LOBBYING AND DEMOCRACY
REPRESENTING INTERESTS IN ITALY
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EXECUTIVE SUMMARY

Lobbying, defined as the attempt by organised groups or their representatives to influence public decisions, is both omnipresent and opaque in Italy. Everybody knows that lobbying is happening. Yet it is very difficult to say who is lobbying whom, through which means and to what end.

The lack of transparency around how decisions are made and who influences the decision-making process has led to a large share of the public equating “lobbying” with “corruption”. The public see the profession of lobbying as an attempt by influential and resourceful actors, such as from the pharmaceutical, banking or financial sectors, to gain political power.

The media has not helped in building a more positive image since lobbyists are often compared to wheeler-dealers or freemasons. On top of this, the topic of lobbying is mostly featured in scandal-related articles.

The report *Lobbying and democracy: Representing interests in Italy* closely examines the lobbying landscape in Italy. It assesses the extent to which ordinary people have access to information about who is influencing public decisions (transparency), whether ethical conduct of lobbyists and those being lobbied is upheld (integrity), and whether there is sufficient space in the decision-making system to allow for a diversity of voices and input (equality of access). Results confirm the need to act to improve the situation of the lobbying sector. The level of transparency scores only 11%, while integrity scores 27% and equality of access 22%. The overall score, which shows how safeguarded Italy is from undue influence and risky lobbying practices, is 20% – one of the lowest in Europe.

The report also presents case studies to highlight both negative and positive examples of lobbying practices. The negative examples concern practices in the gambling and taxi-driving sectors. A positive example was found, perhaps surprisingly, in the pharmaceutical sector.

The very low level of public awareness of what lobbying really is and what lobbyists actually do is due to several factors. It has been clearly pointed out by Gianluca Sgueo¹ that politicians, academia, civil society and even lobbyists themselves have repeatedly failed in terms of regulating the phenomenon. Likewise, they have fallen short of developing a sound debate on lobbying. These limitations have contributed to the detriment of lobbying overall.

In fact, 70% of Italians believe that their government is entirely or to a large extent run by a few big entities acting in their own best interests, according to Transparency International’s *Global Corruption Barometer 2013*. Who are these “few big entities” that influence the decision-making process? In Italy it is not possible to clearly identify them. Even though nearly 50 draft laws on lobbying have been presented to parliament since the start of the Republic in 1946, no legislative regulation has been passed. This vacuum in legislation has been partly offset by weak regional legislative initiatives and regulation of lobbying-related issues (e.g. trading in influence, access to information and political financing).

In the absence of specific lobbying regulation or even a register of lobbyists, the phenomenon takes place informally and behind closed doors. The cultural and socio-political context has contributed to

the development of the practice of ad personam lobbying. This is based on social and personal relations, rather than procedure, content and persuasive communication. Such lobbying practice can be traced back to the fact that, for a long time, representation of interests was possible only through affiliation with political parties, trade associations and labour unions. An “old style version” of this kind of lobbying came clearly to the fore during the recent Expo 2015 scandal. The scandal involves a “group of interests” made up of former politicians and mediators. They are being accused of having relied on contacts and networks built in the past to create informal connections between companies and public officials working in the Expo 2015 procurement area.

Today “traditional” categories of lobbyists, such as the big industry and professional associations are still among the most influential representatives of interests. In the last few years, however, new professional lobbyists and lobbying firms and associations have emerged – and it is these new lobbyists who have tried to implement self-regulation, such as adhering to internal codes of ethics.

In the rare cases when an attempt to introduce a register was made (at regional level and at the Ministry of Agriculture) the voluntary basis of this tool hampered its effectiveness. Hence, no reporting requirements and public disclosure of relevant information were settled. The same goes for public sector representatives who are not required to disclose information on their contacts with stakeholders. In particular, information remains opaque in the very early stages of the legislative process when the law is in a draft version. Likewise, when the law passes through the Parliamentary Commissions, there is no track record of the procedures.

Many gaps also exist in the ethical infrastructure which should promote responsible lobbying, both among lobbyists and lobbying targets. While ethical guidelines do exist for public sector employees, they are not deemed to be satisfactory. They also do not sufficiently cover lobbying-related issues. Concerning lobbyists’ self-regulatory codes of ethics, the problem lies in their reach. For instance, even if there are good examples of codes of ethics applying to lobbyists, only a very small share of them actually endorse these guidelines.

Finally, equal participation in decision-making is not properly enforced. Aspects of discretion remain despite equal participation having been enabled to a certain extent through consultations and working groups.

This report also considers what role investigative journalism and civil society play in Italy. While investigative journalism is constrained by a lack of resources and the widespread use of libel suits, civil society initiatives are also limited. Overall, this project aims to make a contribution to boost investigative journalism and civil society. After all, an engaged citizenship that acts as a watch-dog can make a difference. It can shine a light on the dark corners of institutions, illuminating opaque lobbying practices in order to change them.
RECOMMENDATIONS

Considering the issues highlighted so far and the fact that lobbying regulation is a stated priority of the new government, we strongly support legislative and regulatory action. In particular we recommend:

1. The government must introduce a public register of lobbyists, entrusted to a super partes authority (e.g. the Anticorruption Authority, the Counsel Presidency or the High School of Public Administration). It should be compulsory and provide transparency and reporting requirements.

2. The legislative process must be publicly disclosed. In particular, these phases should be made public: when a law is being drafted and when it passes through the Parliamentary Commissions.

3. MPs must be obliged to publish details of meetings with interest groups and all access to Parliament and Ministries must be registered and made public.

4. A new Freedom of Information Act should be introduced that guarantees access to any documents and products of the public administration, including lobbying data.

