparency is often touted as one of the most powerful tools available for combating actual and perceived undue influence-peddling by lobbyists and corruption in government. The European lobbyists surveyed in this study feel very much the same way.

195. As shown in Figure 9, more than 76 percent of respondents “agree” or “strongly agree” with the statement: “Some level of public transparency of lobbying activity would help alleviate actual or perceived problems of inappropriate influence-peddling by lobbyists.” Only about 5 percent of respondents “disagree” or “strongly disagree.”

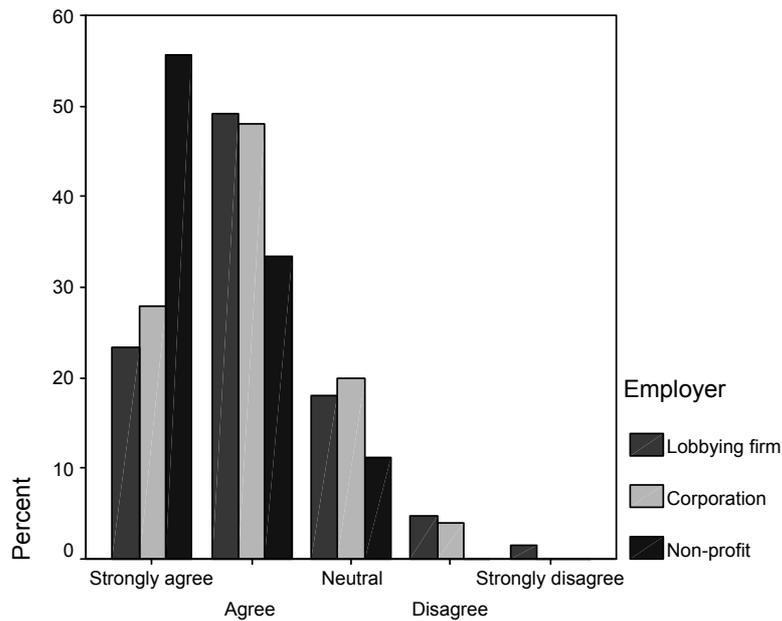
<sup>80</sup> Much of the perception of lobbying as a corrupting influence is rooted in history. See Thomas Susman, “Lobbying in the 21<sup>st</sup> Century: Reciprocity and the Need for Reform,” *Administrative Law Review* (2006) at 737.

**Figure 9. Some level of public transparency of lobbying activity would help alleviate actual or perceived problems of inappropriate influence-peddling by lobbyists**

		Frequency	Percent	Cumulative Percent
Valid	Strongly agree	57	30.2	30.2
	Agree	87	46.0	76.2
	Neutral	32	16.9	93.1
	Disagree	7	3.7	96.8
	Strongly disagree	2	1.1	97.9
	NA	4	2.1	100.0
	Total	189	100.0	

196. The sentiment that transparency is useful in addressing actual or perceived problems of the profession crosses all three category types of lobbyists, though lobbyists for non-profit organisations are significantly more inclined to “strongly agree.” As shown in Figure 10, those who disagree that transparency is useful for restoring the integrity of the profession are few and far between.

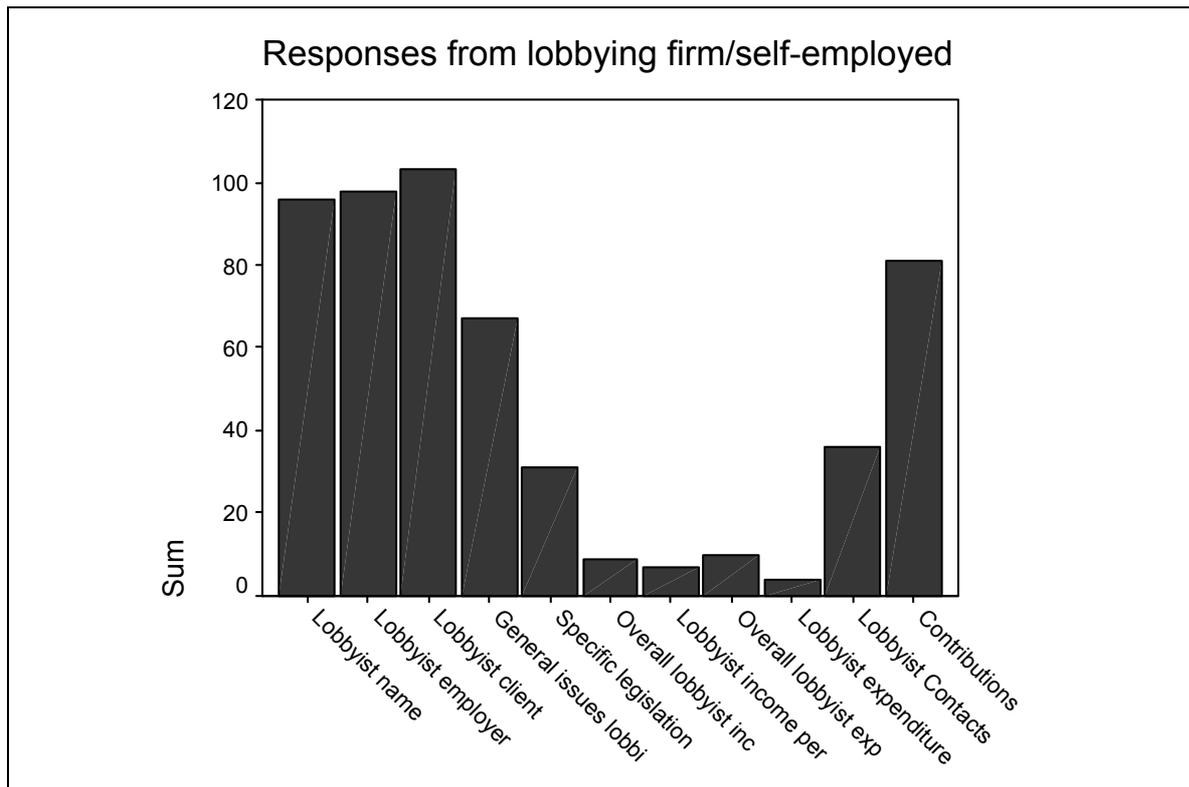
**Figure 10. Transparency is useful in alleviating actual or perceived problems of influence-peddling, by type of lobbyist**

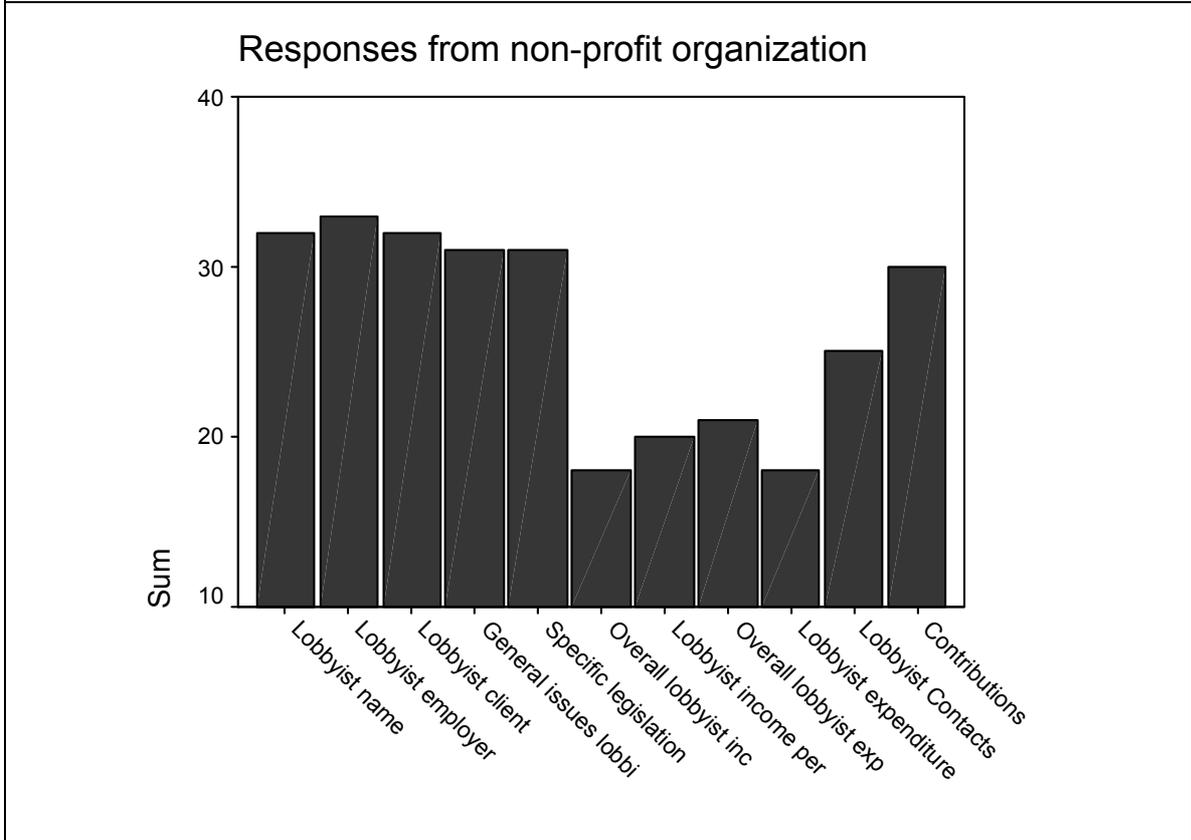
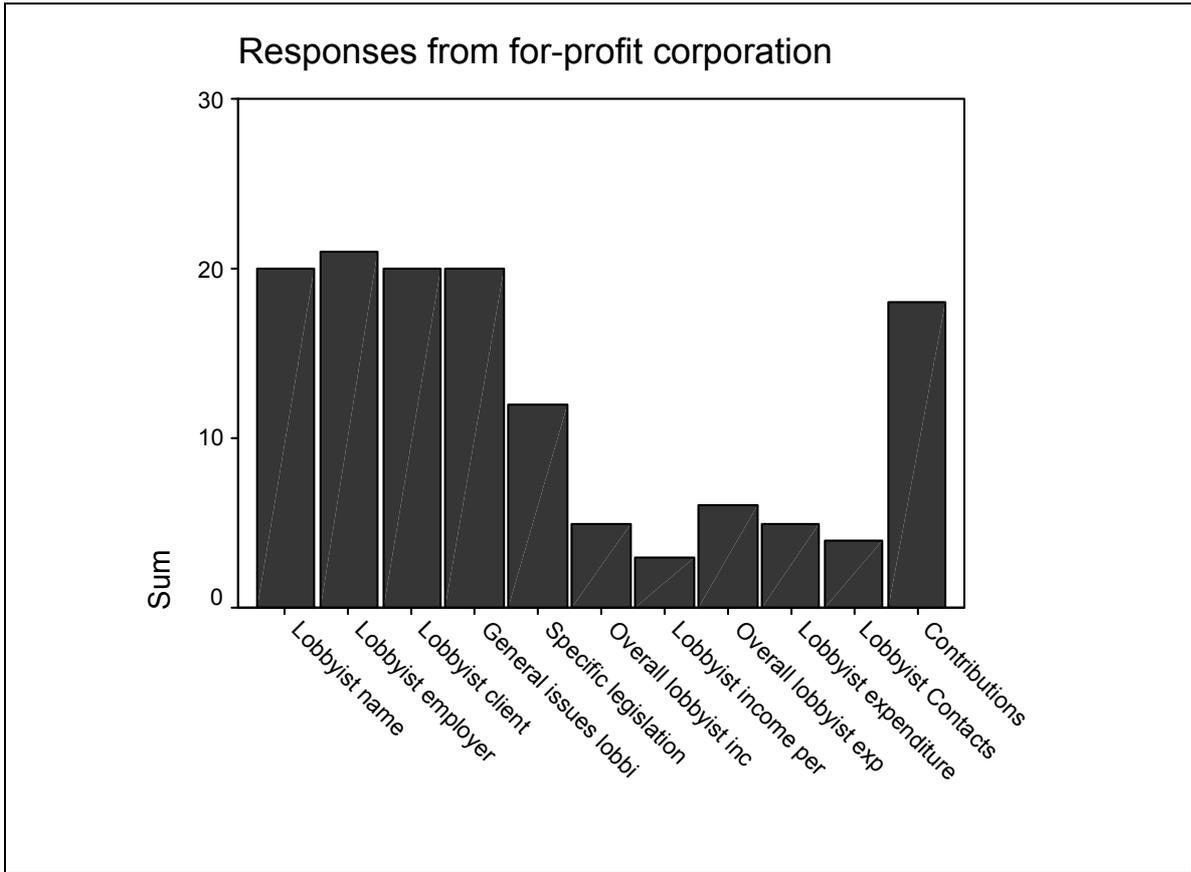


197. The controversy within the lobbying community is not whether transparency of lobbying is useful to the profession – it is – but which lobbyists and what lobbying activity should be disclosed to the public. Supplemental interviews conducted with leaders of European lobbying associations reveal a great deal of concern that the definition of “lobbyist” be fair and balanced, so as not to exclude lawyers and others who lobby as a corollary to their regular professions. The issue of “who” is a lobbyist subject to transparency is a matter of definitions, discussed at greater length elsewhere in this study. The issue of what type of lobbying activity should be subject to transparency is included in this survey.

