



Irish Congress Trade Unions

Observations and Recommendations on the
Regulation of Lobbying in Ireland

February 2012

Introduction

The Irish Congress Trade Unions is the representative body for workers and their unions on the island of Ireland. The ICTU has 49 affiliated trade unions, directly representing almost 820,000 members from all sectors, industries, occupations and professions in the public and private sectors. Trade union members include those working in communications, public relations and public affairs.

The ICTU welcomes the call for evidence as it represents a practical step towards delivering on the commitment in the Programme for Government to introduce a mandatory register of lobbyists with a statutory Code of Conduct concerning lobbying practices. Congress and our affiliated trade unions believe that open government is central to the public interest and we are committed to the ethos of transparent public administration.

Congress recognises the legitimate role of those who work in the sphere of public relations and public affairs – many are trade union members - and believes that professional practitioners operating within an ethical framework have nothing to fear from appropriate regulation. The right of Government to consult, and the right to respond should not be confused with the practice of behind the scenes lobbying outside the public process in a manner which can be designed to circumvent transparent systems of public administration, including Freedom of information. There is a clear distinction between appropriate public representations conducted by representative groups whose activities are open to scrutiny and private representations made by hired hands with a commercial agenda.

Congress is urging the government to use the lessons learned from other jurisdictions ¹ and put in place meaningful legislation with robust, mandatory requirements. Experience from around the world demonstrates that it will be a mistake to launch a scheme that is voluntary, making it optional for lobbyists to join or stay in the shadows.

Congress is calling for:

- 1. A mandatory Lobby Transparency Register for all ‘lobbyists’;**
- 2. A requirement for ‘lobbyists’ to disclose their ‘lobbying’ activities;**
- 3. A Statutory Code of Conduct setting out the rules of the game on the practice of lobbying;**
- 4. An effective monitoring and enforcement mechanism with dissuasive sanctions on those who do not comply;**
- 5. Reform the Freedom of Information (Amendment) Act and the extension of the Act to include new bodies which impact on the daily lives of citizens, such as NAMA;**
- 6. Ensure that the operation of the legislation does not threaten the legitimate rights of citizens to campaign, government’s right to consult, or trade union rights to collective bargaining, collective action or social dialogue.**

¹ See *Regulating Lobbying: A Global Comparison* Dr Raj Chari (Trinity College Dublin), Dr Gary Murphy (Dublin City University) and Dr John Hogan (DIT) and Regulate Lobbying <http://www.regulatelobbying.com/index.html>

Who is a lobbyist?

Lobbying is a growing industry in Ireland. A number of journalists, former politicians and senior party officials work in the sector. All the major communications and PR firms have public affairs divisions and legal, accountancy and consultancy firms carry out less obvious but just as sophisticated lobbying activity. There are also a number of employees of large enterprises whose work involves targeting decision makers in their organisations field of interest.

While we refer to 'professional' lobbyists the fact is that unlike other professions, there is no qualification or certification required to be a 'professional' lobbyist. The term -professional - refers to the fact that the lobbyist's services are available for a fee.

The OECD set out, in their principles on regulating lobbying, that national 'rules and guidelines should primarily target those who receive compensation for carrying out lobbying activities, such as consultant lobbyists and in house lobbyists'. This suggests that Ireland's legislation should focus on all paid lobbyists providing lobbying services for hire, including those working in accountancy, consultancy and legal firms. These organizations cannot be allowed to stay in the shadows allowed to hide behind 'client confidentiality'. The legislation should also cover in-house lobbyists; regardless of whether lobbying constitutes all or some of their work. All sectors should be covered.

In-house lobbyists working in trade unions (and the ICTU) should be enabled to register, however the definition of 'lobbying' and the practical implementation of the disclosure requirements should not be such that it inhibits or throws into question the right of trade unions and its' members to undertake a diverse range of actions in pursuit of members interests or operate in such a way that it undermines social dialogue arrangements.