5. The issue of revolving doors should be regulated through the introduction of cooling-off periods. This should be applied to members of parliament, members of the government and senior public officials. The regulations should ensure that the above-mentioned parties are forbidden from lobbying the institution they have been working in, for a certain period of time after they leave office.

We also address lobbying actors directly because we think they can have a key role in enhancing transparency and integrity in the sector. Thus, we recommend the following:

6. The associations of lobbyists must develop and adopt national conduct guidelines for all lobbyists.

7. Finally, we call for the promotion and major protection in the law of investigative journalism. This would enable a more comprehensive and unbiased understanding of the phenomenon.
INTRODUCTION

Transparency International’s European National Integrity System regional report *Money, Power and Politics* (2012) found that in most European countries, the influence of lobbyists is shrouded in secrecy and is a major cause for concern. In the Italian report, the lack of regulation in the lobbying sector was underlined. This was noted as having a negative impact on the level of integrity within the parliament as well as the level of transparency and integrity of political parties. When undertaken with integrity and transparency, lobbying is a legitimate avenue for interest groups to be involved in the decisions that may affect them. Yet problems arise when lobbying is non-transparent and unregulated. With these conditions, privileged access may be granted to a select few while others are excluded from decision-making processes. Corporate lobbying, in particular, raises concerns because it often involves companies with vast sums of money at their disposal. Companies develop close relationships with lawmakers, enabling them to gain undue and unfair influence in a country’s politics and policies.

A recent Eurobarometer report revealed that 81% of Europeans agree that overly close links between business and politics in their country has led to corruption. In addition, more than half believe that the only way to succeed in business in their country is through political connections. This corroborates the data from TI’s *Global Corruption Barometer* 2013, which found that in many European countries, more than 50% of people believe that their country’s government is to a large extent or entirely run by a few big interests.

Therefore, a need to focus on the lobbying sector has emerged. The sector needs to be analysed to identify loopholes as well as possible improvements and reforms. This report is part of a regional project involving the assessment of lobbying regulations and practices in 19 European countries.

This report begins by mapping the lobbying landscape in Italy. It gives a contextual analysis of the national historical, socio-political and legal situation with regard to lobbying. The first section also discusses the intensity and scale of lobbying efforts. On top of this, it considers the various cultural understandings of the term ‘lobbying’ and perceptions of lobbying practices in the country. Further relevant issues such as self-regulation of lobbying activities, as well as the role of the media and civil society as watchdogs in monitoring and reporting on lobbying activities, are also discussed.

The following section of the report uses a series of 65 assessment questions to evaluate the degree to which national regulation (public law and private self-regulation) adequately provides for the transparency of lobbying activities and public decision-making. It also discusses ethical lobbying and conduct by public officials. Moreover, the section considers the equality of access to public decision-making processes.

5 The participating countries are Austria, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, and the United Kingdom.
6 See Annex 1 for more details on the methodology and research approach used in this study.
The report is enhanced by some factual examples of positive and negative practices of lobbying in the country. Since the lobbying process is not publicly reported, cases were elaborated using experts' input and media sources.

Finally, all collected information has allowed us to draw eight recommendations for decision makers and interest representatives in the public and private sectors. These recommendations will be actively promoted in the advocacy phase, following publication of this report.
A Parliamentary Republic with a bicameral system

Italy is a parliamentary republic made up of two chambers (the Senate and the House of Representatives). It is a bicameral system with the two chambers having similar powers and competences. Parliament has legislative power and elects the President of the Republic and can approve the appointment of the Prime Minister.

For several years, a heated political debate regarding reform of the constitutional structure of the state has been underway. Specifically, the removal or at least a strong reduction of powers of the Senate is at the core of the debate. There are good chances for reform to limit the parliamentary body’s powers.

Italy is still a unitary state with the administrative level divided up into 20 regions. The regional administrations’ power and jurisdiction have been increasing over the years. In particular, there was a relevant constitutional reform in 2001. As a result, the Constitution now provides a list of competences up to the state with a “general and residual” competence up to the regions.7

Lobbying control: many attempts but still no regulation

Despite more than 50 bills having been introduced to parliament since 1945, Italy still does not have a specific, standalone regulation of lobbying activities. The debate over the legitimacy of lobbying in the Italian framework has been ruled on by the Italian Supreme Court (Corte di Cassazione), which has long confirmed the lawful existence of lobbies.8

Only a few bills were actually discussed in the parliamentary commissions and chambers. One of the most prominent bills (S.1866) was presented in 2007 by the former Prime Minister, Romano Prodi, along with Minister Giulio Santagata. The bill provided for a public register of lobbying representatives; a list of individuals who cannot be qualified as lobbyists. The bill also contained details of sanctions for subjects who perform lobbying activities without being registered. Nevertheless, the bill has not been approved by the chambers.

In May 2013, the government headed by Enrico Letta started working on a draft bill on lobbying. The project was abandoned, however, due to a lack of consensus within the government itself. One year later, lobbying regulation is among the key priorities of the reform plan issued by the present

7 Article 117, Constitution of the Italian Republic.
government headed by Matteo Renzi. Currently, nine draft bills have been presented to the Chambers. Six of these bills have been assigned to the relevant commissions but no examination has begun.

In the absence of a national law, some regions have adopted regional laws on lobbying. Lobbying activity is regulated in Tuscany, Molise and Abruzzo. Other regions (Emilia-Romagna, Calabria and Veneto) tried to regulate lobbying but they were unsuccessful.