198. Consensus runs fairly high among all category types of European lobbyists surveyed that a lobbyist transparency program should disclose at least (1) the lobbyist’s name; (2) the lobbyist’s employer; (3) the lobbyist’s client; (4) general issues lobbied; and, somewhat surprisingly, (5) campaign contributions made to political parties or candidates. Transparency of lobbyist income and expenditures is largely rejected by contract lobbyists and, less so, by corporate lobbyists. Non-profit lobbyists, on the other hand, show somewhat greater support for disclosure of overall lobbying income, lobbyist income per client, overall lobbyist expenditures, and lobbying expenditure per issue lobbied. Both contract lobbyists and non-profit lobbyists express some willingness to disclose their contacts with governmental officials (*see* Figure 11).

**Figure 11. Which lobbying activities, if any, should be subject to transparency and made public record? (by type of lobbyist)**





***Implementation of a Lobbyist Transparency Program***

199. Debate has raged for several years in the European Commission, and now the European Parliament, whether a system of lobbyist registration should be mandatory for all lobbyists or voluntary for those lobbyists who wish to register. The European Parliament first introduced a lobbyist registry in 1996. But it was never deemed a mandatory registration system. Instead it is an optional registration that provides registrants with easier access to the institution with permanent passes. All other lobbyists must seek temporary passes each time they enter the Parliament. No such registration or passes are required of lobbyists who work outside the halls of Parliament.

200. The European Commission thus far under the “European Transparency Initiative” has opted for a system of voluntary registration. Lobbyists are encouraged to register through such inducements as receiving automatic alerts of pending government business. The European Parliament has recently entered a similar debate. Early indications are that the Parliament may choose a mandatory system of lobbyist registration and invite the Commission as well as the Council of Ministers to join in a common mandatory registry. Representatives from the Parliament and Commission have been in negotiations over the principles of a common lobbyist registry since 2008 and have requested the input of the Council, but so far to no avail.<sup>81</sup>

201. The debate over a mandatory versus voluntary lobbyist registry continues today in Brussels despite evidence that the lobbying community itself is quite comfortable with a mandatory system of lobbyist registration.<sup>82</sup>

202. The broader European lobbying community surveyed in this study feels much the same way. In fact, in separate interviews discussed elsewhere in this study, several leaders of lobbying associations expressed preference for a mandatory system as the only equitable option to ensure that the transparency rules apply to all.

203. Most other European lobbyists seem to agree that lobbyist registration should be mandatory. As shown in Figure 12, more than 61 percent of all respondents believe that a lobbyist registration and transparency program should be “mandatory for all lobbyists.” About 18 percent of respondents prefer a voluntary system of registration and disclosure, and 15 percent are “neutral” on the issue.

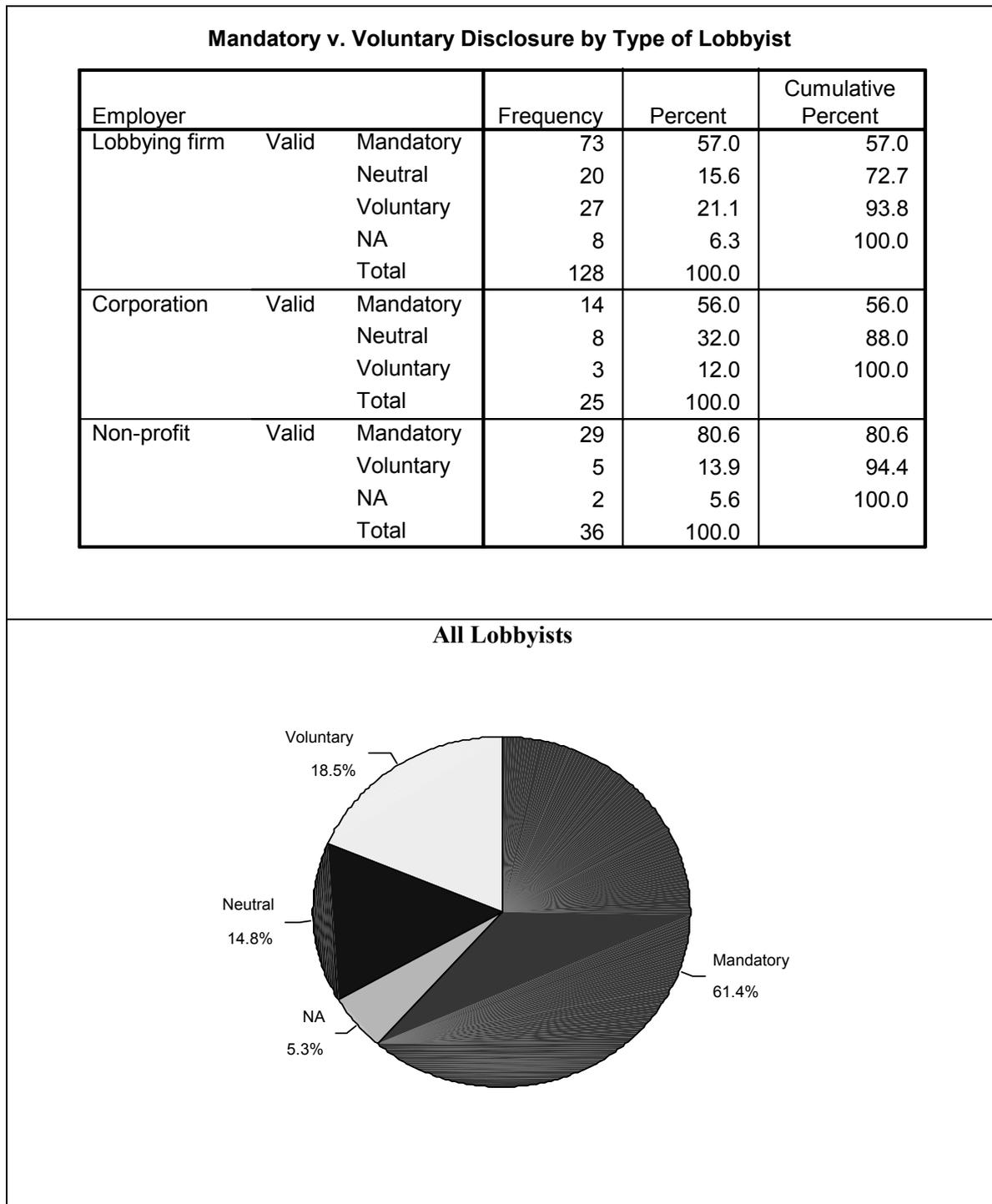
204. This support for a mandatory lobbyist registry again runs the gamut of all categories of lobbyists, with 80.6 percent of non-profit lobbyists favouring a mandatory system, 57 percent of contract lobbyists supporting mandatory registration and disclosure, and 56 percent of corporate lobbyists supporting the same. Mandatory versus voluntary registration and disclosure of lobbying activity is simply not an area of much dispute – at least not within the lobbying community.

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<sup>81</sup> Simon Taylor, “EU Edges Closer to Single Register for Lobbyist,” *European Voice* (April 9, 2009).

<sup>82</sup> Craig Holman, “Lobbying Reform in the United States and the European Union: Progress on Two Continents,” in Conor McGrath, ed. *INTEREST GROUPS AND LOBBYING* (2009) at 283.

Figure 12. Should transparency of lobbying activity be mandatory or voluntary?



205. An even greater consensus exists within the European lobbying community that information subject to disclosure in the lobbyist transparency program should be made available to the public over the Internet. More than 82 percent of all lobbyists surveyed agree that lobbyist disclosure records should be put on-line. Only 9 percent disagree, with another 9 percent offering no opinion.

206. Much of the consensus on the nature of a lobbyist transparency program fades away with the issue of who should manage the program. As shown in Figure 13, a slight majority of contract lobbyists (51.6 percent) prefer that the lobbyist registration and transparency program be managed by

a professional lobbyist association, 21.9 percent of contract lobbyists favour the government running the transparency program, and 14.8 percent suggest that transparency should be handled lobbyists themselves.

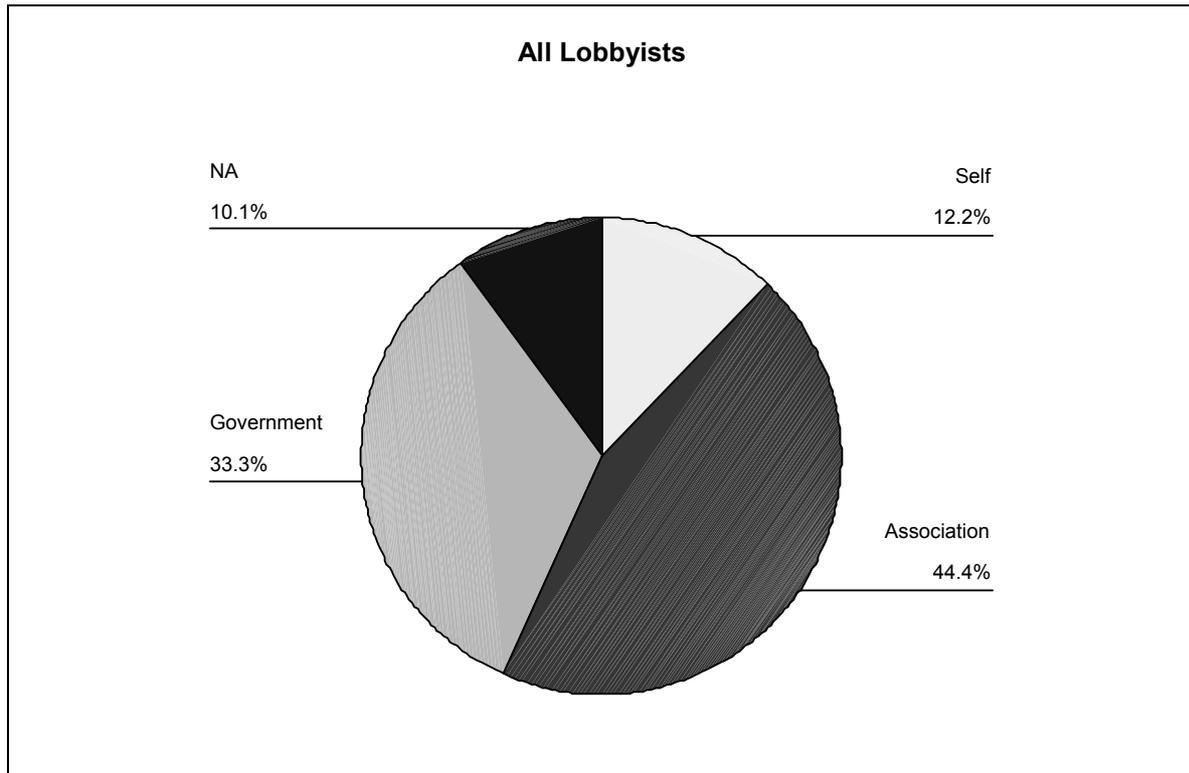
207. Nearly a majority of corporate lobbyists (48 percent) prefer a government-run lobbyist transparency program, with 36 percent expressing preference for an association-run program, and 8 percent prefer doing it themselves.

