# PRCA response to draft recommendation of the Committee of Ministers to member states on the legal regulation of lobbying activities in the context of public decision-making

**Introduction**

- The PRCA is the professional body representing lobbyists and communications professionals. Our membership includes consultancies (including around 75% of the "PR Week Top 150"), in-house teams and individual practitioners. Members include organisations as diverse as charities, banks, professional bodies, law firms and the entire Government Communications Service. We represent around 350 consultancies and 250 in-house teams. We are the largest association of our type in Europe and MENA.

- Of our 20,000 individuals who are members of the PRCA, around 1,500 are lobbyists.

- There are currently 103 members on the PRCA Public Affairs Register. This includes the largest consultancies such as MHP Communications, Weber Shandwick, H+K Strategies and Edelman, alongside specialist and smaller organisations. We also represent in-house teams for organisations as diverse as the NSPCC, AXA, Visa, Local Government Association and Nationwide.

**Respondent Information**


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- Organisation: PRCA
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## Definitions

+ We believe that – given the importance of the recommendation and its principles – that the terms and definitions ought to be scrutinised thoroughly by members. They are the very groundings of legislation and issues with them must be addressed as soon as possible. The below comments come from the PRCA's own Definition of Lobbying.

+ "Lobbying" should mean activities which are carried out in the course of a business for the purpose of—
    (a) influencing government, or
    (b) advising others how to influence government.

+ We believe that a "lobbyist" is not defined by any specific profession of the person lobbying, but by the "act of lobbying in a professional capacity" itself. Any lobbying register must be universal in order to capture all who perform the "act of lobbying in a professional capacity".

+ "Public decision-making" is reasonably defined.

+ "Public official" should mean, using the United Kingdom as an example for members, those employed by or elected to:
    (a) central government, devolved government, local government,
    (b) members and staff of either House of Parliament or of a devolved legislature,
    (c) Ministers and officials, and
    (d) public authorities (within the meaning of section 6 of the Human Rights Act 1998).

+ "Legal regulation" is correct in its recognition of self-regulation although members must ensure this is recognised as pre-existent (in most cases), well-established (in most cases) and distinct from legislation (in most cases).

## Objective (A.)

+ We agree that the legal regulation of lobbying should promote the transparency of lobbying activities: this, however, should not be its sole objective. It should also function to dispel the myths and misunderstandings that exist around lobbying in democracy. Members will also be aware that – against a general backdrop of distrust of political institutions – a lobbying register should not be seen as some sort of remedy to all the issues facing modern politics: it does, however, help explain and improve the reputation of one aspect.

## Scope (B.)

+ To frame our comments: member states should concern themselves with the regulation of lobbying rather than lobbyists.

+ We welcome the fact that this draft text will cover third party professionals and in-house professionals (an estimated 20% and 80% of the UK industry respectively). Whilst we appreciate

the recognition of associations and bodies like ourselves, it has to be noted that our lobbying is already covered by the in-house inclusion.

+ Legislation should provide certain common sense exemptions to protect the relationship between a politician and their constituents: whilst the register should include all those who meet the definition and the legislation must be scrutinised to avoid possible loopholes, an individual representing themselves on personal matters should not be considered a lobbyist here.

+ Other exemptions should cover the provision of information or evidence in response to an invitation, in response to a court order or enactment or as part of a tender process.

+ Addressing the exclusion of voluntary work which some stakeholders will propose (and remains unaddressed in this draft), this risks excluding important work done on a pro-bono basis. To give a real world example, a number of lobbyists give their time and expertise by joining the PRCA at meetings with politicians and civil servants alongside helping us to plan this work. Turning specifically to lobbyists working as consultants, this would also exclude work counted as overservicing (time and activities carried out above and beyond the agreed project fee or retainer fee which may not be reclaimed from the client).

