Access Info Europe

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Comments to the OECD on the "Draft revised Recommendation of the Council on Transparency and Integrity in Lobbying and Influence"

Access Info welcomes the proposed new OECD Recommendation on Transparency and Integrity in Lobbying and Influence (hereinafter "Draft Recommendation), which identifies and seeks to address a series of current concerns about the nature and scale of influence to which public decision making is subject.

The Draft Recommendation aims to advance the "resilience" of the public sector in the face of a complex information and influence landscape, promoting "*integrity, transparency, openness, and equity in public decision making*", and promoting plurality of participation, so as to deliver both optimal policies and citizens' trust in government, whilst ensuring that public officials are "*shielded from undue influence*".

To this end, the Draft Recommendation is wide-ranging in scope, going well beyond lobbying to identify multiple important integrity and transparency measures, ranging from election campaign financing, to transparency of beneficial ownership of companies – including specifically ownership of media – to whistleblower protections and limiting SLAPP suits, along with access to information laws and the publication of data in open formats.

These recommendations are all contained in a relatively concise text structured without giving clear titles to guide the reader. There are insufficient references to existing rules and standards.

In this way, the Draft Recommendation makes many positive proposals on a broad range of matters, while failing to provide sufficiently specific guidance for them to be of much practical use in defining national policies and regulations.

There are two main concerns with the Draft Recommendation. The first is that the definition of "lobbying and influence" is overly broad, as it includes all activities "*capable of influencing public decision making*" including those directed at a public body's "*stakeholders or a wider audience"* while noting that the current influence landscape includes "*channels of influence, such as through social media*".

The second concern is that, for many of the other matters contained in the Draft Recommendation, regulation of lobbying is simply the wrong vehicle for questions which should be approached from a rights-based perspective. For instance, protection of whistleblowers or of journalists merit separate legal instruments which take full account of freedom of expression standards and jurisprudence.

There is, therefore, a real risk that some of the proposals in the Draft Recommendation could be used by governments to limit rights such as freedom of association, media freedom, and freedom of expression in the name of regulating "influence" and protecting public officials from "undue influence".

Access Info therefore strongly recommends to the OECD to consider recasting the proposal, separating out its constituent elements.

An updated OECD Recommendation with a specific focus on lobbying would be welcome, since many if not most OECD members currently do not have proper lobby regulation. There is still an added value in providing detailed guidance on the regulation and transparency of lobbying, particularly as there is no EU directive on this.

The Global Data Barometer survey found a paucity of data necessary to track lobbying activity in most European countries, with an average score across 21 European countries of just 24%, and 11 of these countries scored zero on lobby data. Only France, Ireland and the UK score over 50% on availability of lobby data.

For all the other topics in the Draft Recommendation, Access Info recommends that the OECD liaise with other bodies such as the EU, the Council of Europe's GRECO, and the Open Government Partnership, as well as with relevant civil society actors so as to advance the various priorities identified in ways that are fully protective of freedom of association and freedom of expression and information.

Relevant groups include, for instance, media freedom organisations working on the EMFA, the Coalition Against SLAPPs in Europe, the anti-corruption UNCAC Coalition, and Access Info, Transparency International, the Open Spending EU Coalition and others leading the current campaign for open beneficial ownership registers.

In this submission to the OECD Consultation, Access Info first summarises the content of the Draft Recommendation, and then identifies and analyses the most important points, making specific recommendations to the OECD on how to address the concerns raised.

The Content of the Draft Recommendation

The Draft Recommendation calls on countries to act to ensure:

- **Transparency of all lobbying and influence activities** (Recommendation III.a)
- **Mandatory regulatory footprints** for all decision making in open data formats (Recommendation III.b);
- **Political party and election financing disclosures** of all direct and indirect contributions (Recommendation III.c);
- **Access to Information laws** that ensure timely responses to all requests about lobbying activities (Recommendation III.d);
- **Transparency around advisory and expert groups** and those providing advice to government with full funding details for legal entities declarations of the private interests and current and past professional affiliations of experts (Recommendation IV.a);
- **The inclusiveness of advisory and expert groups** (Recommendation IV.b);