208. Among non-profit lobbyists, a large majority (63.9 percent) believe the lobbyist transparency program should be managed by a governmental agency. A quarter of respondents favour an association-run program, while 5.6 percent believe lobbyists should handle it themselves.

209. Overall, the lobbying community is split on the issue of who should manage the lobbyist transparency program. Among all lobbyists, 44.4 percent believe it would be better managed by a professional lobbying association, 33.3 percent believe the government would do a better job at running the transparency program, and 12.2 percent think it should be managed by lobbyists themselves.

**Figure 13. If some level of public transparency of lobbying activity were implemented, who would best manage a lobbyist transparency program?**

Who Best Manage Disclosure? (by Type of Lobbyist)					
Employer			Frequency	Percent	Cumulative Percent
Lobbying firm	Valid	Self	19	14.8	14.8
		Association	66	51.6	66.4
		Government	28	21.9	88.3
		NA	15	11.7	100.0
		Total	128	100.0	
Corporation	Valid	Self	2	8.0	8.0
		Association	9	36.0	44.0
		Government	12	48.0	92.0
		NA	2	8.0	100.0
		Total	25	100.0	
Non-profit	Valid	Self	2	5.6	5.6
		Association	9	25.0	30.6
		Government	23	63.9	94.4
		NA	2	5.6	100.0
		Total	36	100.0	



210. Sharp differences of opinion among lobbyists over who would best manage a lobbyist transparency program also arise between those who believe that inappropriate influence-peddling within the profession is a “frequent” or “occasional” problem and those who do not. As shown in Figure 14, lobbyists who believe that ethical violations are a problem for the profession overwhelmingly favour a government-run lobbyist transparency program. Lobbyists who believe that ethical violations are “not often” or “never” a problem in the profession tend to favour a lobbyist transparency program managed by a professional association or by lobbyists themselves.

**Figure 14. Attitudes of those who believe that inappropriate influence-peddling is an actual problem with who would best manage a lobbyist transparency program**

		Ethics a Problem?			
		Frequently	Occasional	Not often	Never
		Col %	Col %	Col %	Col %
Who Best Manage Disclosure?	Self	5.9%	7.1%	11.1%	22.2%
	Association	11.8%	28.6%	59.7%	55.6%
	Government	70.6%	55.4%	19.4%	11.1%
	NA	11.8%	8.9%	9.7%	11.1%

**Regulation of Lobbying Activity**

211. Another surprising result of this survey is that more European lobbyists agree than disagree with the statement: “If legislation regulating lobbying activity were implemented, then transparency

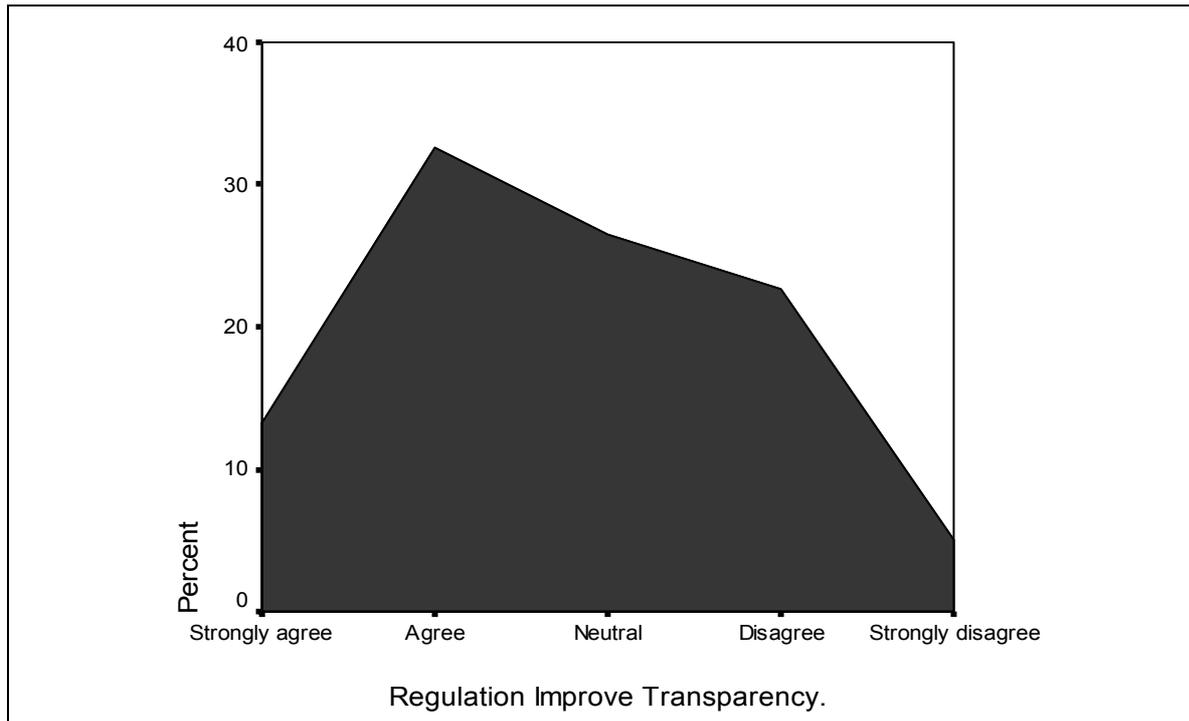
and accountability in policymaking would be improved.” Similar to lobbyist attitudes on mandatory registration, the expected outpouring of opposition to government regulations of the profession among rank-and-file lobbyists is vastly over-exaggerated. A majority of European lobbyists surveyed believe that some government regulation of lobbying would improve the integrity of government

212. As shown in Figure 15, there is a decided shift in lobbyist attitudes favouring regulation. Among all lobbyists, 45.9 percent “strongly agree” or “agree” that government regulations would improve transparency and accountability in policymaking. About 26.5 percent of all lobbyists “strongly disagree” or “disagree” that regulation would improve transparency and accountability. Slightly more than a quarter of all respondents (25.4 percent) are neutral on the issue.

213. No doubt the results of this survey would vary depending on how “government regulation” is defined, but as a general concept the European lobbying community, like its counterpart in the United States, recognises that some regulation of the profession can produce positive results for the integrity of government.

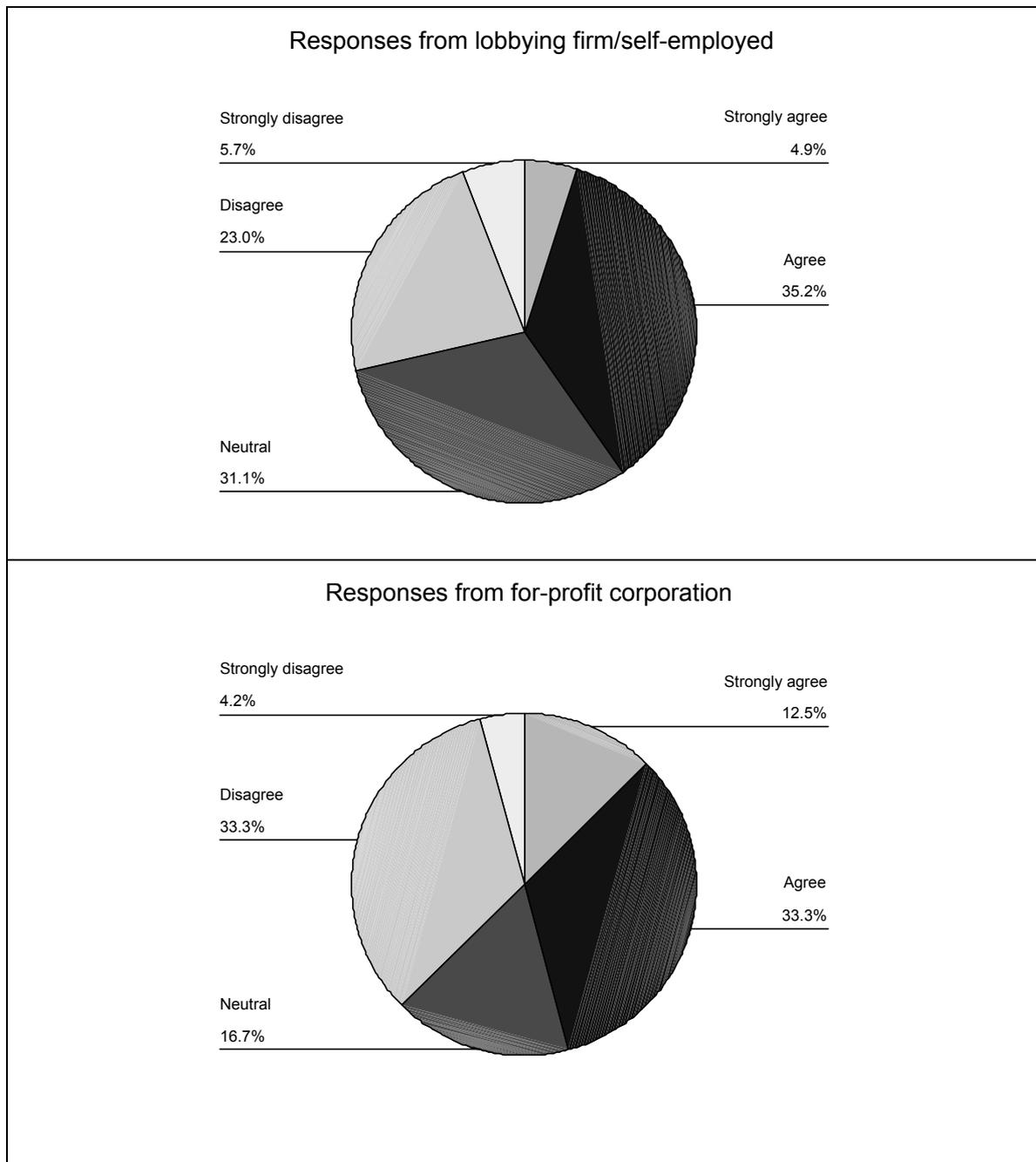
**Figure 15. If legislation regulating lobbying activity were implemented, then transparency and accountability in policymaking would be improved**

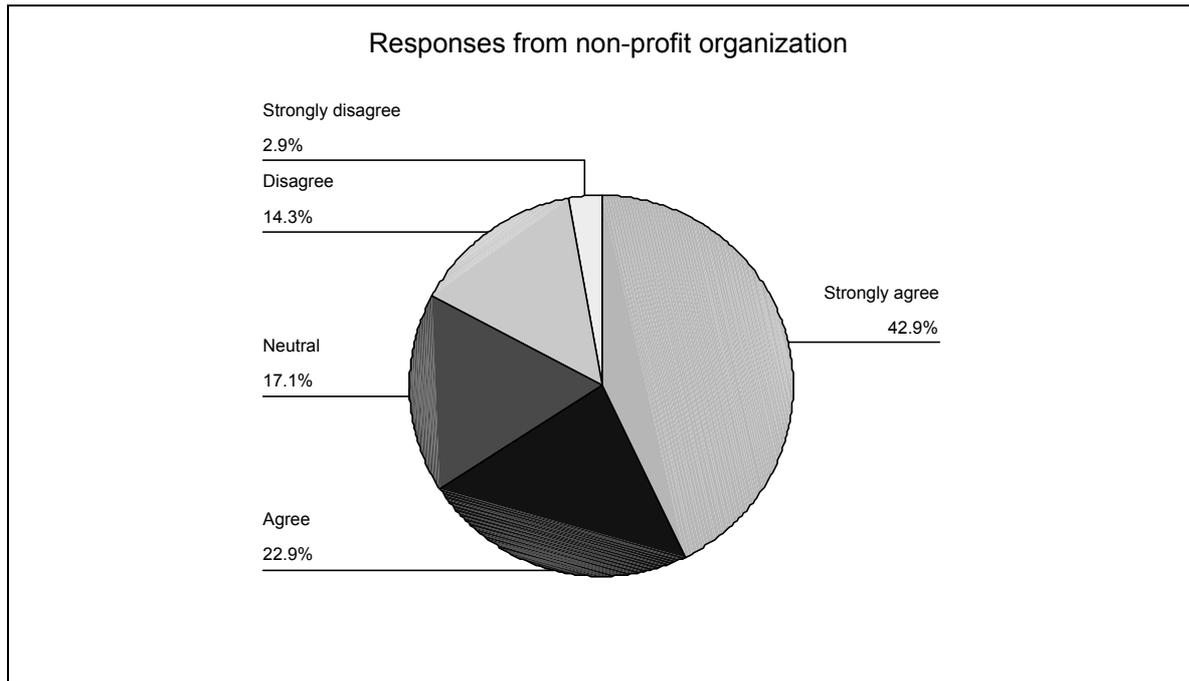
<b>Regulation Improve Transparency.</b>				
		Frequency	Percent	Cumulative Percent
Valid	Strongly agree	24	12.7	13.3
	Agree	59	31.2	45.9
	Neutral	48	25.4	72.4
	Disagree	41	21.7	95.0
	Strongly disagree	9	4.8	100.0
	Total	181	95.8	
Missing	System	8	4.2	
Total		189	100.0	



214. When broken down by type of lobbyist, support for the idea that some government regulation of the profession can enhance accountability clearly is strongest among non-profit lobbyists. Nevertheless, significant pluralities agree with the concept as well among contract lobbyists and corporate lobbyists. As shown in Figure 16, a large percentage of contract lobbyists, and less so corporate and non-profit lobbyists, are “neutral” on the issue.