Recommended definition of 'lobbyist'

Lobbyists are paid advocates who aim to influence the decisions of elected representatives, senior officials and other relevant office holders such as Board members and Regulators;

The objective of lobbying registration is to create transparency in the political process so people know who politicians and high level civil servants are talking to. Like elected representatives, senior public and civil servants have a lot of strategic power in policy making and they are often target of lobbying activity. The legislation can set out a comprehensive list of 'relevant office holders' to include civil and public servants, employees and holders of public office, whether elected or appointed, with the aim of ensuring comprehensive application of the legislation.

Likewise it is essential that the legislation embraces a wide range of lobbying outcomes such as legislation, regulation, policy, programmes, planning, grants, contracts, awards or benefits.

Defining Lobbying

The OECD Principles describe lobbying as 'the oral or written communication with a public official to influence legislation, policy or administrative decision'. Congress concurs with this description however we recommend the definition would cover more than 'oral and written communication' in

its scope. Public affairs is now a very sophisticated business embracing a multitude of techniques that make full use of and technological developments a good example of which is set out below:

'The Focus FFV was an essential ingredient of a three-stranded partnership programme comprising (1) a car that could run on biofuels, (2) a retail network that could provide the fuel, and (3) a source of fuel. Maxol, an independent petrol retailer with which Ford had a longstanding relationship, was a partner which could both source and sell the fuel. A joint Ford/Maxol launch event was designed to raise awareness and also put pressure on Government to grant favourable tax treatment for the car.

Environment Minister Dick Roche was invited, along with around 70 others including fleet customers from local authorities, Department officials and agri-science interests. The biofuel was made from a milk derivative in Cork, so a photoshoot was set up with the Minister holding a jug of milk – it was used widely.

Motoring journalists would be key drivers of publicity, primarily through a test drive programme. Given the proximity of the budget, an all-out effort of chauffeuring the one test model available to journalists for short periods was initiated. The task was accentuated by the need to display the same car at relevant conferences (ICOS, IFA) within the same period.

Political lobbying was essential but challenging, given that there was no precedent in Europe for positive discrimination by Government of the Focus FFV. However, it was decided to seek a 50% VRT rebate, similar to the tax break the Government had introduced for the Toyota Prius Hybrid.

(As the Focus FFV was not a dedicated hybrid, however – it could be driven entirely on petrol if the customer wished – most commentators felt the car would not be granted the rebate.)

Starting with the presence of the Minister for the Environment at the Focus FFV launch, the lobbying effort included the Society of the Irish Motor Industry, the Minister for Finance, various opposition spokespersons as well as a meeting with the Department of Finance immediately prior to the Budget.

Evaluation

Lobbying – to the surprise of most motoring commentators, on Budget day the Minister for Finance duly announced that the tax rebate would be extended to Flexi-Fuel Vehicles. This represented a saving of some €2,500 and made the Focus FFV an attractive commercial proposition.

<http://www.cullencommunications.ie/workLobbying1.html>

What this example demonstrates is that the definition of lobbying needs to embrace a multitude of lobbying techniques. We therefore recommend the following definition of lobbying.

'Lobbying' is defined as

The specific efforts to influence public decision making; either by pressing for change or seeking to prevent change; It consist of representations whether in oral, written or digital form, communications, events, advertising and other techniques whose purpose or effect is to influence the decision of matter being considered or likely to be considered by the office holder;

Activities to be excluded from the definition of 'lobbying'

The positive feature of the register is that it will bring transparency to the activities of lobbyists by requiring disclosure of who they lobbied, for whom, and with what purpose. There is however a danger that the practical operation of the register may undermine the capacity of community groups and trade unions to carry out broad based lobbying campaigns. Rather than weaken the disclosure requirements overall, Congress is recommending that the disclosure requirements for trade unions and not-for-profit NGOs campaigning in the public interest (not in business' interest) would be drafted in such a way that broad based campaigning and other similar activities would not be considered as 'lobbying'.

The OECD Principles recognise this difference and they recommend that national systems 'clearly specify the type of communications with public officials that are not considered lobbying...these include, for example, communication that is already on the public record-such as formal presentations to legislative committees, public hearings and established consultation mechanisms'.