- **Rules requiring proactive outreach to and engagement of stakeholders** during participation process as well as governing the communications and provision of information around those processes (Recommendation V) ;
- **Rules on transparency of the company ownership** – including beneficial ownership – and the financing of companies (Recommendation VI.a)
- **Disclosure of financing and political and electoral campaign contributions** by legal and natural persons engaged in lobbying (Recommendation VI.b)
- **Rules on the transparency of all activities aimed at influencing public decision making** and on the interests in and contacts with other organisations and social actors of all companies, company directors, and senior managers (Recommendation V.c/d/e, analysed at Point 6 below);
- **Transparency of media ownership including beneficial ownership** (Recommendation V.f);
- **Disclosures of media owners' private interests** as related to the content of the media they own content (Recommendation V.f);
- **Adherence to integrity standards of all engaged in lobbying and influence** and ensuring that they "take responsible business conduct and integrity standards into account" when engaging in decision-making processes (Recommendation VI);
- **Integrity frameworks and guidance to public officials on checking the "credibility" of stakeholders** (Recommendation VIII.a);
- **Guidance to public officials on dealing with false and disinformation** and assessing the quality of information received (Recommendation VIII.a);
- **Rules on gifts, invitations and hospitality** (Recommendation VIII.a);
- **Guidance and support for "at-risk" public officials** and those in and "at-risk sectors" likely to be subject to the risks of undue influence on government policies (Recommendation VIII.b);
- **Comprehensive conflict of interest and revolving door regulations** (Recommendation IX);
- **Protecting freedom of expression and pluralism and independence in media**, and protecting journalists and media outlets from intimidation and abusive defamation or libel cases or SLAPPs (Recommendation X);
- **Whistleblowers protection rules** for those who report suspected violations of the policies and rules on lobbying and influence activities, and protection in law and practice against all types of retaliation against whistleblowers as a result of reporting on reasonable grounds (Recommendation X);
- **Effective oversight of all the above rules and sanctions** for non-compliance (Recommendation XI).

The OECD recommends that for all these rules there be stakeholder engagement in developing and reviewing the rules and in promoting best practices. Furthermore, non-governmental stakeholders are encouraged to follow and promote the use of the Recommendation.

1. Not all Expression is Lobbying

All the issues in the Draft Recommendation merit attention, and many are contained in existing international standards and recommendations and are regulated to at least some extent in most countries.

They form, as relevant, part of measures to deliver integrity and accountability of government, to prevent corruption, to advance public participation, and to protect and promote freedom of expression.

The problem with the Draft Recommendation is that regulation of lobbying and influence should not be a starting point for regulating media freedom, freedom of expression, or freedom of association.

Particularly not in this Draft Recommendation which conflates the specific activity of lobbying with more nebulous and broader concepts of influence, and seems to be driven by fears of "undue influence" on public decision making, and so the need to protect public officials from it.

Rather, for any matters related to the exercise of freedom of opinion and expression, the starting point has to be a rights-based approach.

At this moment in history there is, undoubtedly, a pressing need to address the issues of mis- and dis-information, but that has to be done in a way that also appropriately protects freedom of speech, taking full account of international standards on the right to freedom of expression, including the rich body of jurisprudence of national courts and international human rights tribunals such as the European Court of Human Rights.

It is welcome that the OECD wishes to engage in a constructive way in the broader information landscape, promoting media plurality and protecting journalists and whistleblowers, while promoting public participation in decision making, but a Recommendation on the regulation and transparency of lobbying is neither a sufficient nor an appropriate vehicle for doing this.

An additional weakness of the Draft Recommendation is that it does not contain proper cross-referencing to existing recommendations and standards – be they OECD standards or those of others – for each of the many areas of regulation touched upon, thereby further undermining the value of its rather general calls for action.

Access Info recommends that the OECD:

- **Develop a specific detailed Recommendation on Lobbying regulation**, registration, and transparency. Make use of the International Lobby Regulation Standards as one of the reference documents.
- **For all other integrity and corruption-prevention measures** identified in this Draft Recommendation either subscribe to and support existing standards and recommendations and/or develop specific detailed recommendations for OECD members to set world-leading laws and good practices.
- **Liaise with relevant international and governmental bodies and networks**, including the EU, Council of Europe (GRECO, PACE) and the Open Government Partnership, and Europe's network of Anti-Corruption Agencies.
- **Liaise with relevant civil society organisations and networks**, including the UNCAC Coalition, the Open Spending EU Coalition, the CASE Coalition, the RTI Europe network, civil society working on the European Media Freedom Act, the Whistleblowers International Network, etc. Access Info would be happy to provide relevant contact details.