**Figure 16. Regulation of lobbying activity would improve transparency and accountability, by type of lobbyist**





215. Not so surprisingly, those who agree that transparency of the lobbying profession is useful in alleviating actual or perceived problems of inappropriate influence-peddling are more likely to agree that some government regulation is also useful. Those who disagree that transparency is constructive also disagree that government regulation would improve transparency and accountability in policymaking (see Figure 17).

**Figure 17. Attitudes on whether transparency is useful with whether government regulations improve transparency and accountability**

		Regulation Improve Transparency.				
		Strongly agree	Agree	Neutral	Disagree	Strongly disagree
		Row %	Row %	Row %	Row %	Row %
Transparency is Useful	Strongly agree	39.3%	33.9%	14.3%	8.9%	3.6%
	Agree	2.4%	42.9%	27.4%	23.8%	3.6%
	Neutral		10.0%	43.3%	43.3%	3.3%
	Disagree		14.3%	42.9%	14.3%	28.6%
	Strongly disagree			50.0%		50.0%
	NA				100.0%	

216. Similarly, those who agree that some government regulation would improve transparency and accountability believe that government is best suited to manage a lobbyist transparency program. Those who disagree that government regulation would be constructive generally believe that a professional lobbying association or lobbyists themselves are best suited to manage a lobbyist transparency program. Those who are neutral on the issue of government regulation heavily favour an association-run transparency program (see Figure 18).

**Figure 18. Attitudes on whether regulation improves transparency and accountability and who would best manage a lobbyist transparency program**

		Regulation Improve Transparency.				
		Strongly agree	Agree	Neutral	Disagree	Strongly disagree
		Col %	Col %	Col %	Col %	Col %
Who Best Manage Disclosure?	Self	8.3%	11.9%	6.3%	12.2%	44.4%
	Association	8.3%	39.0%	56.3%	70.7%	33.3%
	Government	83.3%	47.5%	16.7%	4.9%	11.1%
	NA		1.7%	20.8%	12.2%	11.1%

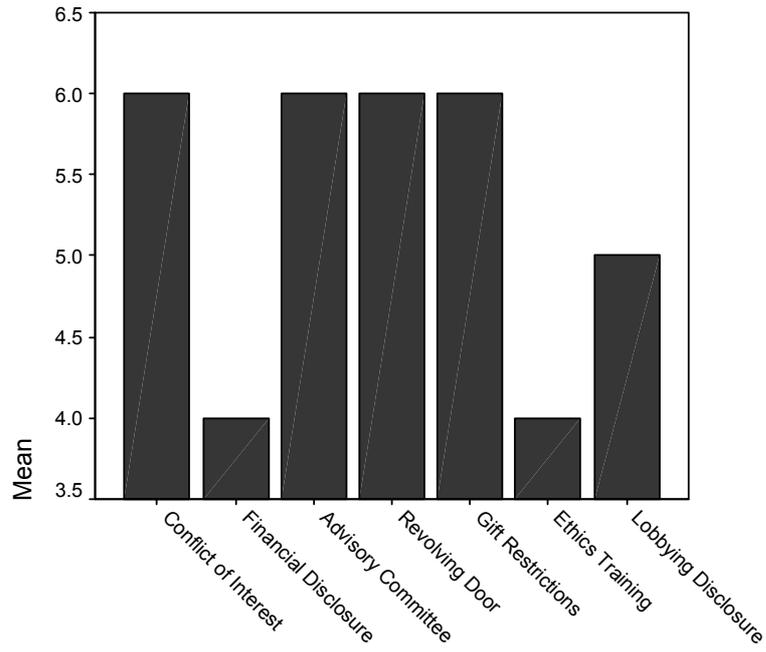
**Public Sector Survey Results**

217. In a separate and much smaller survey, several public disclosure offices of national and provincial governments in Europe and Canada were queried about their attitudes on lobbying self-regulation and regulation as well as the effectiveness of other governmental regulations in addressing inappropriate influence-peddling. All of the offices asserted that lobbying of government officials by private interests is “very extensive” or “somewhat common.”

218. As expected, these governmental offices almost universally “agree” or “strongly agree” that transparency measures would help alleviate actual or perceived problems of inappropriate influence-peddling by lobbyists. All of the offices that responded call for a mandatory system of lobbying registration and transparency and believe that the program would best be managed by a governmental agency. They also “agree” or “strongly agree” that some government regulation improves transparency and accountability in policymaking. There is no opposition expressed among respondents to any of these concepts.

219. Perhaps the most interesting result of this public sector survey is that these offices have as much confidence in other forms of ethics regulations besides lobbying reforms for promoting transparency and accountability in government. Lobbying transparency is important, but so are conflict of interest regulations for public officials, restrictions on officials receiving gifts from private parties, ethics training for government employees, personal financial disclosure for high ranking officers in the government and disclosure of who sits on advisory committees. While lobbying transparency is certainly useful for maintaining integrity in government, according to respondents, transparency and ethics restrictions should also apply to government officials (*see* Figure 19).

Figure 19. Which of the following measures are “very effective” in curtailing inappropriate influence-peddling by lobbyists over public officials?



## **CONCLUSION: OPTIONS FOR ENHANCING TRANSPARENCY AND ACCOUNTABILITY THROUGH SELF-REGULATION AND REGULATION OF LOBBYING**

220. The ultimate objectives of any system of self-regulation or regulation of the lobbying profession is to rein in the potential for inappropriate influence-peddling by lobbyists and to establish the public's trust that governmental decisions are being made in an open and fair manner. In proposing a "best model" for the self-regulation or regulation of the lobbying profession in Europe, the authors recognise that each nation has a unique set of circumstances pertinent to the practice of lobbying. While there appears to be growing cynicism among the public generally about whose interests government represents, and the role of lobbyists in influencing the policymaking process, that cynicism is much stronger in some European countries than others.

221. Where public cynicism about the integrity of government is not so strong, carefully planned and administered efforts by lobbyists and their lobbying associations to abide by principles of transparent and honest policymaking may well be sufficient, at least for the time being. In countries where public cynicism is more challenging, a stronger set of self-regulations and government regulations may be in order to regain the trust of the citizenry and to prevent occurrences of undue influence-peddling by lobbyists. Much like the survey results of lobbyists given above in Figures 17 and 18, those who believe that there is a serious problem of inappropriate influence-peddling and believe that transparency can help alleviate the problem are much more likely to support government regulations of the profession. Those who believe the problem is not so pervasive tend to favour association-run programs. Clearly, the "best model" for establishing transparency and accountability in government to a large extent must be tailor-made for the political realities of each country.

222. Nevertheless, this study has identified several options for self-regulation and regulation of the lobbying profession that can help achieve the goal of reducing undue influence-peddling by lobbyists and strengthening the public's trust in government. These options are discussed below.

### **Enhancing Transparency and Accountability through Self-Regulation**

223. As public opinion has fallen dramatically about the integrity of government in general, and the role of lobbyists in the policymaking arena in particular, the lobbying profession in Europe has developed an array of institutional mechanisms to help address these problems. To gain the confidence of governmental officials with whom they work, the profession must root out inappropriate and potentially scandalous influence-peddling behaviour. At the same time, the credibility of the profession rides on the public's perception of the integrity of government – and this, nearly all European lobbyists recognise, requires some level of transparency in how lobbyists relate to government officials.

224. Steps can be taken to strengthen self-regulatory tools of the lobbying profession. These include:

- (i) Make a code of conduct mandatory and specifically target ethical behaviour by lobbyists;
- (ii) Strengthen the enforcement mechanisms of a lobbying association;
- (iii) Mandate ethics training for members of an association; and
- (iv) Impose a mandatory system of lobbyist registration and Internet disclosure of lobbying activities managed by the lobbying association.

**Code of Conduct**

225. One of the most important tools for self-regulation of the lobbying profession is an ethics code of conduct. As noted in the review of European lobbying associations, every professional association has established principles of ethical behaviour in the form of a code of conduct. About 91 percent of lobbyists surveyed indicated they are subject to some form of ethics code, either from a professional association, business or the government. Those who said they are subject to a government code were a small 3.2 percent of respondents.

226. Most of the lobbying associations originally based their ethics codes upon traditional codes developed for the public relations profession, such as the Code of Athens or the Code of Lisbon. Some of the associations continue to adhere to the older codes, but several associations have made efforts to update their ethics codes and refashion the codes to apply specifically to the lobbying profession.

227. One component of a more effective ethics code for lobbying associations is that membership is made contingent upon agreeing to abide by the code. Rather than being just an amorphous document posted on an association’s web page, members should be required to sign that they have read and will abide by the code in order to alert members that such a code exists.

228. Critical to the development of an effective ethics code for lobbyists is the newest tendency of some codes to embellish the behavioural constraints suggested in the Code of Lisbon and prescribe specific behavioural rules for lobbyists. The codes for the Association of Professional Political Consultants (APPC) the Public Relations Consultants Association (PRCA) in the United Kingdom, for example, provide more than general moral principles to guide the practice of lobbying; they also include some specific restrictions on the flow of money from lobbyists to government officials. The APPC code states: “Save for entertainment and token business mementoes, political consultants must not offer or give, or cause a client to offer or give, any financial or other incentive to any person in public life, whether elected, appointed or co-opted, that could be construed in any way as a bribe or solicitation of favour.” This provision has been interpreted by officers of APPC to even prohibit paying lecture fees to government officials.

“Save for entertainment and token business mementoes, political consultants must not offer or give, or cause a client to offer or give, any financial or other incentive to any person in public life, whether elected, appointed or co-opted, that could be construed in any way as a bribe or solicitation of favour.”

and

**Key Behavioural Components of a Lobbyist Code of Conduct for a Professional Association**

- Agree to abide by the code as a condition of membership or employment.
- Lobbying communications must be factually accurate and honest.
- Require disclosure of clients and interests represented to those lobbied.
- Prohibit simultaneous employment as a lobbyist and a public official.
- Mandate recusal from representing any client on matters posing a personal conflict of interest, unless the conflict is fully disclosed and manageable.
- Provide no gifts above *de minimis* value, fees, services, employment or other things of value to public officials.
- Require periodic ethics training as a condition of membership.
- Establish an independent investigative panel to monitor compliance.
- Impose sanctions for violations.

229. If properly enforced, such a specific code on lobbying behaviour could significantly reduce inappropriate influence-peddling associated with the reciprocity principle – government officials feeling indebted to lobbyists who have given them gifts, remuneration or other things of monetary value. It need be pointed out, however, that no data exist as to the compliance of APPC and PRCA members with this restriction. One formal complaint is on record of an alleged violation of this provision, against Media Strategies in 2005. Media Strategies, however, resigned from APPC before a formal hearing was launched and joined PRCA instead.<sup>83</sup>

**Enforcement Mechanisms of a Lobbying Association**

230. APPC has launched a new campaign at restructuring its enforcement authority to deal with a case like Media Strategies. APPC and PRCA joined with the Chartered Institute of Public Relations lobbying division in forming an umbrella organisation. The umbrella organisation seeks to promote a common ethics code and approach to self-regulation across the industry of lobbyists and public relations professionals. Though the organisation has agreed upon a set of Guiding Principles, it has not yet gained consensus on an ethics code that includes a specific constraint against the flow of money from lobbyists to government officials, nor has it developed a single enforcement

entity governing all three associations.

