

Transparency of lobbying: The example of the Irish Lobby Register

SUMMARY

On 11 March 2015, Ireland's Regulation of Lobbying Act 2015 was signed into law by President Michael D. Higgins. The Act provides for, inter alia, the establishment of a mandatory register of lobbyists and lays out its rules. The Irish Lobby Register was only the sixth fully mandatory lobby register among the EU Member States, and attracted widespread attention due to its comprehensive scope. The drive to develop the legislation was strengthened by a number of public scandals in the country.

The Irish Lobby Register presents an example which other Member States could follow, and might also be a source of inspiration for an EU system in transition. Its mandatory nature allows for a stricter approach, with investigations and sanctions available for non-compliance. Strict definitions enumerate those who fall under its scope, unlike the EU's all-encompassing activity-based definition of interest representation. While financial information is not requested of registrants under the Irish system, returns are required three times a year and provide greater detail on all instances of lobbying activity carried out. Its scope is both broad and ambitious.

As with any new legislation, the effectiveness of the new Irish system can only be measured in practice. The register has met with a positive start, registering a high uptake. A critical period is approaching, with the legislation to be reviewed in September 2016, one year after its commencement. The powers of investigation and sanctions under the Act will also come into force simultaneously.



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Background

The transparency of lobbying activity is increasingly seen as an issue of public importance. As the EU approach continues to develop, Member States show a high degree of fragmentation in their own systems. Some Member States have no lobby registers in place, while others have voluntary schemes, and a few have opted for fully mandatory transparency registers. Ireland was the latest country to take action on this front, introducing a fully mandatory register for lobbyists.

On 11 March 2015, the [Regulation of Lobbying Act 2015](#) (The Lobbying Act) was signed into Irish law by President Michael D. Higgins. The Register for Lobbyists set up under the legislation has been in force since September 2015, following an initial trial period. Its adoption represented the end of a long and complex process in Ireland. The drive for a lobby register was ignited by several high-profile political corruption scandals in the 1990s. These scandals led to the establishment of a series of public tribunals of inquiry investigating allegations of corrupt payments to politicians.

One of the most high profile of such tribunals, the [Mahon Tribunal](#), highlighted concerns that private interests weighed more strongly in some decisions than the wider public interest, and recommended in its conclusions, inter alia, the creation of a new register of lobbyists. The push for reform was further strengthened by the financial crisis and the resulting public perception that a close-knit and opaque relationship between regulators and bankers had played a key role in precipitating the crisis. It was against this background that the Lobbying Act was developed and subsequently signed into law.

The Regulation of Lobbying Act 2015

According to the Irish legislation, lobbying activity is being carried out when a 'lobbyist' within the scope of the Act communicates with one of 'the lobbied' (a designated public official) about a relevant matter. The Lobbying Act defines all these elements strictly and further sets out the types of communication that are covered by the Act as well as a number of exceptions to its application.

(i) A lobbyist

A lobbyist is defined by the Lobbying Act as being:

- An **employer** with more than 10 employees, where the communications are made on their behalf,
- A **representative body** with at least one employee communicating on behalf of its members, and the communication is done by a paid employee or office-holder of the body,
- An **advocacy body** with at least one employee that exists primarily to take up particular issues, and a paid employee or office-holder of the body is communicating on such issues,
- A **third party** being paid to communicate on behalf of a client who fits into one of the preceding three categories,
- Any **person** communicating about the [development or zoning of land](#).

(ii) The lobbied

Those who are lobbied are known as Designated Public Officials (DPOs), and they are set out explicitly in the Lobbying Act. They are: Ministers and Ministers of State; Members of *Dáil Éireann* and *Seanad Éireann* (the Irish Houses of Parliament); Members of the European Parliament for Irish constituencies; Members of local authorities; Special advisers to Ministers and Ministers of State who have been appointed under section 11

of the Public Service Management Act 1997; Public servants as prescribed;¹ Other categories of persons as prescribed. Each public body with DPOs is expected to provide a list of them on their website. The [links](#) to these lists may be accessed through the Irish Lobby Register website.

(iii) A relevant matter

A relevant matter is one which relates to the initiation, development or modification of any public policy or of any public programme, the preparation or amendment of any law or the award of any grant, loan, contract, or any licence or other authorisation involving public funds. The Lobbying Act, however, does not apply to communications relating to the implementation of any such policy, programme, enactment or award or any matter of a technical nature only.