2. The Definition of Lobbying

The Draft Recommendation contains just one main paragraph on regulation of lobbying itself, found at Recommendation III.a, which recommends that countries:

> *Make publicly available and easily accessible, timely, comprehensive and detailed information on activities aimed at or capable of influencing government decision-making processes, in particular on who is lobbying or influencing government, who is the target of such activities, and the specific policy issue.*

The Draft Recommendation also provides a definition of lobbying which is so broad that it encompasses many other "influence" activities which should not be subject to the same type of regulation as lobbying.

> ***Lobbying and influence activities*** *refers to actions aimed at or capable of influencing public decision making, and targeted at public officials or institutions carrying out the decision-making process, its stakeholders or a wider audience.*

The logical consequence of this is that almost any public debate on any topic in any media could be considered "capable of" influencing decision making, albeit communications which reach some stakeholders or a wider audience.

This could include, for instance, members of the public having a discussion on social media about proposed policy or law, or a comment made by an academic in a radio interview, or a grassroots meeting held by an informal group of neighbours in the square of a small town regarding a hyperlocal issue.

A scientist speaking about the nature of epidemics at a public conference or a seismologist speaking about volcanic activity on a television programme are acts "capable" of influencing public decision making should the comments reach the ears of decision makers, and/or could influence some stakeholders, and definitely could reach and influence a wider audience, irrespective of whether the speaker is intending or not to influence decision making.

Indeed, this concern is underscored by language in the preamble which specifically mentions social media stating that there is an "*evolving lobbying and influence landscape, particularly with new and more diverse mechanisms and channels of influence, such as through social media*".

In our modern hyper-connected societies, many things can have the consequence of influencing public debate and so public decisions (a single social media post with the right hashtag can trigger a social movement that eventually results in legislative changes), but this is quite distinct from the specific activity of lobbying and it is unwise to conflate lobbying and influence more broadly

The Draft Recommendation does not make clear what the suggested consequences of this broad definition are for any policy or legislative action by OECD members, except that they should adopt measures related to all the other policies which the Draft Recommendation touches upon.

The dangers are, however, clear and it is that this proposed Recommendation could quickly be used to justify controls and limitations on freedom of speech by a large number of actors.

Access Info recommends that the OECD:

- **Adopt a clear and specific definition of lobbying activity**. The definition of "lobbying" contained in the International Lobby Regulation Standards is a good starting point:

  > *Any direct or indirect communication with a public official that is made, managed or directed with the purpose of influencing public decision making.*

  It is noted here that "indirect" means that the communication does not come directly from the source of the lobbying but is linked to that source. It does not mean that any comment made by anyone on social media is necessarily lobbying!
- **Develop specific recommendations on regulation and transparency of lobbying** to be done after a thorough review of previous OECD recommendations, all other relevant international standards, IGO and NGO recommendations, and best practices from OECD members, and develop a comprehensive set of specific recommendations.

3. Exclusions from the Definition of Lobbying

The Draft Regulation then goes on to exclude from the definition of lobbying and influence, participation in public consultations:

> *It does not cover influence activities exercised through official consultation processes whereby transparency and integrity is already ensured …*

There are various problems with this exclusion. One is that professional lobbyists often participate more actively in public consultation processes than many other stakeholders, who often have fewer resources.

If, therefore, we are going to capture the influence on a decision, public consultations have to be part of what is regulated. At the very least, there should be an obligation on decision makers to make public all inputs into a particular decision-making process given that submissions in consultations undoubtedly do have an influence on outcomes.

A second problem is that the current practice in many OECD countries with regard to public consultations woefully fails to meet requisite standards of transparency (see OECD's own data on members' weaknesses on consultation exercises). To blithely assume that the transparency let alone the integrity of consultation processes is assured, and therefore that this is not one of the vehicles of lobbying and/or influence, is a mistake.

It is the case, however, that there are considerations which need to apply to public consultations which should not apply to other lobbying rules. For instance, there should be no prior requirement on all stakeholders and members of the pubic to register as lobbyists before participating in a public consultation. On the other hand, when registered lobbyists of any ilk do participate, they should have to provide their lobby registration details such as a reference number.

The International Lobby Regulation Standards have an exclusion for citizens interacting with public officials:

> *The interaction of individual citizens with public officials concerning their private affairs shall not be considered lobbying, save for where it may concern individual*

economic interests of sufficient size or importance so as to potentially compromise public interest. In such case, a careful balancing act needs to be made on the respective benefit and efficacy of regulation, as well as due consideration given to any constitutional protections and guarantees.

It is not always easy to draw the line between what is the freedom of expression and association of ordinary citizens and what is lobbying, but with some clearer definitions and some criteria for balancing in difficult cases, this can be done.