231. Furthermore, in the survey of attitudes toward self-regulation among European lobbyists, lobbyists tend to believe that a system of sanctions for violations is more compelling than inducements, though the current systems of inducements and sanctions are generally viewed as ineffective by a majority of respondents (71.9 percent believe positive inducements are ineffective, and 50.8 percent believe that the existing penalties are ineffective).

232. For professional associations, sanctions have been limited to reprimand or expulsion from the association, if invoked at all. A stronger form of sanctions would be to make compliance to the code conditional for *employment* in a lobbying firm, corporation or non-profit organisation. Egregious violations could result in job termination. APPC has attempted to make its ethics code a condition for employment among its member consultancy firms. Member consultancy firms must agree that: “It is a condition of membership of APPC that the member firm, its staff and non-executive political consultants should accept and agree to abide by this Code for itself and that members will be jointly and severally liable for the actions of their staff in relation to the Code.” The association requires its members to explain their day-to-day compliance procedures with the code and to affirm that the ethics

<sup>83</sup> Public Administration Select Committee, House of Commons, Lobbying: Access and Influence in Whitehall (Jan. 5, 2009) at 20.

code forms part of the members' contracts of employment for lobbyists hired by the member consultancy firms.<sup>84</sup>

233. This emphasis of the APPC code to apply its ethics guidelines as a condition for employment among member firms likely explains why more than a quarter of European lobbyists surveyed said they are subject to a corporate code of ethics. However, there is not any record of a lobbyist being terminated by a member consultancy firm because of a violation of APPC's code of conduct.

234. If corporations and firms are not likely to make hiring and firing decisions based on compliance with an association's ethics code, would sanctions for violations likely be meted out by lobbyists within an association against their own members? The evidence also is not convincing. Lobbying associations throughout Europe have received few formal complaints against their members and conducted even fewer investigations of complaints or unethical behaviour.

235. Many lobbying associations reported no formal complaints and no enforcement actions in their history. Those who reported no enforcement actions include the Public Relations Institute of Ireland, the Society of European Affairs Professionals, the Turkish Public Relations Association, the Public Relations Consultants Association, and the Croatian Society of Lobbyists, created in 2008. The Swedish Public Relations Association reported one enforcement case in 1972, and APPC reported two cases, one formal investigation conducted a decade ago and another recent case in 2008 that was cancelled when the issue was settled in court. Perhaps the most robust enforcement track record comes from the Chartered Institute of Public Relations, reporting that it receives about four written complaints a year against members, most of which do not result in formal investigations. Over the last five years, CIPR investigations have been conducted in 10 cases, only one of which involved lobbying behaviour. Even so, CIPR has convened its disciplinary committee only twice in the last decade to issue formal sanctions for violations.

236. It is not possible to evaluate whether informal discussions have appropriately addressed most violations of the ethics code among lobbyists. That only four formal disciplinary proceedings across Europe have been reported by professional associations in not-so-recent history suggests a very low level of enforcement. This accounts for why a majority of European lobbyists surveyed said they are unaware of anyone ever being reprimanded or otherwise penalised for infractions.

237. If an association is going to develop an effective mechanism for investigating possible infractions and issuing appropriate sanctions for violations, the investigative panel should consist of at least some persons from outside the profession. There is an inherent conflict of interest in lobbyists sitting in judgment of lobbyists. Some associations have developed such formal investigative bodies composed of outside members, but even these have rarely initiated or handled complaints. There is a severe incongruence with perception and reality in this track record: while the public perceives a substantial problem of undue influence-peddling by lobbyists – and even 39 percent of European lobbyists themselves believe that inappropriate influence-peddling is a frequent or occasional problem – the lobbying associations are reporting very few enforcement actions.

### **Ethics Training and Education**

238. All the European lobbying and public relations associations provide some amount of ethics training and education, ranging from seminars and conferences to actual courses of study and diplomas for graduation. Both the Public Relations Institute of Ireland and the Swedish Public Relations Association, for example, excel in education for their members. Education is the primary purpose of PRII, which provides its own school for lobbyists and public relations professionals.

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<sup>84</sup> Association of Professional Political Consultants, APPC Response to the Public Administration Select Committee Report on Lobbying (Feb. 27, 2009).

Though ethics training and education are voluntary programs at SPRA, it offers extensive classes for all its members three times a year, in which a good share of the membership participates.

239. The PRII offers various workshops and courses, to help professionalise its members. It hosts an ongoing series of educational forums, luncheons and conferences. Additionally, PRII workshops are designed to allow its members to obtain the resources they may “need to grow professionally.”<sup>85</sup>

240. More importantly, PRII is essentially a school in lobbyist and public relations training. It offers a Diploma in Public Relations in cooperation with various universities and colleges in Ireland. The curriculum for receiving the Diploma is “suitable for those with some PR experience but without an industry-specific qualification” and “can also be undertaken by those working outside the industry but who wish to bring advanced communication skills to an existing role.”<sup>86</sup>

241. The Swedish Public Relations Association also takes its educational function very seriously. SPRA’s education program consists of a 3-day class offered to all members three times every year, known as the Communication Mentoring Program. One session of the class focuses on ethical conduct. Though the class is voluntary, about 20 to 30 members participate in each round of classes.<sup>87</sup> The goal is that once the program has been completed, the participants “shall have gained broader and deeper knowledge and increased their skills.”<sup>88</sup>

242. The Chartered Institute of Public Relations specialises in education as well. CIPR supports the training and education of its members through a wide variety of events. Most significantly, CIPR has achieved such status in the industry that it provides industry-recognised degrees in lobbying and public relations. CIPR’s on-going training degree, the Diploma program, is now available on-line so as to be more accessible.

243. These education and training programs are extraordinary achievements of the professional lobbying associations that provide them. Education and ethics training is a task for which professional associations are uniquely suited. Professional associations have the kind of expertise and real-world experience that is not readily available elsewhere. Judging from the participation rates in these educational programs, their members are quite appreciative of the service.

244. To maximise this value of professional associations, ethics training at the very least should be mandatory as a condition of membership. Furthermore, the educational function would be made all the more valuable if, as in the case of CIPR, the professional association provides degrees in the field that are recognised within the industry as a license of professionalism.

### **Association Registry**

245. Another innovation by APPC for self-regulation that could well be emulated by other lobbying associations is that of a mandatory lobbyist registry for all its members, with reports filed on a quarterly basis. The registry discloses the identities and contact information of the lobbying entity, the names of its lobbyists and staff working on the lobbying campaign for that period, and the names of their clients in each three-month period. This information is then provided on-line through the association’s web page.

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<sup>85</sup> PRII “Training Workshops,” at: [http://prii.ie/training\\_workshops.aspx](http://prii.ie/training_workshops.aspx) (April 2009).

<sup>86</sup> PRII “Diploma in PR,” at: [http://prii.ie/show\\_content.aspx?idcategory=7&idsubcategory=0](http://prii.ie/show_content.aspx?idcategory=7&idsubcategory=0) (April 2009).

<sup>87</sup> Interview (telephone) with Margaretha Sjoberg, Secretary-General, Swedish Public Relations Association (Feb. 12, 2009).

<sup>88</sup> SPRA “Communication Mentoring Program,” at: [http://www.sverigesinformationsforening.se/in-english/communication-mentoring-program-\(cmp\).aspx](http://www.sverigesinformationsforening.se/in-english/communication-mentoring-program-(cmp).aspx).

246. As noted earlier, this registry was created in response to a political scandal. Disclosing the names of the lobbyists and clients is a transparency measure designed to reassure governmental officials and the public that lobbying activity is done in the open. Conflicts of interests between lobbyists, their clients and governmental officials can readily be identified on an ongoing basis – at least for members of the association.

247. Partly due to this association-run mandatory registry, and another like it run by PRCA, a vast majority (61.4 percent) of European lobbyists surveyed support a mandatory system of lobbyist registration and disclosure. But this overwhelming support for a mandatory registry cannot be attributable to experience with APPC and PRCA alone given that respondents come from all across Europe, not just the United Kingdom. About 9 out of 10 European lobbyists surveyed believe that the public perceives there is a frequent or occasional problem of inappropriate influence-peddling by lobbyists, and most recognise that the profession needs to take steps to counter this cynicism. More than three-quarters of lobbyists believe that transparency will go a long way toward alleviating public concerns, and a mandatory registry is just such a step.

248. According to lobbyists themselves, information contained in a lobbyist registry should be available on the Internet and include at least the lobbyist's name, lobbyist's employer, lobbyist's client and general issues lobbied. According to most lobbyists, the registry also provides an ideal opportunity to report and disclose lobbying contacts with government officials and any contributions made by lobbyists to political parties or candidates.

249. Less support is shown among lobbyists for disclosure of financial activity, such as income received from clients or expenditures made to lobby specific legislation. While this may be the preference of many lobbyists, the profession must ask itself if the public's demand for transparency and accountability will be met if lobbyists continue to conceal who is paying how much to influence what.

250. However noble the current association-run registries, critical information such as general and specific issues lobbied and income or expenditures is omitted. The member disclosure reports thus are unable to show which business or client is interested in which issues and how much they are interested in those issues. The disclosure reports tend to provide much of the same information from reporting period to reporting period – the same lobbyists and the same clientele, usually with only minor modifications over the course of a year or two. This type of registry, for example, does not permit the public to find out which issues Microsoft Corporation is lobbying for and against in Europe, and how much it is spending on its lobbying campaign.

### **Enhancing Transparency and Accountability through Regulation**

251. While several significant steps can be taken to strengthen self-regulation of the lobbying profession, self-regulation cannot be as widely applied and evenly balanced among different professions as government regulation. While the umbrella organisation formed by APPC, PRCA and CIPR is a highly commendable step to broaden the numbers of lobbyists subject to an ethics code and lobbyist registry, it is important to realise that these professional associations represent primarily commercial consultancies, which comprise a small portion of all lobbyists.<sup>89</sup> If transparency and accountability are to be applied to all professional lobbyists, be they members of an association or not, be they lawyers who lobby or contract lobbyists, a government-run registry offers the most sweeping and thorough reach.

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<sup>89</sup> Robbie MacDuff, "A Clean Bill of Health?" *Total Politics* (Feb. 2009) at 12.

### *Capturing the Lobbying Community via Definitions*

252. While professional lobbying associations are necessarily limited to applying their self-regulatory regimes to their own members, governments are not so constrained. The universe of lobbyists captured for a government registry and disclosure system can extend well beyond contract lobbyists and those who voluntarily join lobbying associations. Unlike the voluntary registration system of Hungary, and the limited definitions of who constitutes a lobbyist in Lithuania and Poland, the most effective program that ensures transparency across all categories of lobbyists would be *mandatory* and *broad in its definition* of who is a lobbyist.

253. Under no means should citizens who voluntarily and without compensation exercise their right to petition government, who communicate their viewpoints with elected and appointed representatives, be subject to registration requirements or reporting or disclosure burdens. Any such imposition on average citizens is unnecessary, over-reaching and an anathema to democracy.

254. It is the element of *money in politics* where the potential for corruption arises and where citizens begin worrying about whose interests are represented in policymaking. Thus, an effective system of government regulations of lobbying must focus on those who receive significant compensation, or make significant expenditures, to influence governmental officials.

255. The definitions now in place in Canada and the United States are both sweeping in scope, yet provide fairly clear bright lines distinguishing who must register and what information must be disclosed. As opposed to the definition of “lobbyist” in Australia, Lithuania or Poland, which cover only contract lobbyists, and as opposed to the limited reach inherent in a self-regulatory regime, the Canadian and American definitions cover all persons – regardless of primary occupation and regardless of whether they have joined a voluntary lobbying association – who receive compensation and spend a significant amount of time attempting to influence public policy. This includes in-house lobbyists for corporations and non-profit organisations, lawyers who lobby on behalf of one or more clients, as well as contract lobbyists.