(iv) A relevant communication

A relevant communication is one that is made in writing or orally, is made personally (directly or indirectly), is made to a designated public official, is related to a relevant matter and is not an exempted communication. The Act makes no distinction regarding who initiates a relevant communication. If a designated public official contacts a lobbyist within the scope of the Act, and that person makes a relevant communication, it must be registered regardless of who initiated the conversation.

The Lobbying Act also makes no distinction regarding the method, venue or formality of communications. Therefore, a formal business meeting and a casual social encounter may equally be classed as lobbying activity if all the other elements are present. Texts or emails may count as lobbying, as indeed might the use of social media in certain cases.

(v) Excepted communications

The Lobbying Act sets out numerous exceptions to its remit, and communications relating to such matters are not to be considered as lobbying.²

(vi) Summary

Under the Irish legislation a person is lobbying if:

1. They meet the definition of a lobbyist;
2. The person being lobbied is a Designated Public Official (DPO);
3. They are making relevant communications;
4. The communications are about a relevant matter;
5. Those communications do not fall under any of the excepted communications.

Practical application of the Act

When all of the above conditions are met, the organisation must register as a lobbyist. This process is done on the Register of Lobbying [website](#). During this initial registration an organisation is obliged to provide only basic details such as the organisation's name, business address and contact details, its main business activities, and, if applicable, the Company Registration Office number or charitable registration number. However, once registered, the lobbyist then has to make returns three times a year (in September, January and May) in respect of the preceding four-month period.³ These returns must include information on each instance of lobbying activity carried out. However, all activities in support of the same subject matter are grouped into one single return. Separate returns should therefore be made for each subject matter, including all related emails, phone calls, meetings, etc.

With regard to the specific information requested, lobby returns must indicate the public policy area in relation to which the lobbying was carried out (e.g. health), the relevant matter (e.g. legislation), specific details (e.g. Public Health (Alcohol) Bill) and the intended results (e.g. changes to policy on measures relating to duty free and travel retail). It is then required to indicate the name of the lobbyist, and whether any DPOs or former DPOs were involved in the lobbying activity. If the lobbying was carried out on behalf of a client this must be specified, along with details of the client. Furthermore, if a 'grassroots campaign' has been initiated this must be indicated. Lastly, in relation to the lobbying activity itself, it is necessary to disclose what form this took (e.g. a telephone call or a letter) and the DPOs targeted by such activity.⁴ All declarations are available for inspection by the public at www.lobbying.ie. When returns are not made, or misleading or inaccurate information is purposely provided, registrants may be sanctioned. The Standards Commission also has the power to carry out investigations if they reasonably believe that a person may have committed or may be committing a contravention of the Act.

Territorial application of the Act

The Lobbying Act applies to lobbying activities which take place within the Irish state. This is the case whether a lobbyist is based in Ireland or abroad. Therefore, foreign lobbyists who carry out lobbying activity aimed at Irish officials within the Irish state should not assume that their activities are exempt from the Act. An area of particular debate has been the question of whether the provisions of the Lobbying Act apply to lobbying of DPOs which takes place outside the Irish state. The Lobbying Act and its supporting statutory instruments explicitly identify Irish Members of the European Parliament and senior civil servants, including some in positions based abroad, as DPOs. Furthermore, the Lobbying Act makes no distinction regarding where communications take place. While it is recognised that extra-territorial enforcement might be difficult, all those lobbying Irish DPOs outside the Irish state are nonetheless encouraged to comply with the spirit of the legislation.⁵

Comparison of the EU Transparency Register and the Irish Lobby Register

| Parameter | EU Transparency Register | Irish Lobby Register |
|--------------------------|--|---|
| Legal basis | The EU register is based on an Inter-institutional Agreement (IIA) between the European Parliament and the European Commission. The IIA sets out the rules and principles of the EU system and includes a code of conduct which lobbyists agree to respect on signing up. | The Irish Lobby Register is a fully mandatory register, based on the Regulation of Lobbying Act 2015. |
| Scope of register | Covers all activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions, irrespective of where they are undertaken and of the channel or medium of communication used. The EU system therefore uses an activity-based definition and covers all organisations and self-employed individuals engaged in activities covered by the register, irrespective of their legal status. | In contrast to the EU's activity-based definition, the Lobbying Act explicitly defines those who may be considered lobbyists under the Act. It applies to commercial organisations with more than 10 full-time employees, representative bodies and advocacy bodies with at least one full-time employee and professionals engaged in lobbying on behalf of a client who fits within the other criteria. Any communication relating to the development or zoning of land is also covered. |