Access Into recommends that the OECD:

- **Reconsider the definition of lobbying** to include materials received via public consultations, then making specific recommendations on how they should be handled to ensure the transparency and integrity that this Draft Recommendation seeks to promote.
- **Develop guidance on other interactions with the public by public officials and elected representatives**, such as transparency of meeting agendas and minutes, so as to help draw a clear line between lobbying and other activities and participation in public debate in a democratic society.

4. Regulatory Footprint Definition

The definition of the "Regulatory Footprint" in the Draft Recommendation is overly-narrow because it only refers to external inputs – "documentation that details the stakeholders who sought to influence the decision or were consulted in its development, and shows what inputs into the particular decision-making process were submitted"—and would not capture the entire regulatory process within the executive and the legislative branch where also involved.

A comprehensive definition for a decision-making or normative footprint should necessarily include all inputs that are taken into account, which may be internal data held already by public bodies, or reference documents proactively sought by public officials, or debates at internal meetings, with no interaction with external stakeholders.

The decision-making footprint should definitely include a record of inputs from other governmental units. For example if a Ministry receives inputs from other ministries or from regional and local government bodies, these should be part of the decision-making footprint, even if these actors are not considered to be lobbyists and may not be thought of by all public officials as "stakeholders".

A decision-making footprint should also include justifications of how decisions were taken, and what evidence or which considerations were used to reach the final decision. Again, this is broader than merely the inputs of external actors. This does seem to be included in the recommendations in Recommendation III of the Draft Recommendation, language which is largely positive.

A second, and welcome, part of the definition of regulatory footprint is that which requires that for any decision a record be kept of which "steps were taken to ensure inclusiveness of stakeholders in the development of the regulation".

One challenge here, however, is that decision makers sometimes are reluctant to be transparent about ongoing decision-making exercises precisely because they fear "undue influence". This in turn undermines a possibility of participation, even while more well-connected lobbyists often manage to obtain inside information on the status of the decision making. Hence an important recommendation is that there be real-time transparency to permit engagement by a wide range of stakeholders.

Access Info recommends that the OECD:

- **Redraft the definition of Regulatory Footprint**, possibly renaming it so as to broaden the term beyond just regulation to other decision and policy making, and ensuring that it recommend comprehensive transparency of all steps in the process, and all documents relied upon, with clear justifications on the final decisions.
- **Develop guidance on ensuring real-time participation** so that transparency of decision making is not only after the decision has been taken, but rather that decision making can be followed as it proceeds in order to facilitate participation.

5. Undue Influence

The Draft Recommendation seeks to combat "undue influence" which is defined as follows:

> ***Undue influence*** *refers to an act of attempting to influence the design, implementation, execution and evaluation of public policies and regulations administered by public officials, whether by providing covert, deceptive or misleading evidence or data, by manipulating public opinion, or by using other practices capable of manipulating the decisions of public officials.*

The preamble similarly states that "*public decision-making processes that are shielded from undue influence and supplied with relevant inputs are crucial to safeguarding the public interest, especially as the information landscape is becoming more complex and it is more difficult for public officials to navigate through the information and documents they receive*".

The preamble also recognises that "*the increasing risks connected with undue influence on public decision-making processes make it more important for governments to tackle undue influence and set up a strong, effective and resilient framework for lobbying and influence activities*".

The preamble states that the purpose of the Draft Recommendation is to "restrict undue influence of government policies".

There is no doubt that these are very legitimate concerns. The mass of false or unreliable information that is distributed in the modern data and digital age is something that few individuals or institutions are well-equipped to deal with.

At the same time, there is a dangerous undertone to the language used here. The possible consequence of "shielding" public decision-making processes and of "restricting undue influence" is that it could lead to legislation which severely limits public participation and is open to massive abuse in less democratic countries.

The truth is often relative, a matter of interpretation, and subjective; it is rarely absolute and clear. (Some philosophers and scientists would argue that we can only approximate towards the truth, to the extent that it exists at all). What is clear in the field of political life is that whilst it may be possible to identify the most outrageous falsehoods, propaganda, and disinformation, in other cases the facts can be a matter of legitimate dispute amongst reasonable and democratically minded people.

When it comes to lobbying regulation, there are undoubted benefits to putting in place the codes of conduct and ethics which are referred to in the Draft Recommendation. These cannot, however, guard against the use of information and data which is, objectively or subjectively, either deliberately or accidentally, false or misleading. Many lobbyists will, at the very least, pick and choose the facts which best support their arguments. In many instances this is unlikely to meet the threshold of unethical behaviour even if it is something that decision makers should be attentive to.