256. At the same time, it is important that a definition of “lobbyist” not be so sweeping as to capture average citizens petitioning government for redress. An appropriate definition also requires that any person subject to registration as a lobbyist:

- Receives a certain threshold of compensation to lobby on behalf of paying clients, or is employed by an organisation that makes significant expenditures for lobbying.
- Makes one or more of lobbying contacts with “covered public officials” designated as decision-makers in government.
- Spends a significant amount of their work time conducting lobbying activity on behalf of *any single client* or the employing business or organisation during a reporting period.

257. Many nations with a regulatory regime also specify a long list of exemptions to the definition of lobbying. Typical exemptions in Australia, Canada and the United States, for example, include:

- Communications made in response to a request by public officials or government offices seeking information.
- Communications made in a public forum or in the news media.
- Communications made in a judicial proceeding or in response to an official investigation.

258. The specification that a person is captured under the definition of “lobbyist” if they spend a certain amount of time (say, 20 percent) lobbying on behalf of any specific client addresses head-on

the “lawyer problem.” Lawyers who spend a certain amount of their time on behalf of any one client conducting lobbying activity, and receive significant compensation from that client for the lobbying activity, must register and report the lobbying activity only for that specific client. The confidentiality of legal work for all other clients is protected.

259. This definition is sufficiently broad to capture professional lobbyists and sufficiently narrow to avoid capturing citizens petitioning government. Only a government-run registry may deliver this kind of scope and reach of the profession and offer full transparency of who is being paid to lobby the government.

260. It comes as no surprise that a government-run registry, backed by a broad but clear definition of lobbying, draws considerable support even from within the lobbying community. Nearly twice as many European lobbyists surveyed believe that government regulation would improve transparency and accountability in policymaking. Only about a quarter of respondents “strongly disagree” or “disagree” with that statement.

261. A shortcoming in the definition used in Australia and the United States is that it does not include “grassroots lobbying” – paid communications to the general public intended to encourage the public to contact government officials to support or oppose specific pending legislation. Businesses, organisations and individuals may be spending twice as much on grassroots lobbying activity than direct lobbying, but no reliable estimates exist.

262. A classic example of a grassroots lobbying campaign that fundamentally shaped public policy in the United States, yet went fully undisclosed at the time, was the infamous “Harry and Louise” television ad campaign. The Health Insurance Association of America (HIAA), a health insurance industry lobbying group, was fearful that Congress was about to adopt a government-run national health care program. HIAA poured millions of dollars into a television ad campaign featuring an average middle-class couple (“Harry” and “Louise”) despairing over the allegedly bureaucratic nature of the plan and urged viewers to contact their representatives in Congress. The sponsor of the ad campaign remained secret; HIAA was not required to disclose under the nation’s lobbying law. Many Americans believed that it was a truly citizen-backed campaign and responded by swamping Congress with calls and letters opposing national health care. The national health care plan was defeated, and as of this writing no such health care program exists today in the United States.<sup>90</sup>

### ***Government Administration of the Transparency Program***

263. Clearly, the least coercive means for reining in undue influence-peddling by lobbyists is through compliance to codes of conduct administered by lobbying associations or by lobbyists themselves. But the least coercive may also be among the least effective – as recognised by the public and many lobbyists themselves.

264. A government of laws by definition comes with mandatory prescriptions for lobbying activity and the institutional mechanisms to monitor and enforce compliance. But a heavy hand is not recommended. Citizens should feel free and unrestrained to petition government for redress without fear of violating lobby laws. This means the threshold that determines when a person must register as a lobbyist needs to be made as clear as possible. When a person crosses that threshold but fails to register, perhaps by accident, that person ought to be notified of the obligations and given a chance to rectify the situation. Enforcement actions should only be taken in egregious and deliberate violations of the lobby law. Since lobbying is such a fundamental part of democratic society, it is important to err on the side of caution in enforcing the laws that govern the lobbying profession.

<sup>90</sup> To see the “Harry and Louise” television advertisements on YouTube, go to: <http://www.youtube.com/watch?v=Dt31nhleeCg>.

265. Enforcement actions taken by the government against lobbyists in the regulated systems appear fairly active but not over-zealous. In the United States, enforcement actions have historically been rare, but greater public scrutiny of lobbying abuses has resulted in stepped-up efforts to ensure compliance. Enforcement of the lobby laws in the United States proceeds in two steps. First, the Secretary of the Senate or Clerk of the House sends a notice of potential noncompliance to registrants where a problem seems to exist. If the registrants decline to justify their actions or take corrective remedies, the cases are then referred to U.S. Attorney's Office for the District of Columbia for follow-up action. In 2007, 330 cases were referred to the U.S. Attorneys Office. Removing the duplicate referrals for the same registrant reduced the number of registrant referrals to 268. "Subsequent compliance" by 16 registrants occurred after the referral was made and reduced the number of registrants for which follow-up was required to 252. The U.S. Attorney's office sent "contact letters to the 252 registrants in an effort to secure their compliance with the Act."<sup>91</sup>

266. In the Canadian federal lobbyist registry, 17 formal complaints against lobbyists were initiated in the 2007-2008 fiscal year and six additional complaints were carried over from the previous year. They include 13 allegations of unregistered lobbying. Of these, nine involve individual lobbyists, and four involve non-profit organisations. Of the remaining four reviews, two were initiated based on allegations that registered lobbyists were in breach of the 2007 Canadian Lobbying Act by filing registrations that did not include full disclosure of the members of a client coalition and public funding.<sup>92</sup>

267. The Investigations Directorate of Canada issued a total of 26 advisory letters to lobbyists from April 2007 to March 2008. These letters resulted in six respondents replying that they were not required to register. It is worth noting that registrations were received from six of the 26 addressees shortly after advisory letters had been sent. Over this same period, an additional 193 entities, such as consulting firms, corporations, and organisations, were examined as a result of references in the media alleging unregistered lobbying activities. No further action was taken in 152 of the cases for the following reasons: 121 institutions were already registered, 21 were volunteer organisations which were not required to register under the Act, and 10 instances were found to involve provincial lobbying only.

268. While these figures show an appropriate "velvet glove" approach to enforcement of the lobbying laws in the regulatory systems of Canada and the United States, they also suggest that the very few enforcement actions taken by the professional lobbying associations in Europe may not be adequately addressing the problems.

269. The social cost of government regulation does not appear to be excessive. The most complex regulatory system, that of the United States, has been implemented and administered on a shoe-string budget, consuming the time of three full-time employees in the U.S. Secretary of the Senate's office, with additional assistance provided by shared governmental staff. The Secretary, for example, tapped the computer expertise and generosity of the Senate Sergeant-at-Arms to develop its electronic filing and disclosure program.<sup>93</sup> The European Commission has developed a voluntary registry that is fully capable of handling legions of registrants, complete with on-line disclosure. Its start-up cost in 2008

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<sup>91</sup> Ken Doyle, "DOJ Has Received 330 Possible Lobbying Violations This Years," *BNA Money and Politics Report* (Sept. 24, 2008). Prior to the lobbying scandals associated with Jack Abramoff, neither the Secretary of the Senate nor Clerk of the House referred many cases to the U.S. Attorneys Office for further action, and the U.S. Attorneys Office very rarely prosecuted any cases. The new lobby law in 2007 attempts to deal with this lack of enforcement action by requiring each agency to file public reports on the number of enforcement referrals and actions taken each year.

<sup>92</sup> Office of the Commissioner of Lobbying of Canada, Annual Report 2007-2008 (2008), available at: <http://www.ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/eng/nx00319.html#s11>.

<sup>93</sup> Interview (telephone) with Pam Gavin, Superintendent, U.S. Secretary of Senate (Mar. 11, 2009).

for the on-line register was EUR 415 000, with annual maintenance costs of about EUR 110 000.<sup>94</sup> The Commission registry is staffed by two full-time employees working on the design, launch, running and evaluation of the register.

270. The largest budget for administration of a lobbyist regulatory system is that of the Office of the Commissioner of Lobbying of Canada. The Canadian registry reports an annual budget of CDN \$4 million, with 28 full-time employees. However, the Canadian office is fully equipped and staffed to handle all elements of the program, from education and ethics training, to registration and disclosure, to handling investigations and prosecutions in-house.<sup>95</sup>

271. The personal cost of government regulation also does not appear to be excessive. American lobbyists must deal with one of the most comprehensive reporting and disclosure regimes anywhere in the world. Yet, in an earlier survey of U.S. lobbyists, the total time spent on recordkeeping and filling out disclosure forms is less than 30 hours a year for most lobbyists. Nearly a quarter of lobbyists said it was less than 10 hours per year.<sup>96</sup>

### ***Financial Disclosure***

272. Follow the money. Money in politics is the issue that all transparency and accountability measures attempt to address. The question whether public policy is being formulated in the public's interest or in the interest of powerful financial interest groups, represented by paid lobbyists, is at the bottom line of concerns over undue influence-peddling.

273. So when we discuss the options for enhancing transparency and accountability in government, we are in fact discussing how to reassure the public that governmental decisions are not being made simply in the interests of well-paid lobbyists and those who can afford to hire them. Such reassurance comes from opening the books and letting the public know who is paying how much to influence what. Public officials especially would benefit from this information in evaluating the merits of a lobbying campaign knocking at their door.

274. The survey of European lobbyists shows a great deal of reluctance among the lobbying community to disclose their financial dealings. The actions of professional lobbying associations, even those that have created their own lobbyist registries, reconfirm this reluctance among European lobbyists to open their financial books.

275. The argument posed most frequently by European lobbyists against disclosing their lobbying income or lobbying expenditures is that such disclosure may unfairly expose competitive business practices and undermine market forces. "EPACA is opposed to any requirement that commercially sensitive or confidential financial information, such as individual client fees, be published," declared the European Public Affairs Consultancies' Association in response to the European Commission's request for public comments on its proposed European Transparency Initiative.<sup>97</sup> Financial disclosure is often also criticised for opening up lobbying campaigns to public criticism, depending on who is financing the lobbying campaign.

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<sup>94</sup> Interview (e-mail) with Kristian Schmidt, Deputy Head of Cabinet for European Commission Vice President Siim Kallas (Feb. 17, 2009).

<sup>95</sup> Office of the Commissioner of Lobbying of Canada, Annual Report 2007-2008 (2008), available at: <http://www.ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/eng/nx00319.html#s11>.

<sup>96</sup> Craig Holman, "Lobbying Reform in the United States and the European Union: Progress on Two Continents," in Conor McGrath, ed. INTEREST GROUPS AND LOBBYING (2009) at 291.

<sup>97</sup> European Public Affairs Consultancies' Association, "EPACA Response to the European Commission's ETI Green Paper and Consultation" (2006) at: [http://ec.europa.eu/transparency/eti/docs/contributions/20\\_C3\\_Ch1\\_EPACA.pdf](http://ec.europa.eu/transparency/eti/docs/contributions/20_C3_Ch1_EPACA.pdf).

276. Who is financing which lobbying campaign is precisely the type of knowledge that informs the public as well as policy-makers on the merits of a lobbying campaign. It is extremely useful to know, for example, that the insurance industry is funding a lobbying campaign to oppose a national health care bill. From that knowledge, lawmakers can better evaluate the political pressures to which they are subjected. And from that knowledge, the public can better evaluate the integrity of public officials and their decisions.

277. Lobbyist income and expenditures have long been publicly disclosed in the United States, and there has been no downturn in the lobbying market. Nor do most American lobbyists feel they are revealing commercially sensitive data to competitors. Disclosure of income per client and overall lobbying expenditures, every three months, is widely accepted among American lobbyists as a simple matter of doing business in the profession.<sup>98</sup> That simple matter of business for the profession – financial disclosure of client income and lobbying expenditures – has proved sufficient to unravel the complex web of deception and corruption built by disgraced lobbyist Jack Abramoff and others.

278. Most European lobbying associations appear unwilling to set up a system of financial disclosure. If this pillar of transparency is to be achieved, it likely must come from a regulatory regime run by the government, accountable to the public rather than solely the lobbying profession.