Congress supports the approach recommended by the OECD that the legislation would not operate in such a way that it threatens:

1. The rights of citizens to individually make contact with various governmental bodies;
2. The ability of elected representatives to carry out constituency work;
3. Responses to consultations or requests for information on the public record;
4. The ability to campaign in the public interest – that is campaigns that are in the public interest and not-for-profit. These campaigns are on the public record and it would be very undesirable if as a consequence of the legislation individuals, trade union members, or any group of concerned citizens found themselves subject of a fine, or worse, because their ability their recording of all the campaign actions breached the rules of the lobbying register;
5. 'Collective bargaining' and 'collective action' undertaken by trade unions must be excluded from the scope of the legislation. Otherwise there is a real danger that the legislation will breach human-trade union rights as set out in ILO Conventions, the ECHR and the Charter of Fundamental Rights as employers will undoubtedly seek to exploit the register as yet another avenue through which they can injunct, frustrate or threaten workers and their union from carrying out 'collective action'. Similarly unions and their members or supporters participating in mass campaigns may find themselves subject to fines or imprisonment as the nature of mass campaigns makes keeping accurate records of contacts impossible. It is important to note that trade unions are already subject to supervision and a requirement to hold a negotiating Licence which already regulates 'collective bargaining' and 'collective action'.
6. The responsibilities of government to involve trade unions as social partners in 'social dialogue' is confirmed in article 152 of the Treaty of the Functioning of the EU and must be respected. It is interesting and informative to look at how Germany deals with this in its lobbying laws. The German Bundestag was the first parliament in Europe to adopt laws to regulate lobbying. However activities undertaken by and with trade unions are almost never defined as 'lobbying' under their legislation. Under German law, lobbying has been and still is considered to be associated with professional (for hire) lobbyists and with strong connotations of secretive policy process where illegitimate influence is sought. The special position and role of trade unions is protected in the German Constitution: - Article 77, makes it clear that consulting with trade unions is necessary, it emphasis that ministries should cooperate with trade unions in the substantive elaboration of Bills starting at the early

drafting stage - Article 23 of their Constitution further elaborates that the consultation is to be carried out through the national trade union confederation (DGB). Through the DGB, trade Unions are invited to express their views and put their expertise at the Bundestag's disposal bringing transparency to the process. The provisions are mirrored for the employers' representative organisation (BDI).'

'Lobbying' does not include:

campaigns that are in the public interest and not-for-profit, social dialogue, collective bargaining or collective action, responses to consultations, public hearings and established consultation mechanisms on the public record or elected representatives carrying out normal constituency work.

Rules of the game on the practice of lobbying;

Congress strongly supports the inclusion of a statutory Code of Practice to require lobbyists to behave in an ethical way and to restrict certain practices.

Features of the Statutory Code of Practice:

- Lobbyists should not represent conflicting or competing interests without the informed consent of those whose interests are involved.
- Lobbyists should be required to disclose the identity of the person or organization on whose behalf the representation is being made as well as the reasons behind the approach.
- Lobbyists providing on information and research developed by Think Tanks should be required to disclose the funding behind the research or think tank.
- Lobbyists should be prohibited from using insider information, lobbying with a conflict of interest and from engaging in unethical behavior
- Lobbyists should not represent conflicting or competing interests without the informed consent of those whose interests are involved.
- Most jurisdictions have in place rules that prohibit legislators and other senior officials from immediately jumping into the world of lobbying once they have left office and vice versa. For example in the United States public officials are restricted from lobbying on matters they dealt with for two years and lobbyist cant join government agencies they lobbies in the two previous years.
- Congress is particularly concerned about the practice of appointing professional lobbyists as members of advisory groups to government. This practice is fraught with difficulty as in the case of the professional lobbyist there is no transparency in the interests being represented.

- Many other jurisdictions have in place restrictions on physical access to and around the parliament for lobbyists and Congress recommends that this would also be a regulated area under the Code.
- There can be little doubt that ‘lobbyists’ will in all likelihood try to foster the impression that going through them is the only way that ordinary citizens can gain access to their representatives. This should not be allowed to develop.