+ This exclusion also raises a number of unintended consequences. For example, it suggests that lobbying is confined specifically to what we might call the lobbying industry. Concurrently, it goes some way to suggest that there exists a class of paid lobbyists and a class of voluntary lobbyists whose work is so radically different that the former is required to register and the latter is not.

+ A lobbyist is a lobbyist is a lobbyist and there must be a truly inclusive register.

**Freedom of expression, political activities and participating in public life (C.)**

+ We agree broadly with the comments here: lobbyists have the right, whether as an individual or a company, to inform the legislative process. The wording of this section ought to consider that individuals not only have the democratic right to express their opinion, petition and campaign for change, but these also have the right to inform, to maintain the status-quo and to provide factual groundings. Individuals engaging with a politicians as a constituent and representing themselves in a personal capacity should not be considered lobbyists.

+ Legal regulation of lobbyist must, however, resist the mistake of exempting individuals (please see our comments on Scope (B.)) and several specific-types of lobbyists. Law firms, management consultancies, trade unions, think tanks and charities all lobby and there should be a level playing field of disclosure and ethics.

**Transparency (D.)**

+ We agree that the information on lobbying activities should be disclosed to promote transparency and public confidence in political institutions and the wider lobbying community. From our experience of running the UK's voluntary lobbying register, it is clear that the lobbying community is committed to transparency.

- Whilst we broadly agree with the comments that the rules on disclosure should be proportionate, we believe that proportionality "to the importance of subject matter of the public decision-making process" risks creating a two-tier system of lobbying, whereby one area of lobbying is deemed important enough to be registerable whilst another area is not. In this context it is quite possible that charity lobbying and voluntary lobbying could be excluded from the register. Therefore, clause 6 should be removed to avoid confusion among lobbyists and the authorities enforcing legislation.

- On the unintended consequences of making "the importance of subject matter" part of the decision making process when it comes to lobbying transparency, this opens up a range of issues. For example: will it be judged by number of organisations or people lobbying on a matter? Will it be judged by central government spend on that issue? Ultimately whatever metric used would also need to be published in the interest of transparency and raises another issue in that it would suggest a government is concerned about certain subject matters but far less concerned in others.

**Public registers of lobbyists (E.)**

- We strongly agree that a register of lobbyists should be maintained as a means to promote transparency and strengthen democracy. The PRCA has a long standing commitment to supporting statutory registers and we believe that all those conducting lobbying in member states should be captured by a statutory register. In the interest of transparency and democracy, we agree that the register should also be easily accessible to the public and should be user-friendly.

- A register of lobbyists should be maintained by public authorities, however, it must be maintained by a Registrar independent of politicians, policymakers, civil servants and those who would appear on the Register to avoid conflicts of interest. For example, the Register of Consultant Lobbyists in the UK is maintained by an independent official who is responsible for enforcing the legislation and maintaining the register. From our experience of engaging with the Office of the Registrar of Consultant Lobbyists (ORCL) and representing members who lobby, this is the only way to ensure public confidence. Members should be minded that, ultimately, the onus cannot sit solely with those who are lobbying: it has to be understood that political institutions themselves have a vital role to play with disclosure from their side (such as ministerial diaries).

- Whilst we agree that the information held on the register should be of a declaratory character we stress that the responsibility to ensure accuracy on the register should not solely lie with lobbyists. This risks unnecessarily burdening the industry and negatively affects the industry's reputation. It is clear that the public authorities maintaining the register also have a responsibility to ensure accuracy on the register and that lobbyists should not be faulted for a mistake made by these authorities. We also believe that public officials should declare their meetings through diaries. This would complement a statutory register ensuring the utmost transparency.

- We largely agree with the amount of information required from registrants. We believe that the information disclosed on the register should aid transparency but should not be overly burdensome on registrants. However, requiring registrants to include additional information on the register will not significantly improve transparency and will impose unnecessary burdens on registrants and the wider lobbying industry.