### ***Regulation of the Governmental Sector***

279. While the objectives of transparency and accountability in policy-making can largely be achieved through the various means of self-regulation and regulation of lobbying, it may be imprudent to make lobbyists alone shoulder the entire burden of strengthening the integrity of government. Mechanisms for enhancing ethics among governmental officials are every bit as important, if not more so, in building the public's trust in government. The reciprocity principle of human behaviour in which public officials may feel obliged to return favours calls for at least some regulation of the public sector.

280. The survey of public sector officials involved in transparency and lobbying regulation in Canada and Europe show that these officers value regulation of the public sector just as highly as regulation of lobbying in addressing actual or perceived problems of inappropriate influence-peddling by lobbyists over public officials. One key reform measure expressed by the public sector is restrictions on former government officials moving into businesses that they previously regulated, known as the “revolving door,” and the movement of persons representing special interests into government, known as the “reverse revolving door.”

281. These revolving doors threaten the integrity of government in at least three ways:

- Business and special interest groups may “capture” a federal regulatory agency by getting their own personnel appointed to key government posts.
- Public officials may be influenced in official actions by the implicit or explicit promise of a lucrative job in the private sector with an entity seeking a government contract or to shape public policy.
- Public officials-turned-lobbyists will have access to lawmakers that is not available to others, access that can be sold to the highest bidder among industries seeking to lobby.

282. Even if public officials are not in fact influenced by these revolving doors, the appearance of undue influence that these arrangements create casts aspersions on the integrity of government. The spinning of the revolving door could be slowed by requiring that governmental appointees recuse

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<sup>98</sup> Craig Holman, “Lobbying Reform in the United States and the European Union: Progress on Two Continents,” in Conor McGrath, ed. *INTEREST GROUPS AND LOBBYING* (2009) at 267-292.

themselves from official matters that affect former clients or employers and imposing a “cooling off period” on when a former governmental official may work for a private company that had business pending before that official.<sup>99</sup>

283. Other public sector measures that could be taken to increase public trust in government include: restrictions on conflicts of interest for government officials, mandating that officials recuse themselves from matters in which they have a pecuniary interest; full financial disclosure of income as well as investments and properties owned by government officials; and limits on gifts, salaries or other financial rewards provided to government officials from private interests. These types of measures applied to the public sector for improving the integrity of government have been discussed at length elsewhere, but merit repeating.<sup>100</sup>

### **Finding the Appropriate Mix of Self-Regulation and Regulation of Lobbying**

284. Each country has a unique political environment, with its own history of governance and its own levels of public trust in policy-making. The political environment is the final determinant of the appropriate mix of self-regulation and regulation of lobbying.

285. All democratic societies, however, rely on a certain degree of transparency and accountability in policy-making for legitimacy. Transparency and accountability can be enhanced through a variety of measures.

286. Several professional lobbying associations in Europe have taken extraordinary steps to enhance the integrity of governmental policy-making. These steps include:

- Develop and promulgate an ethics code for lobbyists that relies less on general principles of honesty and integrity and more on specific behavioural principles that can help steer lobbyists away from unethical situations, such as restricting the flow of gifts or compensation from lobbyists to public officials.
- Provide extensive, mandatory ethics training as a condition of association membership.
- Enforce compliance to the ethics code through an investigative panel that is reasonably independent of lobbyists and the lobbying associations.
- Establish an association-run lobbyist registry, disclosed to the public through the Internet.

287. But these steps of self-regulation may not be sufficient. It must not be forgotten that the profession of lobbying is unlike any other profession. Lobbying inherently serves a governmental function. Its entire purpose is to influence public policy. In a democratic society, governmental functions need to be transparent to gain legitimacy.

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<sup>99</sup> For further discussion of the problems and potential solutions of the “revolving door” and “reverse revolving door,” see Craig Holman, Testimony before the House Committee on Oversight and Government Reform, U.S. House of Representatives (Feb. 13, 2007) at: <http://www.citizen.org/documents/craigtestimony.pdf>.

<sup>100</sup> See, for example, János Bertók, Post-Public Employment, Lobbying: Are Governance Arrangements Adequate to Prevent Conflict of Interest? (Sept. 6-7, 2006); Organisation for Economic Cooperation and Development, OECD Guidelines for managing Conflict of Interest in the Public Service: Report on Implementation (2007); C. Demmke et al., Regulating Conflicts of Interest for Holders of Public Office in the European Union (October 2007); and Simeon Dijankov et. al, DISCLOSURE BY POLITICIANS (2009).

288. A government-run program of lobbyist registration and disclosure, if properly administered, offers a more sweeping and balanced system of transparency of the profession. It may be the only way to achieve adequate disclosure of who is paying how much to influence which policies. And regulation of the profession is more apt to be monitored and enforced. At the same time, measures to enhance transparency and accountability in government should not only address the profession of lobbying but the governmental sector as well. The advantages of government-run measures to enhance transparency and accountability in lobbying include:

- Capture all persons who pass a minimal threshold of paid lobbying activity as “professional lobbyists” in the transparency program, rather than only those who voluntarily join a lobbying association, by carefully defining who must register as a lobbyist and what activity must be disclosed to the public.
- Mandate registration and disclosure of professional lobbyists, their clients and certain financial activity, all records of which are to be made easily available to the public on the Internet.
- Monitor and enforce compliance to the lobbyist registration and disclosure requirements, as well as any other violations of lobbying laws or ethics rules, through a governmental agency that is fully independent of the lobbying profession and demonstrably more inclined to take enforcement actions than the voluntary lobbying associations.
- Extend transparency and accountability measures beyond lobbyists to public officials as well, including restrictions on conflicts of interest, full financial disclosure of investments and properties owned by government officials, and restrictions and disclosure on the “revolving door” between the private sector and the public sector.

**APPENDIX A: SURVEY QUESTIONS**

The survey on lobbyist attitudes was conducted by Dr. Craig Holman of Public Citizen and Thomas Susman of the American Bar Association, Washington, D.C. for the Organisation for Economic Co-operation and Development (OECD). The survey consisted of 16 brief multiple choice questions seeking lobbyists’ opinion on lobbying regulation and self-regulation. Respondents’ identity was not recorded at any point, and answers have been kept strictly confidential.

**1. Which of the following options best describes your employer?**

- Lobbying firm/self-employed
- For-profit corporation
- Non-profit organisation

**2. Which level of government do you primarily lobby? [Please check as many as appropriate]**

- European Union
- National [Name of country: \_\_\_\_\_]

**3. Are you subject to a lobbyist code of ethics?**

- Yes, I belong to a business with a lobbyist code of ethics
- Yes, I belong to an association with a lobbyist code of ethics
- Yes, a lobbyist code of ethics is established by the government
- No, there is no lobbyist code of ethics
- Don’t know/No answer

**4. Does the lobbyist code of ethics provide meaningful guidance on how you conduct day-to-day lobbying activity?**

- Yes, the code provides good principles easily applied to specific situations.
- Somewhat meaningful, the code provides good general principles that may or may not apply to specific situations.
- Not really, the code is a little too abstract to guide daily lobbying activity.
- No, the code does not provide meaningful guidance.
- Don’t know/No answer

**5. Are there effective rewards for agreeing to comply with the lobbyist code of ethics, such as easier access to lawmakers?**

- Yes, there are effective rewards for agreeing to comply with the code.
- Not really, there are some benefits for complying but they are not compelling.
- No, there are no effective rewards for agreeing to comply with the code.
- Don’t know/No answer

**6. Are there compelling penalties against violating the lobbyist code of ethics?**

- Yes, there are effective penalties for violating the code.
- Not really, there are some penalties but they are not compelling.
- No, there are no penalties for violating the code.
- Don't know/No answer

**7. Are you aware of any lobbyists who have been penalised for violating the lobbyist code of ethics?**

- Yes, several lobbyists have been penalised for violations.
- Yes, a few lobbyists have been penalised for violations.
- No, I am not aware of any lobbyists who have been penalised for violations.
- Don't know/No answer

**8. Is competition for business between lobbyists a motive to help ensure ethical lobbying behaviour?**

- Yes, competition encourages ethical behaviour by lobbyists.
- Competition has little or no impact on ethical behaviour by lobbyists.
- No, competition discourages ethical behaviour by lobbyists.
- Don't know/No answer

**9. Generally speaking, do you think that inappropriate influence-peddling by lobbyists, such as seeking official favours with gifts or misrepresenting issues, is a problem?**

- Yes, it is a frequent problem.
- Somewhat, it is an occasional problem.
- Not really, there are very few such cases.
- No, as far as I know, it almost never happens.
- No, such behaviour is not inappropriate influence-peddling.
- Don't know/No answer

**10. Generally speaking, do you think the public perceives that there is a problem of inappropriate influence-peddling by lobbyists, whether or not there is a problem in actuality?**

- Yes, the public perceives that this is a frequent problem.
- Somewhat, the public perceives that this is an occasional problem.
- Not really, the public perceives that this is a rare problem.
- No, the public believes that inappropriate influence-peddling almost never happens.
- No, the public does not perceive any such lobbyist behaviour as inappropriate.
- Don't know/No answer

**11. How strongly do you agree with the following statement: Some level of public transparency of lobbying activity would help alleviate actual or perceived problems of inappropriate influence-peddling by lobbyists.**

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Don't know/No answer

**12. Which lobbying activities described below, if any, should be subject to transparency and made public record? [Check as many boxes as appropriate]**

Lobbyist name  
Lobbyist employer  
Lobbyist client  
General issues lobbied  
Specific legislation lobbied  
Overall lobbyist income  
Lobbyist income per client  
Overall lobbyist expenditures  
Lobbyist expenditures per issue/legislation lobbied  
Log of lobbyist meetings with public officials  
Political party/campaign contributions by a lobbyist

**13. Should transparency of lobbying activity be mandatory for all lobbyists or voluntary for those who wish to disclose?**

Mandatory for all lobbyists  
Neutral  
Voluntary for lobbyists who wish to disclose

**14. If some level of public transparency of lobbying activity were implemented, who would best manage a lobbyist transparency program?**

Lobbyist themselves  
Voluntary lobbying associations  
Administrative agency of the government  
Don't know/No answer

**15. If some level of public transparency of lobbying activity were implemented, should the public records be made available on the Internet?**

Yes  
No  
Don't know/No Answer

**16. How strongly do you agree with the following statement: If legislation regulating lobbying activity were implemented, then transparency and accountability in policymaking would be improved.**

Strongly agree  
Agree  
Neutral  
Disagree  
Strongly disagree  
Don't know/No answer

**17. Are there any additional comments you would like to make?**

## APPENDIX B: CODE OF LISBON

In the practice of his profession, the public relations practitioner undertakes to respect the principles set forth in the Universal Declaration of Human Rights and, in particular, to freedom of expression and freedom of the press which affect the right of the individual to receive information. He likewise undertakes to act in accordance with the public interest and not to harm the dignity or integrity of the individual.

In his professional conduct, the public relations practitioner must show honesty, intellectual integrity and loyalty. In particular, he undertakes not to make use of comment or information that, to his knowledge or belief, is false or misleading. In the same spirit he must be careful to avoid the use, even by accident, of practices or methods incompatible with this Code.

1. Public relations activities must be carried out openly: they must be readily identifiable, bear a clear indication of their origin, and must not tend to mislead third parties.
2. In his relations with other professions and with other branches of social communications, the public relations practitioner must respect the rules and practices appropriate to those professions or occupations, so far as these are compatible with the ethics of his own profession. A public relations practitioner must respect the national Code of Professional Conduct and the laws in force in any country in which he practices his profession and must exercise restraint in seeking personal publicity.

### Specific professional obligations

#### A. Towards clients or employers

3. A public relations practitioner shall not represent conflicting or competing interests without the express consent of the clients or employers concerned.
4. In the practice of his profession, a public relations practitioner must observe complete discretion. He must scrupulously respect professional confidence, and in particular must not reveal any confidential information received from his clients or employers – past, present or potential – or make use of such information, without express authorisation.

A public relations practitioner who has an interest that may conflict with that of his client or employer must disclose it as soon as possible.

5. A public relations practitioner must not recommend to his client or employer the services of any business or organisation in which he has a financial, commercial or other interest without first disclosing that interest.