Disclosure and Information Requirements for the Lobbying Transparency Register

Simply requiring professional lobbyists to announce that they are a ‘lobbyist’ on a list reveals very little if anything, likewise simply requiring a global financial statement from them or their public relations firm will not provide any real information to the citizen about who they lobbied, about what and with what objective in mind. A genuine register will recognise the need for professional lobbyists – that is an individual or company that provides lobbying for a fee – to provide sufficient disclosure to allow scrutiny by the citizen while protecting ‘commercial’ information. Congress is therefore recommending that the register comprise the following information:

Mandatory Disclosure Requirements

1. **Name of the lobbyist;**
2. **Name of the company or organisation they work for;**
3. **Contact details in Ireland;**
4. **Information on any public office held in past 5 years;**
5. **The goals and remit of the organisation;**
6. **The fields of interest of the organisation giving a clear indication of objectives of lobbying;**
7. **Information on the organization’s memberships;**
8. **In the case of professional lobbyists, details of the decision(s) they attempted to influence, the objectives behind this, the means by which they lobbied, the names of the elected representatives or officials lobbied, the overall amount spent on that lobbying action and on whose behalf they carried the lobbying action out; or**
9. **In the case of in-house business interest, for profit lobbyists an estimate of costs associated with lobbying and the officials contacted; or**
10. **In the case of lobbyists working in membership based public interest, not-for-profit, NGOs and Trade Unions, including the ICTU, the organization’s overall budget and their main sources of funding and overall lobbying objectives.**

Ensuring Compliance

The register should be available for scrutiny on-line. It should be an offence not to register or to register false or misleading information on the register with fines or potentially a jail sentence.

Congress is calling for an Independent Regulator with powers to monitor and enforce compliance with the legislation. The regulator should be able to act on complaints or on their own investigation to determine if a breach has occurred.

In return for registering ‘lobbyists’ should, similar to the EU system, receive alerts giving details of upcoming public consultations and legislation on policy areas of interest to them. However it is important that the register is not presented as a seal of ‘approval’ for the individual or firm listed nor should registration grant a right of access to decision making. That being said Ministers, elected representatives and the other relevant office holders should not meet with or attend events organized by unregistered professional ‘lobbyists’.

Improving Freedom of Information

The operation of the lobbying transparency register will go a long way in shedding light on lobbying in the decision making processes. However there is still a danger that information on lobbying will remain opaque and unaccountable. To address this Congress is calling for an improvement to the Freedom of Information legislation in particular that FOI should apply to a wider range of government decisions and organisations, such as NAMA. At the end of the day democracy is improved by the involvement of citizens. Increasing the amount of publically available information would ensure greater transparency in decision making and would go a long way to ensure that all citizens, especially those who cannot afford the services of lobbyists, could have an opportunity to participate and influence decisions that affected them.

Summary and Conclusion

1. The Irish Congress of Trade Unions believes that open government and administration is in the public interest and a necessary building block in repairing Ireland’s reputation abroad.
2. The ICTU is calling for a robust definition of lobbyists centered on the OECD principles that ‘lobbyists’ are paid advocates who aim to influence the decisions of elected representatives, senior officials and other relevant office holders.
3. For the legislation to be effective ‘lobbying’ must be defined broadly to encompass a diverse range of efforts to influence public decision making; either by pressing for change or seeking to prevent change.
4. To safeguard human and trade union rights, certain activities should not be considered as ‘lobbying’ such as campaigns in the public interest with not-for-profit objectives, social dialogue, collective bargaining and collective action.
5. Public consultations and public hearings and normal constituency work should also fall outside the scope of the legislation.
6. A mandatory Lobbying Transparency Register should be established including a requirement to disclose lobbying activities.
7. A statutory Code of Practice should be put to require lobbyists to act ethically and restricting certain practices.
8. An independent regulatory body should be established with powers to monitor and enforce the regulation of lobbyists
9. Dissuasive sanctions should apply to those who breach the requirements of the legislation.
10. Reform of Freedom of Information to increase information available on government and the administration of government.

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