Implemented laws are shaped according to the European Transparency Registry, and are therefore focused on transparency and participation. They provide for a register; a list of permitted lobbying tools and specific sanctions. Tuscany has been the pioneer since 2002, although the regional regulation does not provide a specific definition of lobbyists. Moreover, the Tuscan registry has a limited application; it only applies to organisations where the internal structure is based on democratic principles. This results in the exclusion of most companies and consulting agencies. In August 2014, there were 129 registered entities. The majority were social and third sector associations, non-governmental organisations, local trade unions, foundations and research institutes. Moreover, the registry is provided to the council but not the board of the region which holds the executive power. The law of the Molise region resembles the Tuscan law, and has the same limitations. In addition, there is no trace of the Molise registry on the official regional administration website.

In 2010, the Abruzzo region drafted a more advanced law since it provides a specific definition of a lobby group. It also allows lobbyists to access both the council and the board of the region. It became effective at the end of 2012. Its implementation has been slow, however, as testified by the fact that only six entities are currently registered, while in Tuscany, for instance, 130 groups of interest are registered.

Another lobbying registry initiative was developed by the Ministry of Agriculture, Food and Forestry. In 2012, Minister Mario Catania, issued a ministerial decree to regulate the participation of interest groups in the decision process of the Ministry. The decree, which is inspired by the standards of the European Union, has two basic elements: the adoption of a register of lobbyists and a permanent procedure of consultation. According to the decree, lobbyists who want to participate in the consultations, submit documents or proposals, are required to enrol in a public register. At the end of the “online” consultations which last at least 20 days, officials of the Ministry report information about the participants and the way the consultations were held. The decree also establishes a transparency unit for carrying out the task of managing the registration process. The transparency unit also ensures the general transparency of the decision-making process of the Ministry. Moreover, the transparency unit is tasked with coordinating activities related to the implementation of the Analysis of the Impact of Regulation (AIR). For the purposes of the decree, lobbyists are defined as those who professionally represent legitimate interests in order to influence the decision-making process.

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10 Namely they are C.2196 (Marazziti), S.1191 (Milo and others), S.806 (D’Ambrosio Lettieri), C.1000 (Bruno), S.643 (Nencini and others), C.724 (Sereni and others), S.358 (Ranucci), S.281 (Marinello and others), C.188 (Pisicchio).
12 Maria Cristina Antonucci, Rappresentanza degli interessi oggi, Carocci editore, 2011
13 Ministerial Decree n. 2284 of February 9th, 2012.
14 Procedure established by Law 246/2005 and providing for preliminary assessment of the effects on citizens and firms of hypothesis of regulations or activities of public administrations.
The definition also includes natural or legal persons who represent the interests of non-profit organisations or whose principal activity is not constituted by economic interests. However, the list provided by the decree does not include the main associations of the agricultural sector because they did not want to be identified as lobbyists. The declaration of the President of Coldiretti (the main association of the sector) is clear: “the lobby is a form of pressure driven by self-interest and therefore should not have a place in the bargaining table with institutions. The Italian-style lobby has already done enough harm to the country that legitimacy is not possible anymore”.15 According to Francesco Macchia, lobbyists and member of the project’s Advisory Group,16 if the President of Coldiretti does not perceive himself to be a lobbyist, then it is unclear exactly what he understands himself to be. In this way, as far as the largest holders of special interests continue to disregard their profession, there is still much to be done. Despite this, the register of the Ministry of Agriculture represents an embryonic lobbying regulation. Whilst it is limited to a single public administration, it represents the first real act containing rights and obligations for interest representatives and the public administration. It has come after more than 40 years of proposed bills that never came to pass.

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**BOX 1**

**PROGRESS IN LOBBYING REGULATION**

*by Benedetto Proia*

International Relations Officer, Department of Public Administration

Even ordinary legislation provides examples of openness to forms of participation. For instance, Article 14 of Law no. 246/2005 on the Analysis of the Impact of Regulation (AIR) provides that the highest political authorities should carry out a preliminary analysis of all executive acts. The analysis should be done by comparing alternative options, in order to assess the potential effects on citizens, businesses and the functioning of the public administration. The law provides that the methods and results of consultations with interested parties are to be made public.

Surprisingly, the regulations of the Chamber of Deputies and the Senate contain provisions that govern the presence of interest holders in parliament. The regulations also administer the participation of interest holders in the legislative process. Article 144 of the Rules of the Chamber and Article 48 of the Rules of the Senate provide that all parliamentary committees may hold hearings with local representatives, private sector representatives, trade associations and other sector experts. The hearings are to acquire information and documents relevant to parliamentary activity. However, they are entirely discretionary and written reports on the activities do not exist.

Notably, the legislature has never been indifferent to the problem of lobbying. This is evidenced by the several bills that have been issued by both the parliament and the government since 1948, which show that the perception of lobbying has changed through the

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15 *Lobby: addio trasparenza al ministero dell’Agricoltura?* FORMICH.NET, 12th November 2013

16 Partner of the lobbyist agency Nomos – Parliamentary Studies Center and President of ISPE-Sanità and Licia Soncini, lobbyist at Nomos
legislatures. The first bills were characterised by a vision that identified lobbying as a major cause of corruption. Lobbying therefore needed to be regulated. Hence, a new phase was opened in 2007 by a bill of the Minister for the implementation of the Government Programme, Giulio Santagata. This bill marked a turning point in the attempts to regulate lobbying. In addition to introducing a definition of lobbying that came from a traditionally negative pattern, it included a system of rights and responsibilities for stakeholders. By following certain procedures, lobbyists could submit proposals, studies and documents. However, they would have to enrol in a special register and produce an annual report on their activities and budgets. Article 7 required lawmakers to record in the reports, the work done by lobbyists in order to make public the reasons for their choices. The passing of the bill recognised the lobbyists’ right to dialogue with the authorities.