A public relations practitioner shall not enter a contract with his client or employer under which the practitioner guarantees quantified results.

A public relations practitioner may accept remuneration for his services only in the form of salary or fees. On no account may he accept payment or other material rewards contingent upon quantifiable professional results.

A public relations practitioner shall not accept as a reward for his services to a client or an employer any remuneration from a third party, such as discounts, commissions or payments in kind, except with the agreement of the client or employer.

When the execution of a public relations assignment would be likely to entail serious professional misconduct and imply behaviour contrary to the principles of this Code, the public relations practitioner must take steps to notify his client or employer immediately and do everything possible to

see that the latter respects the requirements of the Code. If the client or employer persists in his intentions, the practitioner must nevertheless observe the Code irrespective of the consequences to him.

B. Towards public opinion and the information media

6. The spirit of this Code and the rules contained in preceding clauses, notably clauses 2, 3, 4 and 5 imply a constant concern on the part of the public relations practitioner with the right to information, and moreover the duty to provide information, within the limits of professional confidence. They imply also a respect for the rights and independence of the information media.

7. Any attempt to deceive public opinion or its representatives is forbidden. News must be provided without charge or hidden reward for its use or publication. If it should seem necessary to maintain the initiative in and the control of the distribution of information within the principles of this Code the public relations practitioner may buy space or broadcasting time in conformity with the rules, practices and usages in that field.

C. Towards fellow practitioners

8. The public relations practitioner must refrain from unfair competition with fellow-practitioners. He must neither act nor speak in a way which would tend to depreciate the reputation or business of a fellow practitioner, subject always to his duty under clause 10b of this Code.

D. Towards the profession

9. The public relations practitioner must refrain from any conduct which may prejudice the reputation of his profession. In particular he must not cause harm to the PRII, its efficient working or its good name by malicious attacks or by any breach of its constitution or rules.

10. The reputation of the profession is the responsibility of each of its members. The public relations practitioner has a duty not only to respect this Code himself but also to:

- a) assist in making the Code more widely and better known and understood
- b) report to the competent disciplinary authorities any breach or suspected breach of the Code which comes to his notice
- c) take any action in his power to ensure that rulings on its application by such authorities are observed and sanctions made effective

## APPENDIX C: CODE OF BRUSSELS

RECALLING the Code of Venice 1961 and the Code of Athens 1965, of the International Public Relations Association, which together specify an undertaking of ethical conduct by public relations practitioners worldwide;

RECALLING that the Code of Athens binds public relations practitioners to respect the Charter of the United Nations which reaffirms "its faith in fundamental human rights, in the dignity and worth of the human person";

RECALLING that the Code of Athens binds public relations practitioners to observe the moral principles and rules of the "Universal Declaration of Human Rights";

RECALLING that public affairs is one discipline undertaken by public relations practitioners; RECALLING that the conduct of public affairs provides essential democratic representation to public authorities;

This Code of Brussels is a code of ethical conduct applying to public relations practitioners worldwide as they conduct public affairs and interact with public authorities including staff and public representatives.

In the conduct of public affairs, practitioners shall:

### *1. Integrity*

Act with honesty and integrity at all times so as to secure the confidence of those with whom the practitioner comes into contact;

### *2. Transparency.*

Be open and transparent in declaring their name, organisation and the interest they represent;

### *3. Dialogue.*

Establish the moral, psychological and intellectual conditions for dialogue, and recognise the rights of all parties involved to state their case and express their views;

### *4. Accuracy.*

Take all reasonable steps to ensure the truth and accuracy of all information provided to public authorities;

### *5. Falsehood.*

Not intentionally disseminate false or misleading information, and shall exercise proper care to avoid doing so unintentionally and correct any such act promptly;

### *6. Deception.*

Not obtain information from public authorities by deceptive or dishonest means;

### *7. Confidentiality.*

Honour confidential information provided to them;

*8. Influence.*

Neither propose nor undertake any action which would constitute an improper influence on public authorities;

*9. Inducement.*

Neither directly nor indirectly offer nor give any financial or other inducement to members of public authorities or public representatives;

*10. Conflict.*

Avoid any professional conflicts of interest and to disclose such conflicts to affected parties when they occur;

*11. Profit.*

Not sell for profit to third parties copies of documents obtained from public authorities;

*12. Employment.*

Only employ personnel from public authorities subject to the rules and confidentiality requirements of those authorities.

*Sanctions.*

Practitioners shall co-operate with fellow members in upholding this Code and agree to abide by and help enforce the disciplinary procedures of the International Public Relations Association in regard to any breaching of this Code.

## **APPENDIX D: ASSOCIATION OF PROFESSIONAL POLITICAL CONSULTANTS CODE OF CONDUCT**

### **Preamble**

This Code of Conduct covers the activities of regulated political consultants, defined as APPC member companies, their staff and non-executive consultants, in relation to all United Kingdom, English, Welsh, Scottish and Northern Ireland central, regional and local government bodies and agencies, public bodies and political parties (hereinafter “institutions of Government”). This Code applies equally to all clients, whether or not fee-paying.

It is a condition of membership of APPC that the member firm, its staff and non-executive political consultants should accept and agree to abide by this Code for itself and that members will be jointly and severally liable for the actions of their staff in relation to the Code. Regulated political consultants are required to endorse the Code and to adopt and observe the principles and duties set out in it in relation to their business dealings with clients and with institutions of government.

Other conditions of membership of APPC include:

- Undertaking an annual compliance procedure in respect of the Code
- Being bound by the terms of the APPC Complaints & Disciplinary Procedure
- Providing four times a year to APPC the names of all fee-paying clients and consultancy staff during the previous three months for publication in the APPC Register

The Code of Conduct applies the principles that political consultants should be open and transparent in their dealings with parliamentarians or representatives of institutions of government; and that there should be no financial relationship between them. APPC members are determined to act at all times with the highest standards of integrity and in a professional and ethical manner reflecting the principles applied by this Code. In the view of APPC, it is inappropriate for a person to be both a legislator and a political consultant.

### **THE CODE OF CONDUCT**

1. In pursuance of the principles in this Code, political consultants are required not to act or engage in any practice or conduct in any manner detrimental to the reputation of the Association or the profession of political consultancy in general.
2. Political consultants must act with honesty towards clients and the institutions of government.
3. Political consultants must use reasonable endeavours to satisfy themselves of the truth and accuracy of all statements made or information provided to clients or by or on behalf of clients to institutions of government.
4. In making representations to the institutions of government, political consultants must be open in disclosing the identity of their clients and must not misrepresent their interests.
5. Political consultants must advise clients where their lobbying activities may be illegal, unethical or contrary to professional practice, and to refuse to act for a client in pursuance of any such activity.
6. Political consultants must not make misleading, exaggerated or extravagant claims to clients about, or otherwise misrepresent, the nature or extent of their access to institutions of government or to political parties or to persons in those institutions.

7. Save for entertainment and token business mementoes, political consultants must not offer or give, or cause a client to offer or give, any financial or other incentive to any person in public life, whether elected, appointed or co-opted, that could be construed in any way as a bribe or solicitation of favour. Political consultants must not accept any financial or other incentive, from whatever source, that could be construed in any way as a bribe or solicitation of favour.
8. Political consultants must not:
- Employ any MP, MEP, sitting Peer or any member of the Scottish Parliament or the National Assembly of Wales or the Northern Ireland Assembly or the Greater London Assembly;
  - Make any award or payment in money or in kind (including equity in a member firm) to any MP, MEP, sitting Peer or to any member of the Scottish Parliament or the National Assembly of Wales or the Northern Ireland Assembly or the Greater London Assembly, or to connected persons or persons acting on their account directly or through third parties.
9. Political consultants must ensure that they do not benefit unreasonably by actions of any third party that, if undertaken by the consultant, would be considered a breach of the Code.
10. Political consultants must comply with any statute, Westminster or Scottish parliamentary or National Assembly of Wales or Northern Ireland Assembly or Greater London Assembly resolution and with the adopted recommendation of the Committee on Standards in Public Life in relation to payments to a political party in any part of the United Kingdom.
11. Political consultants who are also local authority councillors are prohibited from working on a client assignment of which the objective is to influence a decision of the local authority on which they serve. This restriction also applies to political consultants who are members of Regional Assemblies, Regional Development Agencies or other public bodies.
12. Political consultants must keep strictly separate from their duties and activities as political consultants any personal activity or involvement on behalf of a political party.
13. Political consultants must abide by the rules and conventions for the obtaining, distribution and release of parliamentary and governmental documents.
14. Political consultants must not hold, or permit any staff member to hold, any pass conferring entitlement to access to the Palace of Westminster, to the premises of the Scottish Parliament or the National Assembly of Wales or the Northern Ireland Assembly or the Greater London Assembly or any department or agency of government. The only exceptions are:
- where the relevant institution is a client of the political consultant and requires the political consultant to hold a pass to enter their premises.
  - where the political consultant holds a pass as a spouse of a member or as a former member of the relevant institution, in which case the pass must never be used whilst the consultant is acting in a professional capacity.
15. Political consultants must conduct themselves in accordance with the rules of the Palace of Westminster, Scottish Parliament, National Assembly of Wales, Northern Ireland Assembly or Greater London Assembly or any department or agency of government while within their precincts, and with the rules and procedures of all institutions of government.
16. Political consultants must always abide by the internal rules on declaration and handling of interests laid down by any public body on which they serve.

17. Political consultants must not exploit public servants or abuse the facilities or institutions of central, regional or local government within the UK.

18. Political consultants must disclose the names of all their fee-paying clients and consultants in the APPC Register.

In all their activities and dealings, political consultants must be at all times aware of the importance of their observance of the principles and duties set out in this Code for the protection and maintenance of their own reputation, the good name and success of their company, and the standing of the profession as a whole.

## APPENDIX E: PERSONS AND ORGANISATIONS INTERVIEWED IN THE COURSE OF THIS STUDY

### Individuals Interviewed

- *Gerry Davis*, Executive Director, Public Relations Institute of Ireland (PRII), Dublin.
- *Margaretha Sjoberg*, Secretary-General, Swedish Public Relations Association (SPRA), Stockholm.
- *Natko Vlahovic*, Secretary-General, Croatian Society of Lobbyists (HDL), Zagreb.
- *Emma Hamilton*, Public Affairs Officer, Chartered Institute of Public Relations (CIPR), London.
- *Robbie MacDuff*, Chairman, Association of Professional Political Consultants (APPC), London.
- *Philip Sheppard*, Member of the Board of Directors, Society of European Affairs Professionals (SEAP), Brussels.
- *Pam Gavin*, Superintendent of Public Records, U.S. Senate, Washington, D.C.
- *Ulrich Müller*, Director, LobbyControl, Köln, Germany.
- *Olivier Hoedeman*, Director, Corporate Europe Observatory (CEO), Amsterdam.
- *Erik Wesselius*, Director, Corporate Europe Observatory (CEO), Amsterdam.
- *Serra Gorpe*, Member of the Board, Turkish Public Relations Association (TÜHİD), Istanbul.
- *Kristian Schmidt*, Deputy Head of Cabinet for European Commission Vice President Siim Kallas, Brussels.

### Organisations Consulted

- Association of Professional Political Consultants (APPC), *London*.
- Chartered Institute of Public Relations (CIPR), *London*.
- European Public Relations Confederation (CERP), *Regional*.
- Croatian Society of Lobbyists (HDL), *Zagreb*.
- Deutsche Public Relations Gesellschaft (DPRG), *Berlin*.
- European Public Affairs Consultancies' Association (EPACA), *Brussels*.
- International Public Relations Association (IPRA), *Regional*.
- Public Relations Consultants Association (PRCA), *London*.
- Public Relations Institute of Ireland (PRII), *Dublin*.
- Society of European Affairs Professionals (SEAP), *Brussels*.

- Swedish Public Relations Association (SPRA), *Stockholm*.

**Organisations Consulted, cont.**

- Turkish Public Relations Association (TÜHİD), *Istanbul*.
- Office of Quebec Lobbyist Commissioner, *Quebec*.
- Office of Commissioner of Lobbying of Canada, *Ottawa*.
- Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), *Regional*.