| Parameter | EU Transparency Register | Irish Lobby Register |
|--|--|--|
| Exemptions | Contains exceptions, namely for individual citizens, legal and professional advice, activities of the social partners as participants in the social dialogue, requests emanating from the institutions for factual information, data or expertise, churches and religious communities without Brussels representation, political parties, Member State or third countries' governments, international intergovernmental organisations and their diplomatic missions. | Exemptions exist for communications relating to: private affairs, principal private residences, diplomatic affairs, dialogue between public officials, strictly factual information, trade union negotiations, threats to life or safety, security of the state, shareholders of state bodies, proceedings of a committee of either House of the Oireachtas, information requested and published by public bodies, groups established by a public body where the Transparency Code ⁶ applies. |
| Mandatory/voluntary | The EU Transparency Register is a voluntary system of registration for entities seeking to directly or indirectly influence the EU decision-making process. It is, therefore, not illegal to lobby the EU institutions without registering. | The Irish Lobby Register is fully mandatory. Lobbyists falling within the definition of the Act are legally obliged to sign up and may face sanctions for failure to do so. |
| Elements disclosed | Name, address and contact information, legal status, person with legal responsibility, person in charge of EU relations, goals/remit, specific activities which are covered by the register, number of persons involved in activities covered by the register, participation in EU structures and platforms, persons with accreditation to the European Parliament, fields of interest, membership & member organisations, financial year, estimate of costs related to activities covered by the Register, funding received from the EU. Section 1 registrants must also provide information about clients and relevant turnover; sections 3-6 must provide information about the budget and breakdown. | In relation to the organisation: name, address, contact information, company registration number or charitable registration number. In returns relating to each lobbying activity: relevant matter, public policy area, specific details, intended results of lobbying, name of lobbyists, designated public officials (DPOs) or former DPOs involved in lobbying activity, grassroots campaigns managed, client information, specific lobbying activities, DPOs lobbied. |
| Code of Conduct | The IIA contains a code of conduct which interest representatives agree to respect on signing up and governs their relations with the EU institutions. | The Lobbying Act provides that the Standards Commission may produce, and from time to time revise, a code of conduct for persons carrying on lobbying activities with a view to promoting high professional standards and good practice. However, no such code has been developed to date. |
| Privileges linked to registration | The European Commission and European Parliament have introduced various incentives in order to promote registration. On Parliament's side, registrants may apply for accreditation allowing them access to Parliament premises and may be invited as speakers at committee's public hearings. The Commission has also introduced incentives, which since November 2014, include meetings with European Commissioners or members of their cabinet | As registration on the Irish register is mandatory, no benefits have been introduced in order to promote registration. |

| Parameter | EU Transparency Register | Irish Lobby Register |
|--|---|---|
| | only being offered to those who have registered. Further incentives have been introduced such as those sitting on expert groups being required to register prior to doing so, and the possibility to receive notifications about public consultations or roadmaps on topics of interest. | |
| Administration and enforcement | The EU Transparency Register is run by the Joint Transparency Register Secretariat (JTRS). The JTRS is staffed by officials from the Commission and Parliament and operates under the coordination of the Head of Unit of the Transparency Unit in the Secretariat-General of the European Commission. | While the Department of Public Expenditure and Reform is responsible for developing the legislation and regulations which dictate policy, the Standards in Public Office Commission implements the rules and manages the online register. The Standards in Public Office Commission is an independent public body with six members (four ex-officio), and is chaired by a former Judge of the High Court. ⁷ The Office of the Ombudsman provides the Secretariat for the Standards Commission. |
| Sanctions | As the EU regime is based on an IIA, it cannot legally oblige third parties to sign up and sanction them for failure to do so. However, in the case of inappropriate behaviour and non-compliance with the code of conduct, the JTRS may impose certain limited sanctions. For less serious breaches this can include removal from the register and thereby a removal of access to the incentives linked to registration. While a registrant can subsequently re-register if the grounds leading to removal have been remedied, a more egregious breach may entail a suspension from the register for 1-2 years. In the most serious instance, the JTRS can decide to name and shame the organisation by publishing the decision on the register's website. | The Lobbying Act sets out numerous sanctions in case of its contravention. In the case of a late return, the Standards Commission may in the first instance serve a 'fixed payment notice' on the person. The fixed payment is €200 and if paid before a specified date no prosecution in respect of the offence shall be initiated against the person. However, failure to comply may inflate this amount up to a fine of €2 500. Furthermore, a person who commits a relevant contravention of the act in any other way is guilty of an offence and liable to: (a) on summary conviction to a fine of up to €2 500, or (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or both. However, it is important to note that the Registrar's powers of sanction only come into force in late 2016. |
| Rules on Updating | Registrants are obliged to do an annual update and can also be requested to update at any moment by the Secretariat. Registrants can be suspended and eventually removed from the register for failure to do so. While not mandatory, an update of the registration three times a year is recommended practice. | Returns must be made three times a year (in September, January and May) in respect of the preceding four-month period. If no lobbying activity has been carried out a nil return must be submitted. |
| Number of registrants (as of June 2016) | 9 443 | 1 338 |
| Fees | None | None |