The framework outlined so far is objectively disappointing, but we must also recognise that our system has some good practices. These practices represent a model to follow, even if they are not yet comprehensive enough to effectively tackle the problem.

Some regions have been particularly sensitive to this issue. However, data regarding the effective participation of stakeholders in the activities of regional councils is not significant. This may be because, with the exception of the Abruzzo region, the provisions only apply to the regional council and not the executive branch. However, it is important to emphasize the willingness by stakeholders to make public information about their organisation and their budgets.

At national level, the experience of the Ministry of Agriculture is the only example of public registry that is also recognised in the international arena.

This brief survey of provisions in terms of participation of stakeholders in decision-making shows that the debate is not free of contradictions. Despite this, in the last two years the government has begun a real change of direction and the Ministry of Agriculture has mapped a route that can be followed by other institutions. At the meeting of the Council of Ministers on May 24th, 2013, the former Prime Minister Enrico Letta appointed a group of experts to draw up a bill. He also gave the former Minister for European Affairs, Enzo Moavero Milanesi, the task of conducting a comparative analysis on the regulation of lobbying in European Union countries. However, the fall of the Letta government has stopped the discussion process on this government bill.

However, in his inaugural speech, the new Prime Minister, Matteo Renzi, signalled his intentions to continue the discussion over lobbying. He stressed the need to ensure participation and compliance with the maximum transparency in the decision-making process. This reassures those who support the recognition of lobbying activities. It also encourages those who ask to protect the public interest from the risk of corruption and conflicts of interest. Moreover, it bolsters the call to start the process of policy reforms needed to regain the citizens’ trust in institutions.

While lobbying itself is not centrally regulated, there are some related laws and regulations which are worth mentioning. These include access to information, political financing and trading in influence laws. In all of these areas, there has been progress but loopholes remain. Moreover, the broader legal environment does not fully support ethical lobbying.
Trading in influence

Italy has ratified the UNCAC\footnote{Ratification and execution of United Nations Convention Against Corruption with Law August 3\textsuperscript{rd}, 2009, n.116. The UNCAC was adopted by UN General Assembly on October 31\textsuperscript{st}, 2003 with Resolution n.58/4, signed by Italy on December 9\textsuperscript{th}, 2003, plus internal compliance provisions and amendments to criminal code and code of criminal procedure.} and the Council of Europe Criminal Law Convention on Corruption.\footnote{Ratification and execution of the Criminal Law Convention on Corruption (adopted in Strasbourg on January 27\textsuperscript{th}, 1999) with Law June 28\textsuperscript{th}, 2012, n.110.} According to these laws, a State Party should consider adopting legislative or other measures to regulate the crime of trading in influence.\footnote{Art.18 of the United Nations Convention Against Corruption and Art.12 of the Council of Europe Criminal Law Convention on Corruption.}

In Italy, the recent Anticorruption Law\footnote{Law November 6\textsuperscript{th}, 2012, n.90} provides for a sentence of up to three years. This can be given to those who act as intermediaries for public officials or persons appointed to an official duty, and who receive money for their illicit mediation.\footnote{Article 346-bis of the Criminal Code. “Anyone who,....taking advantage of an existing relationship with a public official or a person appointed to an official duty, improperly get or are promised, for themselves or others, money or other economic advantage in exchange of their illicit mediation towards the public official or the person appointed to an official duty or to compensate him for acts contrary to the official duties or omissions or delays, is punished with a detention from one to three years”}

Since the provision is quite recent, there are few prominent court cases that have been recorded. Those that have been, mainly concern bid rigging in public procurements, or requests of general favours from public officials for private interests.\footnote{Third Degree Penal Court: Sez. VI, 11 febbraio 2013 - dep. 12 marzo 2013 n. 11808, Colosimo; Sez. VI, 15 febbraio 2013 - dep. 18 aprile 2013 n. 17941, Anfuso; Sez. VI, 27 giugno 2013 - dep. 11 luglio 2013, n. 29789, Angeleri; Sez. X, 24 October 2013 - dep. 14 March 2014 n. 29180, Maldera.}

Trading in influence has never before been regulated in Italy. Currently, the delineation between licit and illicit mediation is not completely clear in the law, and it needs to be further specified by the criminal law.\footnote{Alessandro Amaolo, Traffico di influenze illecite, ALTALEX, 17th March 2014}

Access to Information: transparency on paper but not in practice

Regarding access to information, Law no. 241 (1990) on administrative proceedings, specifically regulates the rules on access to administrative documents. Under this law, access to information is granted to citizens who have a legitimate interest related to the request. In article 22, the interest requirement is defined as a direct, actual and present interest of the requestor, in the document being requested.

The Code of Digital Administration, introduced in 2005\footnote{With Legislative Decree March 7\textsuperscript{th}, 2005, n.82.} introduced the principle of available and open public data. This applies to administrations that are obliged to publish larger specific sets of data. In 2009,\footnote{With Legislative Decree October 27\textsuperscript{th}, 2009, n.150, implementation of Law March 4\textsuperscript{th}, 2009, n.15, on the optimisation of public work productivity and efficiency and transparency of public administrations.} further requirements of transparency were dictated to public administrations.

In 2013, the so-called “Transparency Decree”\footnote{Law November 6\textsuperscript{th}, 2012, n.90} changed the legal framework. It provided for the “total accessibility” by anyone to information regarding both the activities and the organisation of
public administrations. The decree states that accessibility of information is important “in order to promote major forms of control on public institutions activities and the use of public resources” (article 1). Article 5 on civic access introduces a protection tool against non-fulfilments by public administrations of publication duties. It provides that citizens can have general access to all documents for which a publicity duty is required under the same law.