- We believe clause 13 should be removed as it risks contradicting the principles of the draft recommendations and will ultimately hinder transparency. Taking the example of Register of Consultant Lobbyists in the UK, it is an "alternative mechanism" which "guarantees public access to information on lobbying activities" therefore it could satisfy the requirement for a public register. However, the Register of Consultant Lobbyists in the UK does not cover in-house lobbyists therefore it undermines the principles of the draft recommendations in question.

**Standards on ethical behaviour for lobbyists (F.)**

- We support the development of ethical and professional guidance for lobbyists. The PRCA requires all its members to sign up to the PRCA Code of Conduct which contain various points relating specifically to lobbying, some of which require members to comply with the Bribery Act 2010 and act with honesty towards the institutions of Government.

- We believe that a clause should be added which allows public authorities to recognise alternative codes of conduct such as our own code of conduct. As an example, the Register of Consultant Lobbyists in the UK recognises the PRCA's code of conduct and other industry approved codes of conduct. An advantage of our industry code is flexibility; we can change and review the PRCA Code of Conduct to reflect the changing political environment or emerging techniques relatively quickly.

**Sanctions (G.)**

- To reiterate our response to the Consultation on Lobbying Transparency, Inquiry into Lobbying and the Lobbying (Scotland) Bill: for a register of lobbying to be credible, it should have statutory powers in place to penalise organisations for non-compliance. The system of sanctions in the Companies Act 2006, for instance, include the proportionate approach that small offences should face a warning notification prior to any civil penalties.

- In our experience running the industry's voluntary Public Affairs Register, errors are promptly corrected once highlighted and subsequently not repeated. We do not foresee that registrants from our industry would make anything other than non-purposeful administrative errors, especially given the industry's commitment to greater transparency. The PRCA and other bodies have their own abilities to enforce our codes, included (but not limited to) terminating memberships and public admonishing.

- We support a broadly "educative" and "light-touch" approach: whether, however, a register can be deemed either of these depends as much on the amount of information required by registrants and the definitions used as it does on positive intentions.

**Standards on ethical behaviour for public officials (H.)**

- We agree that guidance should be issued to public officials on how to conduct their relations with lobbyists. However, the guidance as it currently stands does not distribute the burden for improving transparency to the public officials conducting meetings with lobbyists. As mentioned

earlier, a proposal like this would place the obligation for disclosing lobbying activity solely on the lobbyist. We believe that both lobbyists and public officials should be held to the same standard and be expected to behave in a similar ethical manner. For example, public officials who are engaging with lobbyists should also be required "honestly and in good faith".

+ Public officials benefit – whether in government or not – from the expertise lobbying brings to the decision-making process and that realisation should properly influence this process: the onus cannot solely lie with lobbyists. Reiterating issues with trust and democracy, complying publically with a register of lobbying would go some way to restoring trust in political institutions.

+ The prospect of a "cooling-off" period sounds perfectly reasonable, however these recommendations should establish a specific time period. In the UK the "cooling-off period" is two years.

**Oversight, advice and awareness (I.)**

+ We agree that the oversight of the regulation of lobbying activities should be entrusted to designated independent public authorities. It is important that these authorities provide lobbyists with guidance on their lobbying activities. From our experience of engaging with ORCL, we have found that a light-touch and educative approach has worked to ensure compliance with the legislation. Additionally, in our experience of running the industry's voluntary Public Affairs Register, we have found that errors are immediately corrected once highlighted and subsequently not repeated.

+ In terms of awareness, members must ensure that the independent register of lobbying has the appropriate staff level and funding to allow it to properly promote lobbying and engagement with the democratic process.

**Review (J.)**

+ We agree that the framework for the legal regulation of lobbying activities should be under review to ensure the regulation is relevant and up to date. However, these recommendations should establish a reasonable timescale for a review. In the Lobbying (Scotland) Bill, the Scottish Parliament is required by the legislation to review the Act within two years of its implementation. We believe that this a reasonable timescale for a review period and should be added to the draft recommendations.