Conclusion

The Irish Lobby Register differs in many key ways to the EU Transparency Register. Several of these differences emanate from the mandatory nature of the Irish register. For example, its basis in legislation makes it illegal for lobbyists who fall under its remit not to register, and makes it possible to sanction those who fail to do so. The wide-ranging investigative powers⁸ under the act – including the ability to request documents and search premises – are also novel features. This strict approach differs from the EU system. As registration on the EU Transparency Register is voluntary, the institutions have instead taken the approach of introducing incentives and conditionalities in order to boost registration. The voluntary approach includes a catch-all activity-based definition of lobbying activities. Returns under the Irish legislation are more regular but lack the financial information contained in those made under the EU system. It is also of note that the Irish register is managed by an independent public body, while the EU Transparency Register is managed by an internal joint secretariat between the EU Commission and Parliament.

In looking to the future, change may be on the horizon for both systems. The EU is moving [towards a mandatory register](#) which is expected to be based on an IIA between the European Parliament, the European Commission and the Council. The Commission recently completed a [public consultation](#) on the matter and a proposal is expected later this year. However, the use of an IIA, rather than a regulation or a directive, will mean that third parties (interest representatives) will not be legally obliged to sign up to the EU register as they are under the Irish system. It is, however, thought that an IIA between the EU institutions will create a de-facto mandatory regime through the use of further incentives and by obliging the institutions to adhere to internal rules on lobbying contacts.

As with any new legislation the success of the Irish register will be proved in its implementation. Its start has been promising. As of June 2016 there are over 1 300 registrants and over 4 500 lobbying returns had been made. The first [Annual Report](#) in regard to the Lobbying Act was published on 28 June 2016, and noted a largely positive response among those obliged to register. The register is entering a critical period as a review will be carried out before the end of 2016 by the Minister for Public Expenditure and Reform. The Minister must report back to both houses of the Oireachtas, including any recommendations for amendments, within six months of the commencement of the review. The sanctions and investigatory powers set out in the legislation will also come into force before the end of 2016.

Main references

[‘EU Transparency Register’](#), Briefing, Bauer E and Thiel M, European Parliamentary Research Service, April 2016.

[‘Annual Report 2015 In regard to the Regulation of Lobbying Act 2015’](#), Annual Report, Standards in Public Office Commission, June 2016.

[‘Transparency of lobbying at EU Level’](#), Briefing, Sgueo G, European Parliamentary Research Service, December 2015.

Endnotes

¹ [The Regulation of Lobbying Act 2015 \(Designated Public Officials\) Regulations](#) 2015 details the public servants to whom the status of DPO must be applied.

² See comparison table for the specific exemptions.

³ If no lobbying activity has been carried out a nil return must be submitted for the period.

⁴ DPOs may seek correction of any inaccurate information, and the register has a reporting function built in to enable this. DPOs can also register for an RSS (Really Simple Syndication) feed to receive updates whenever they are named in a return.

⁵ See: <https://www.lobbying.ie/help-resources/frequently-asked-questions/>.

⁶ In light of the different nature of engagement between public officials and non-public officials in certain forums such as task forces and working groups, the Act does not seek to capture and register interactions within these groups as lobbying communications, where appropriate transparency arrangements are in place. The Transparency Code outlines the groups to which these arrangements apply and the transparency arrangements themselves.

⁷ The members of the Standards Commission are: the Comptroller and Auditor General, the Ombudsman, the Clerks of Dáil Éireann and Seanad Éireann *ex officio*, as well as a former member of Dáil Éireann or Seanad Éireann, and a former judge of the High Court or Supreme Court of Ireland.

⁸ Section 19 of the [Regulation of Lobbying Act](#) provides the Standards Commission with the authority to conduct investigations into possible contraventions of the Act.

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