Notwithstanding, some regulatory improvements are noted in the report, *The Silent State*, published by *Diritto di Sapere* in June 2013. The report rates freedom of information in Italy as being quite low. According to the field tests conducted for the report, only 27% of the requests to public bodies received positive feedback.

The new rules on transparency in place since March 2013 have improved the legal framework for access to information. In practice, however, the quality of access appears to remain a long way from the highest standards. This is particularly apparent when compared to countries that do benefit from a real freedom of information acts. These countries recognise access to information as a stand-alone civil right.

Noteworthy is that the present Prime Minister, Matteo Renzi, has declared his willingness to introduce a freedom of information act. However, no law proposals have yet been submitted.

**Is freedom of information in Italy satisfactory?**
Diritto di Sapere, 2013

![Graph showing 27% satisfactory and 73% not satisfactory]

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26 Legislative Decree March 14th, 2013, n.33, Reorganisation of provisions on duty of publicity, transparency and diffusion of information by the public administrations.

27 *Diritto di sapere* is an Italian not-for-profit organisation aiming at fostering citizens’ right to access information held by the State. [www.dirittodisapere.it](http://www.dirittodisapere.it)
Political Financing – regulating money flows in politics

When it comes to political financing, the Italian legal framework has provided for both public and private political financing since 1974.28 Under the existing regime, private contributions are uncapped but they need to be reported when they exceed 5,000 euros.29

Regarding public contributions, in the last 20 years Openopolis30 has reported that public financing of electoral campaigns amounted to nearly 2.7 billion euros. Yet the real expenses incurred by political parties were “just” around 700 million euros.

In early 2014, the House of Representatives introduced a law31 which will gradually abolish political financing from the State.32 Furthermore, from 2015, Italian citizens will be able to decide to allocate 0.2% of their income taxes to a political party of their choice.33

On the other hand, direct contributions from private citizens or legal persons will continue to be allowed.34 However, they will be capped at a maximum of 100,000 euros.35

Moreover, political parties are now required to publish data relating to donations and expenses on the official website of the Central Electoral Commission. Political parties must also now submit an audit of their financial statements.

This new regulation will have a significant impact on the accountability of political parties. It is expected to improve the capacity of civil society organisations to monitor the political financing process. In addition, relationships between political parties and foundations, which have always been complex and opaque, should become clearer if the new law is properly implemented.

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28 Before 1974 only public financing was permitted. Public funding was introduced through Law May 2nd 1974, n.195, State contribution to political parties financing.
29 The is set by article 11, paragraph 1 of Law July 6th, 2012, n.96 (Provisions on the reduction of public financing to parties and measures to guarantee transparency and budgetary controls. Mandate to the Government to adopt a unified text of laws concerning political financing and to uniform the fiscal deductions regime) which amends article 4, paragraph 3 of Law November 18th, 1981, n.659 (Amendments and integrations to Law May 2nd 1974, n.195 on State contributions to political parties financing).
30 Openpolis is an independent association founded in 2006 and jointly owned by hundreds of people. At Openpolis they develop and implement projects to enable free access to public information on political candidates, elected representatives, and legislative activity thus promoting transparency and the democratic participation of Italian citizens. www.openpolis.it
31 Law Decree 28th December 2013 n.149, Abolishment of direct public financing, provisions on parties transparency and democracy and rules on voluntary contributions and indirect contributions.
32 A reduction of 25% in 2014, of 50% in 2015, of 75% in 2016 until the final abolishment in 2017.
33 Maximum caps are stated: 7.75 million Euro in 2014, 9.6 million Euro in 2015, 27.7 million Euro in 2016 and 45.1 million Euro since 2017.
34 Fiscal deductions will be made on these donations.
35 Contributions to multiple parties can be made; the cap is 100,000 per party.
LOBBYING IN ITALY – SHADOW LOBBYING AND A CULTURE OF CRONYISM

Hunting for lobbyists – lack of data feeds speculation and bad press

It is difficult to have a sound estimate of lobbyists in Italy. This is because of the absence of a register as well as a clear definition of lobbying. It is generally believed that the bigger the role of the state, the higher the interest in interacting with the State. Considering the prominence of the state in Italy, interest groups should have a high incentive to interact with public institutions.

In Italy, however, the phenomenon largely takes place informally and behind closed doors. Meetings between policy makers and lobbyists can take place inside or outside of parliament. The access of

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36 Legislative Decree no. 231, 8 June 2001.
37 Francesco Galietti, Alta Pressione, Marsilio 2011.
“lobbyists” (although they are not specifically defined this way) to parliament seems to be rather discretionary. The “Collegio dei Questori” of each house (three members of parliament for each house) “oversees... the ceremonial, the maintenance of order and security of the premises of the Chamber”. Ainis’ reports that the Collegio decides at the beginning of each legislative term how many passes allowing people to circulate within parliament buildings are to be distributed. The outcome of the decision is unpredictable, unquestionable and unknowable, however, since no report is available. According to what the Movimento 5 Stelle (M5S) reported, the Security Service of the chamber manages the main part of accreditations. In January 2014, deputies of M5S publicly complained about the mechanisms ruling the access to the Chamber of Deputies and asked for clarifications from the Security Service. Based on what they reported, there are different kinds of passes to enter the house. Some are valid for the whole period of the legislature. These are granted to those who work in the Palace, such as members of the government offices, in addition to representatives of regional and constitutional bodies. Others are assigned to representatives of foundations and major organisations such as Confindustria. Some interest representatives use daily badges while others are simply members of the deputies’ staff. The lack of official rules, at least on the chamber’s websites, suggests that informal practice rather than clear norms are often followed.