Hence, there are risks to trying to regulate for only "true" information to be submitted to decision makers.

When governments try to regulate for "truth" in political debates this is usually the first step to censorship and limits on freedom of expression.

Rather than attempt shield public decision makers from "undue influence" it is important to ensure that there is sufficient transparency around decision-making processes that the facts being presented can be known, debated, contrasted and countered by other stakeholders, in real time, prior to policy and legislative processes being concluded.

Such openness will help ensure that all stakeholders have a chance to put forward the plurality of data sources that help obtain a clearer and truer picture of any particular situation.

It should, furthermore, be recognised that, for all that the current information environment presents a legitimate challenge for decision makers everywhere, they cannot avoid receiving misleading information.

In the same way as judges have to shut their ears to the media storm around a high-profile case and ensure that they reach their judgments based on the law and on the facts presented in court, so should decision makers have the ultimate responsibility for ensuring that they are well-briefed on a particular context and have the data they need, from reliable sources, to reach a well-informed decision, not permitting external debates and evident misinformation to distort their judgment.

The solution in the modern information age is therefore to ensure that decision makers are well-trained, and to ensure that as much relevant data and as diverse as possible a set of inputs are gathered, in order to permit decisions which are evidence-based and taken in the public interest.

Access Info recommends that the OECD:

- **Review the language on "undue influence"** to make clear that, whilst it is reasonable to have specific codes of conduct that lobbyists must agree to adhere to, and even sanctions and consequences for breaching them, no provisions are recommended which could lead to governments misusing the "undue influence" provisions for curbing

freedom of expression, silencing critics, or excluding sectors of the public from participatory processes.

- **Recommend sufficient training of all relevant public officials** so that they are able to identify which information and inputs are relevant for ongoing decision-making processes, in order to deliver decisions that are evidence-based and taken in the public interest.

6. Foreign Actors and those from Abroad

There are various references to "foreign" actors and organisations and people from "abroad" and their potential influence on decision making.

The preamble recognises that the emerging and complex influence landscape includes "*lobbying and influence by foreign commercial and political interests, including foreign governments and their affiliated organisations, and multinational enterprises*".

The definition of lobbying, however, excludes communications by foreign governments, as it "*does not cover … influence by foreign governments through formal diplomatic channels*".

It is to be understood here that other influence by foreign governments is included, particularly as Recommendation III of the Draft Recommendation urges that there be "*transparency and openness in government decision-making processes in the executive, legislative, and judicial branches at all levels of government and ensure transparency of lobbying and influence activities, **including from foreign governments and foreign commercial interests***." [our emphasis].

The challenge here is the lack of a definition of the scope of "formal diplomatic channels" because, given other parts of the Draft Recommendation, it is highly likely that comments made by a government representative in public or to the media in one country which are then disseminated by traditional, digital, or social media, could constitute "lobbying" and fall under the scope of potential lobbying regulation.

In the context of the European Union (22 of whose 27 members are also OECD members), it is not clear if communications between EU Member State which take place in a way different from the traditional "formal diplomatic channels" count as lobbying, or if in this context these countries do not count as being "foreign" to one another.

It is also not clear whether debates in less formal diplomatic contexts such as, for instance, the multi-stakeholder Open Government Partnership, would count as lobbying, given that many of these debates do indeed touch upon policy and regulatory decisions which might, eventually, be taken, including indeed discussions on the need for lobbying regulation, along with a wide range of other open government policies.

Similarly, the lobbying definition overlooks the role of inter-governmental organisations, including the OECD itself and its regulations, and how these should be taken into account. One could consider, for instance, recommendations developed by the Council of Europe's GRECO anti-corruption mechanism to a particular government on the need for law reform on a specific issue. If this is not considered to be a "formal diplomatic channel", something which is

unlikely, then GRECO's recommendations would be included in the OECD's lobbying and influence definition.

The picture is further complicated by reference to actors "from abroad" in Recommendation III on transparency, where there is a recommendation that there be disclosure of "***all*** *direct and indirect donations and contributions, received by the government, public officials, political parties and election campaigns from* ***non-governmental actors****,* ***including from abroad****."* [our emphasis].

This provision recommends transparency of political financing, something which Access Info very much supports, and we welcome that it is recommended that this all be published as open data.

That said, it is not clear why it is necessary to stress "including from abroad" since surely "all" would already capture this.