Outside the Parliament, meetings take place in bars and restaurants in the capital city. Meetings are even held in strategic meeting points, such as, the lounge of the exclusive fidelity club of Alitalia (the Italian flight company) at Linate airport in Milan. Here there is a flight connection with Rome. This reminds us of a long-lasting characteristic of Italian lobbying, which is still, partially, valid today: the prevalence of an “ad personam” lobbying. Ad personam lobbying is based on social and personal relations, rather than procedures, content and persuasive communication. This characteristic relates to the Italian socio-cultural and political background. More than 50 years ago, the famous sociologist, Edward Banfield, described the Italian social context, as dominated by the so called “familismo amorale” (amoral kinship). This is considered to be the case at least in the country’s southern regions. Banfield’s thesis focused on the concept of “inability of the villagers to act together for their common good or, indeed, for any purpose that could transcend the immediate material interest of the nuclear family”. This way of behaving is more susceptible to personal and informal networking, and seems to reflect itself in the way lobbyists are perceived by the larger part of the society. Another explanation can be found in the recent history of Italy. The representation of interests has been passed for a long time through structured channels, where affiliation was very strong. This structure consisted on the one side of political parties, which were considered the only representatives of citizens’ voices. This was at least the case until the famous scandal of corruption concerning political parties in 1992 (known as Tangentopoli and Manipulite). On the other side, is neo-corporatism, mostly represented by labour unions and trade associations. Neo-corporatism continues to appear in the presence of industry and professional associations among the Italian lobbyists. This continues to be the case despite a group of new representatives of interest having appeared in the 1990s. This group is driven by both multinationals and local associations.

38 Art.10 of Rules of Chamber of Deputies
39 Michele Ainis, Privilegium, Rizzoli, 2012
40 Così sbatteremo i lobbisti fuori dal parlamento, L’INKIESTA, 10th January 2014
41 Id.
42 Francesco Galietti, Alta pressione, Marsilio, 2011
43 Lobby e lobbisti, IL POST, 24th December 2013
44 With this term we refer to a very large judicial investigation into political corruption at national level, occurred in Italy during the 1990s. It led to the disappearance of many political parties.
45 Maria Cristina Antonucci, Rappresentanza degli interessi oggi, Carocci editore, 2011 and Francesco Galietti, Alta pressione, Marsilio, 2011
Mapping Italian lobbyism

It is not possible to have a reliable map of lobbyists in Italy, due to the lack of a national register. A partial overview of official Italian lobbyists can be deduced from the European Transparency Register of lobbyists. This register was established in 2011 for the European Parliament and the European Commission.

EU Transparency Register: categories of lobbyists that are based in Italy
October 2014

The number of registered lobbyists in the EU’s Transparency Register that are based in Italy is 562. Among them, the second most represented group is that of business associations (20% of the total number of Italian lobbyists). The first group is represented by non-governmental organisations (22%), whilst the third group is represented by enterprises (13.3%).
The same picture emerges from the regional register of Tuscany, where civil society associations together with professional associations appear to be prominent. The high number of civil society organisations in the lobbying registers is surprising since they are not usually cited as prominent lobbyists in Italy. External actors that are generally recognised to visit the parliament are business associations, big enterprises and public companies.

Regarding sector distribution, the Transparency Register of the EU shows a high incidence of lobbyists from the environment sector. This is followed by industry, research and technology. According to a survey by Burson Marsteller, Italian decision-makers think that energy, healthcare and financial services are the corporate sectors in which lobbying efforts are more effective. Where NGOs lobbying is concerned, the sectors with the highest effectiveness are perceived to be human rights, energy, environment and agriculture. The most cited sectors in articles and publications about lobbying analysed for this report are energy, insurance, telecommunications, tobacco, bank foundations, professions as notaries, chemists and taxi drivers. In a 2013 VIGEO analysis of lobbying companies, almost all Italian companies are from the financial and energy sectors. This data was drawn from approximately 745 companies from a variety of sectors in Europe and North America.

A regional mapping of lobbying is not possible in Italy since only three regions have a register. Moreover, when registers are available (in Tuscany and Abruzzo), they are incomplete. Lobbyists at regional level have increased, however, since legislative reform gave major decision-making powers to regions.

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46 Companies do not appear in Tuscany register since they are excluded by the regional definition of interest groups.
47 Michele Ainis, Privilegium, Rizzoli, 2012.
49 Michele Ainis, Privilegium, Rizzoli, 2012.
50 VIGEO, Transparency and Integrity of Lobbying: A new Challenge for CSR.
51 The research takes into account those sectors characterized by a high intensity of legislative activity, by an high interaction with public authorities or by a nature of activity that can have a direct impact on stakeholders' interests.
## EU Transparency Register: sectors of lobbyists that are based in Italy

October 2014

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BOX 3
UNDERSTANDING THE SCALE AND INTENSITY OF LOBBYING REQUIRES TRUE TRANSPARENCY

by Gianluca Sgueo
Post-Doc Researcher in Democracy – University of Coimbra (Portugal), Department Director at I-Com, author of the book “Lobbying & lobbismi” (Egea, 2012)

The measurement of the scale, such as the qualification and quantification of private interests that interact with institutions, is among the top priorities of decision-makers. Also important for leaders is the intensity of lobbying. This refers to the frequency with which private interests interact with institutions. Measurement is in fact considered to be a basic step towards the goal of a comprehensive legal framework for institutional transparency.

Generally speaking, the measurement of diffusion and intensity of lobbying can be done only by imposing a regime of transparency on the activity of representation of interests. Through a register of stakeholders, lobbyists are required to give the institution information on their activities. This includes detail of the expenditure capacity, strategic objectives and concrete actions that will be taken to implement that strategy. The registration provides, or should provide, the monitoring of the scale. Information provided after registration is essential to monitor the intensity of lobbying activities.

Results, however, have not always lived up to expectations, for two different reasons. First, in case of voluntary registers (such as the European Union or, in Italy, the one established by the Ministry of Agriculture and Forestry), the comprehensiveness of the measurement is undermined by the fragmented nature of the information contained in the register. The voluntary option of registration may affect the quality of decision-making. It could also affect the possibility to gain knowledge of the phenomenon. An example concerns the EU Register. Wikipedia’s estimates that numbers of “pressure groups” in Brussels are almost three times higher than the 6000 subjects enrolled in the European register.52 This estimate is in line with those collected over the years by the European Commission itself. In a 1992 report,, it was estimated that 3000 interest groups were operating in Brussels, on behalf of a total of more than 10,000 lobbyists.53 In 2011, the number of lobbyists was shown to be much higher – between 25,000 and 29,000.54 This information emerged during the unification of the registers with the European Parliament.

Second, even in the case of compulsory registers (i.e. the United States) the diffusion and scale of the phenomenon emerging from the register did not always match the reality. In the US, from 2007 to 2013 the number of registered lobbyists at the federal level dropped from 14,836 to 12,341.55 Certified spending also decreased. Since the first quarter of 2010, when it

reached a record high of 955.6 million dollars, the expenditure for official lobbying has been decreasing steadily.\(^\text{56}\) This is what the register tells us. In fact, the declining number of professional lobbyists is misleading. A growing number of them in fact chose to work without recording their activities. They took advantage of a legal provision according to which under certain conditions the registration requirement does not apply. In this case, the activity of interest representation must not exceed 20% of the work of the professional during a quarter.

To conclude, the experiences of the European Union and the federal government of the United States demonstrate that the solution of the register of lobbyists has proven feeble and unsatisfactory. This is in spite of the importance of measurement of scale and intensity. Registers have not guaranteed full disclosure of pressure groups’ activities. On top of this, they also have not impeded corruption at the public level.

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**BOX 4**

THE ROLE OF BUSINESS AND PROFESSIONAL ASSOCIATIONS: SOME SUGGESTIONS

by Sergio Valentini  
Director of the Area Promotion and Development of the Territory, Unioncamere Lombardia

The recent news events in Italy\(^\text{57}\) prove that the country has two levels of lobbying. This includes a “transparent” and clearly communicated lobbying, where companies are clearly identifiable. Second, is a “real” lobbying practice, based mostly on opaque - and sometimes hidden - networks.

When it comes to the business sector, the situation is much more complex and can be usefully segmented according to company size. On the one side, we find the large companies. They may or may not be able to lobby in a clear and transparent manner. Nevertheless, they often have even more expertise and resources than public bodies, to monitor very important decision-making moments. Such moments include regulatory working groups and ongoing legislative processes. On the other side, there are small and medium sized enterprises (SMEs). SMEs represent the vast majority of Italian companies (99%) that rely on systems of representation of interests to influence decision-making processes in a legitimate way. The outcomes in this case vary according to the competence of the representative associations.

However, there are some common important elements that are detrimental to the transparency of lobbying activities:

- Strong control by political decision-makers and high-level public officials on legislative process, in addition to poor information flow to the business sector. This entails that the best interest is often identified with those who hold control rather than the plurality of

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\(^{57}\) Big corruption scandals emerged in 2014 concerning the EXPO 2015 in Milan and the MOSE dam project in Venice.
stakeholders;

● Self-referentiality of politics. This often requires specific organisational skills that businesses are unlikely to possess;

● Climate of mutual distrust. This runs parallel to the crisis of the representation of interests. It sometimes brings actors of the private sector into conflict with each other rather than seeking opportunities for cooperation around common interests.

For these reasons, there is no monitoring of the impact and outcomes of lobbying associations. The paradox is that the associations representing collective interests (System of the Chambers of Commerce, Industry, Crafts and Agriculture) are questioned by those lobbies that have no interest in transparency of economic and financial relations. In fact, the Chamber of Commerce, through the public Register of Companies, which requires registration of all companies, provides an essential framework of the legal situation of each company. It also allows creation of indicators on the economic and entrepreneurial development of each area. The existing “Collection of best practices”,58 which includes transparency indicators, could become a voluntary tool to be used to monitor the level of transparency of companies. The tool could also be used to monitor companies’ lobbying activities.

In this framework, a reduction of the role of the Italian Chambers of Commerce could lead, as a direct consequence, to a decrease in the level of corporate transparency. It would also show an alarming supremacy of a certain kind of lobbying to the detriment of business interests.

WHEELER-DEALERS AND SHADY CHARACTERS: PERCEPTIONS OF LOBBYISTS IN ITALY

Lobbying is an issue that has gained much attention in Italy in recent years, as shown by the several legislative reforms that have been introduced as well as the considerable media coverage of the issue.

The judge for the preliminary investigation of a famous lobbying-related inquiry (the so-called P4) has reported that “lobbying is a particular and hardly definable profession” in Italy.59

The term "lobbyist" generally has a negative connotation especially in media articles. It is a synonym of wheeler-dealer, shady operator and sometimes even freemason. This is confirmed by the uncommon use of the term "lobbyist" in legislative bills, regional laws and academic courses. Other expressions are preferred, which have slightly more positive connotations. These include interest groups (“gruppo di interesse”) or stakeholders (“portatore di interessi”).