It is also not fully clear here why this is limited to non-governmental actors when concerns have been expressed elsewhere about "foreign governments". It could be assumed that when political parties declare campaign contributions, this would include those from foreign governmental actors and public bodies, unless it is assumed that these would already be expressly prohibited in law.

Another concern here in the context of "lobbying and influence" is what constitutes an "indirect" contribution to an election campaign. Without clear definitions, there is the risk that communications from public interest groups at the time of political debate or campaigning might be deemed to fall under this definition.

This in turn leads to a particular concern that some governments have already placed limits on non-governmental organisations receiving funding "from abroad" and could be encouraged to go further and more governments could be encouraged to do the same, justifying their actions using the future OECD Recommendation.

Access Info is in favour of recommendations for more coherent, consistent, and appropriate rules of transparency of funding of non-governmental organisations. There are indeed legitimate concerns about the use of supposed not-for-profit public interest groups for disguising commercial and other interests (such as political, ideological, or religious interests) for the purposes of lobbying and engagement in political debates, be it from domestic or foreign actors.

Not-for-profit structures can also be used as part of money laundering schemes, and for terrorist financing and other illegal operations. The regulation of and transparency around these entities in some countries is rather lax, while in other countries non-governmental organisations are overregulated with limits on their financing used to limit their freedom of expression and association rights, resulting in the closing down of civic space.

Therefore, in the same way as civil society is in favour of ownership and beneficial ownership transparency for companies, there a need to develop rules on the transparency of all legal entities, but the vehicle for this is definitively not a lobbying law, and should not be limited to questions of foreign funding or actors. Rather, a carefully framed set of recommendations on transparency of various types of legal bodies should be crafted following full debate with

relevant stakeholders, ensuring at all times that there is adequate protection of the rights to freedom of association and freedom of expression.

Similar concerns arise in Section IX on conflicts of interest and revolving doors where there is a requirement to establish "*an effective system to manage pre/post public employment risks and other conflict of interest situations, whether at the domestic or international level*" which covers the "*conflict-of-interest risks posed by individuals, including from abroad, entering the public sector from government regulated sectors*".

Here again, if there are rules on conflicts of interests and revolving doors, they should capture people who come from anywhere. The definition of "from abroad" is not given, and begs the question as to whether someone who originates in another country but is now a permanent resident or even has obtained nationality still counts as "from abroad".

It is understood that a strategy for intelligence agencies and/or "foreign" companies wishing to exert and influence could be placing people in jobs in public bodies, but this could be done equally well by recruiting nationals of the countries being targeted.

It is also not clear how this would work in the EU region, with freedom of movement, where a Croatian or an Estonian could conceivably get a job in the French or Italian governments, or vice versa, as could, quite possibly, a qualified person from elsewhere, such as an Australian or a Ukrainian citizen.

The risk of the proposed Draft Recommendation is that it encourages discrimination against anyone who is not perceived to be born and bred, possibly for generations, in the particular country.

In line with this, the Draft Recommendation urges governments to design "*effective rules and procedures such as cooling-off periods, subject-matter limits, time limits, and prohibiting any use of any 'insider' information after they leave the public sector, to manage the conflict of interest risks posed by public officials leaving the public sector for entities in government-regulated sectors, including abroad."*

Cooling-off rules and limits on future employment where use of "insider" information might be leveraged are also very important instruments. It is not clear how these might be applied transnationally, although of course, if breached, they could result in longer-term consequences for anyone seeking re-employment in the public service in the country where they were initially employed.

Access Info recommends that the OECD:

- **Consider removing the specific references to foreign actors and people from abroad**, rather ensuring that its recommendations on lobbying regulation as well as other, separate, recommendations on integrity measures such as conflicts of interest declarations and assets declarations, cover all relevant persons working in public bodies, as well as all companies conducting lobbying, irrespective of which country they originate from and/or where they are resident;
- **Propose minimum standards for the content of conflict of interest and assets declarations** as well as for their transparency, to ensure that relevant information is collected and made public;

- **Recommend ensuring that non-residents are included in company ownership and beneficial ownership registers,** with appropriate sanctions or consequences for failures to declare owners resident outside the country in which the declaration is taking place. The same recommendation should apply to other registers such as land, property, and valuable assets registers.

7. Companies, Conflicts of Interest, and Civic Life

The Draft Recommendation contains two recommendations which, on the face of it, look good, namely that companies and their board members and senior executives report on their engagement with outside bodies as a way of tracking influence.

This is recommended for companies with "a significant role in lobbying" but with no guidance on what constitutes "significant" and then with language that points to more generic regulations.

For companies, they should declare relationships with bodies "such as trade associations, grassroots organisations, think tanks and research bodies, as well as with experts and personalities, and disclosure of funding to these organisations and persons".

The problem here is that it is not at all clear how this information will be captured, and it is a potentially massive task, not only for the public administration to capture and organise this data, but also the burden on companies to report it.

Even a medium size company which is active on a particularly legislative proposal in a regional or national government might also be very active in is community, engaging with and supporting local community groups, inviting a personality to talk at a gala dinner, and having multiple experts involved in debates and events that it organises. To capture all of this and report it in some kind of influence register risks being a disproportionate burden, especially when the proposed measure does not make a connection between the lobbying and the other activities. For instance, if the company is a producer of wooden furniture, employing 100 people in a rural location, and is engaged in a campaign for laws to support sustainable forest management, would they be required to report that they have paid a local "personality" for the staff dinner, such as a well known comedian? What are the criteria to assess relevance?

The challenge is even greater when it comes to the recommendation that board members and senior executives should declare their "membership and their engagement with outside associations, other companies, and state agencies, and other outside organisations such as trade associations, grassroots organisations, think tanks and research bodies".

Again, this seems to be for companies engaged in "significant" lobbying. It is not clear, however, if the recommendation is whether the reporting on other activities by board members and senior executives should be done only if the contacts are relevant to the lobbying work, or for all contacts? For instance, if a company director is lobbying on the law relating to business taxes and she sits on the board of an economic justice think tank this could be a relevant engagement, but perhaps less so if she works as a volunteer on a Saturday afternoon for a local charity helping disabled people. There is a clear need for more specific guidance and recommendations here rather than these sweeping statements.

A further reflection is that it is somewhat odd to be proposing such incredibly detailed

requirements for reporting conflicts of interest of companies and their owners, even if it were to be in context of their exercise of influence via direct lobbying activities, when there is currently a hugely inadequate collection of the conflicts of interest declarations and assets declarations of many public officials in OECD members. Furthermore, in many countries conflicts of interest declarations of even senor public officials are not available to the public in any format, certainly not in an open data format.

Similarly, at a time when there is a debate about and legal challenges to the opening of data on the beneficial owners of companies are, it might be advisable to focus on the standards and mechanisms for this, rather than making recommendations which imply a level of data collection that is burdensome, likely to be seen as overly-invasive, and, possibly, in part at least, meaningless and therefore not particularly useful.

Access Info recommends that the OECD:

- **Define detailed minimum standards for the content of lobby registers** so as to ensure that a sufficient level of data is captured about relevant conflicts of interest of those engaging in lobbying, while ensuring that the reporting burden is proportionate;
- **Define what is "significant" lobbying or, alternatively, remove the word**, with a definition possibly being the amount of spending on lobbying activities, but as this is very hard to determine and to verify, removal of the word "significant" is preferable;
- **Focus the passage of lobby regulation and establishment of lobby registers in all OECD members**, ensuring that they meet a strong minimum standard with data on lobbyists and the lobbying activities in which they are involved, with this linked to other instruments such as regulatory and decision-making footprints;
- **Recommend transparency of lobby registers** in fully searchable open data formats;
- **Gather best standards on conflict of interest reporting for companies and company directors and senior management** to the extent that such reporting requirements have been established in some countries;
- **Support the opening of company and beneficial ownership registers** in all OECD member countries, with the data being provided, as recommended in this Draft Recommendation, in a fully open data format.

8. Media Regulation and Protection of Freedom of Expression

The Draft Recommendation contains a number of recommendations that touch on questions of freedom of expression and media freedom and the role of journalists.

Specifically, the preamble makes reference to the importance of independent and plural media.

Recommendation VI on transparency related to all those engaged in lobbying and influence includes the recommendation to ensure:

> *Media companies' ownership, including beneficial ownership, and disclosure of conflict of interest situations between the media content and the private interests of the owner(s)*

Transparency of media ownership, including beneficial ownership, is widely recognised as important for ensuring that all members of the public are able to know who is behind the news and information that they receive. Access Info Europe has developed a series of Ten Recommendations on Transparency of Media Ownership in this area which have been, inter alia, taken up by the Parliamentary Assembly of the Council of Europe.

The current European Commission proposal for a European Media Freedom Act includes recommendations on transparency of media ownership, and the European Commission's work plan makes specific reference to transparency, accountability and independence around actions affecting media freedom and pluralism.

There are a series of practical details that should accompany any recommendation on transparency of media ownership, such as the percentage of ownership to be disclosed, and whether to set up a specific central public register held by, for instance, a government body or a media regulatory agency, or whether to capture this data in the company and beneficial ownership registers. Further recommendations on all these details would be most valuable.

What is somewhat less clear is the proposed disclosure of conflict of interest situations between the media content and the private interests of the owner(s) as no elaboration is given about how this would work in practice. Clearly transparency of company ownership including beneficial ownership more broadly would provide part of the information about the other commercial interests of media owners, but it would not provide the full picture.

It is not clear here whether the proposal is that media owners complete conflicts of interest and assets declarations, or whether, as with company owners, at least for those engaged in "significant lobbying" they disclose all interests and contacts, a proposal analysed at Point 7 above. It is also not clear how these disclosures should be related to the content of the media outlets they own. These proposals sound fine in a short sentence but are harder to understand when considering how they would work in practice.

What is missing from the Draft Recommendation is a consideration of how influence works from the government side through the allocation of funds to media outlets by means of paid advertising. To get a full picture of the way in which the information sphere operates, there also needs to be transparency around advertising spending by public bodies.

As to freedom of expression, the Draft Recommendation at Recommendation X on safeguarding those who scrutinise and/or report violations of the policies and rules on lobbying and influence activities recommends measures to:

> *Promote pluralism and independence in media, and protect journalists and media outlets from intimidation and abusive defamation or libel cases;*

This is welcome as these are very important values in any democratic society, but by lacking in detail it does little to provide useful guidance.

There is an ongoing campaign across Europe to get better regulation to prevent the use of Strategic Litigation Against Public Participation, what are known as SLAPP suits. There has been for many years a campaign to decriminalise defamation. The OECD should support and engage with these ongoing campaigns and liaise with and support those working to develop specific regulatory recommendations.

It is slightly odd that, given the references to social media, there are no recommendations on transparency or accountability of social media, beyond the rules on transparency of media ownership. For instance, there is no reference to the transparency of algorithms used by social media companies, even though these surely result in concerns about disinformation being propagated and therefore impact on the "undue influence" concerns expressed in the preamble to this Draft Recommendation.

Similarly, there is no reference to algorithmic and artificial intelligence transparency in the context of its use inside government and for decision making, although one might presume that this would be captured in a comprehensive decision-making footprint, a specific reference is worth considering.

Access Info Europe recommends that the OECD:

- Liaise with others relevant actors on developing specific proposals on transparency of media ownership, including setting thresholds for amount of ownership share to be disclosed, and the mechanism by which this will be done;
- Clarify the proposal on media owners declaring their interests as related to the content of the media;
- Recommend that there be transparency of all advertising purchased by public bodies with detailed amounts of spending being made public in an open data format disaggregated by media outlet;
- Engage with the civil society network organised around the European Media Freedom Act (Access Info can provide more information) and with the EU on the development of the EMFA;
- Engage with the civil society Coalition Against SLAPPs Europe (CASE) in developing specific recommendations relating to protecting journalists and media outlets from litigation designed to interfere with the right to freedom of expression (Access Info can provide contacts);
- Engage with current debates on the use of artificial intelligence and algorithms in both public decision making and their use by private companies, including social media, with a view to supporting recommendations on appropriate levels of regulation and of transparency.

9. Open Data

The Draft Recommendation contains two references to publishing information collected in open data, both contained in Recommendation V on strengthening transparency and openness in government decision-making processes, it is recommended that:

- The regulatory footprint be made publicly available in an open data format "*which allows for cross-checking by third parties*";
- All direct and indirect donations and contributions, received by the government, public officials, political parties and election campaigns from non-governmental actors be disclosed in an "*open data format, that is reusable for public scrutiny*".

These recommendations on open data are welcome, as is the specific reference to ensuring that the data is not only available for consultation but also for reuse.

What is regrettable, however, is that the open data recommendation is made available only for these two datasets, and not for all the other data which it is recommended by collected and, often, made public, under this recommendation.

Access Info Europe recommends that the OECD

- Develop specific recommendations on open data, access, searchability, open licences and reuse, so that all the key datasets referred to in the recommendation be made available as fully open data.
- Recommend that priority be given to opening existing datasets in open data formats so as to ensure the availability of data necessary for ensuring integrity in government decision making and for tracking lobbying and influence, including:
  - Political party contributions and election campaign financing data
  - Company ownership and beneficial ownership registers
  - Conflict of interest and assets declarations of senior public officials and those elected to public office;
  - Public funds spending and public procurement with the names of all beneficiaries (companies and individuals) provided.

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