In the last thirty years, the word lobbying has even acquired a criminal connotation. It has been used as synonym for corruption and lawlessness.60 According to the 2014 OECD report, Lessons learnt from implementing the OECD Recommendation on Lobbying, reasons can be found in the historical, cultural and legal Italian context. Firstly, the general principles of the legal system are considered to

59 Francesco Galletti, Alta pressione, Marsilio, 2011.
60 Lessons learnt from implementing the OECD Recommendation on Lobbying, OECD, 2014.
be the only source of collective will. This is instead of the bargaining between different interests as may be the case in other country contexts. The importance of the legal system in Italy is considered to be connected to the prominence of the state and the law. Secondly, the role given by the Constitution to political parties, considers them to be the only intermediaries of citizen’s interests. Thirdly, a lack of transparency and regulation has covered the relationship between institutions and lobbyists with a “veil of darkness”. This has made places of decisions a “Seventeenth Century brasserie, full of smoke and bad smell, where, despite entering into it, it is hard to distinguish people, voices, movements”.61 An emblematic example of the negative perception of lobbying can be found in a case which occurred in 1988. In this case, a member of parliament officially complained against one of the main Italian news channels for having affirmed that lobbyists influenced parliament’s activities.62 However, such an event should generally appear normal.

According to the above-cited survey by Burson Marsteller, in the opinion of Italian policy-makers, the description of “lobbyist” generally refers to trade associations, public administration agencies and companies. This is followed by NGOs, professional organisations and law firms which also constitute the category of lobbyists. According to the same survey, trade associations, public administration agencies, NGOs and companies are also the organisations that are perceived to be more effective in their lobbying activities. The study also highlights some characteristics of poor practices of both corporate and NGO lobbying, that could contribute to a negative image of lobbying. For companies, this includes insufficient transparency about the interests represented. An example of a poor practices of NGOs is cited as the prevalence of emotion rather than facts. For both companies and NGOs, a lack of understanding of process and procedure and the timing of lobbying activity (too early or too late) are also seen as negative characteristics.

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BOX 5
CULTURAL PERCEPTIONS OF LOBBYING IN ITALY

by Francesco Macchia
Partner of the lobbyist agency Nomos – Parliamentary Studies Center and President of ISPE-Sanità

and Licia Soncini
lobbyist at Nomos

Despite the undeniable progress made over the past 20 years, the meaning of the term lobbying in Italy continues to be widely negative.

The first reason is the lack of knowledge among citizens, media and often institutions, about what the activity of a lobbyist is. Consequently, there is an inability to clearly define its boundaries and limits. Lobbying is not defined properly and so the widespread perception is fueled more by common assumptions rather than facts.

If we look at the media and the press, the impression is that the lobbying profession is still surrounded by confusion and ignorance. Each time a “wheeler-dealer” is caught red-handed -

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61 Pier Luigi Petrillo, Le norme ci sono, basterebbe applicarle, Istituto Bruno Leoni, 2011
62 Gianluca Sgueo, Lobbying & lobbismi, Egea, 2012
which happens quite often in Italy - he is defined as a lobbyist. Hence, the term lobbyist continues to have negative associations.

Among the best-known examples in recent times we find the case of Luigi Bisignani, an ex-journalist and famous wheeler-dealer. Bisignani was convicted for financing illicit parties during Manipulite. In 2011, and again in 2014, he was investigated and subjected to precautionary measures in two different investigations: for illicit influence and fiscal fraud. All major media, without exception, reported the news talking about the arrest of a lobbyist and thus muddying the whole category.

Regarding the general population, there is a tendency to build up conspiracy theories around lobbying. In Italy, such theories have always characterised politics. The lobbying professional tends to be relegated under a cloak of silence that is only broken by tabloids. Moreover, the boundary between legal behaviour and abuse is uncertain when it comes to lobbying. Hence, lobbying tends to be susceptible to conspiracy theories. Speaking about lobbyists means, in most cases, blaming them. Lobbyists are painted as sordid and unscrupulous characters without ethics. They are perceived as people who do not hesitate to intrigue, corrupt, and use every means as a bargaining chip. In return they are understood to be awarded fabulous salaries. The aim of a lobbyist is commonly assumed to be to obtain from an unsuspecting legislator, rules that generally favour the few at the expense of the common good. Such behaviour harms the community as a whole. Despite this, the news is ultimately full of politicians being arrested. The number of reported lobbyists getting into trouble with the law is comparatively much fewer than the number of politicians.

Regarding public institutions, the relationship with lobbyists is fluctuating and controversial. There are often daily and functional relationships between lobbyists and political institutions. Yet political institutions, when able to, are likely to deny lobbyists’ access to them.

A total lack of regulation of the lobbying profession has contributed to the persistence of ignorance and confusion around it. Consequently, the negative connotation of lobbying and lobbyists has remained.

Despite this, the profession is gaining ground in Italy. There are now several professional firms that profess to carry out lobbying activities. Moreover, all big companies have institutional relation offices. The regulation of lobbying concerning the Ministry of Agriculture is another improvement, even if it is not entirely successful.

All that can be interpreted as a first, rather timid, step towards changing the public perception of the lobbying profession.

63 With this term we refer to a very large judicial investigation into political corruption at national level, occurred in Italy during the 1990s. It led to the disappearance of many political parties.
64 “P4: Bisignani condannato affidamento in prova o carcere” La Repubblica, 29th November 2012 “Bisignani sta trattando il patteggiamento con i pm di napoli” Corriere della Sera, 26th October 2011 “Bisignani? Un lobbista professione indefinibile” La Stampa, 18th June 2011
SELF-REGULATION OF LOBBYISTS’ ACTIVITIES

In the absence of binding legal rules, lobbyists rely on self-regulatory codes of the various associations representing the profession. However, even among the lobbyists, who now claim the profession is regulated, a strong fear remains regarding the rules. This concern pertains to a worry that the rules may be translated into an unnecessary bureaucratic burden, made of quibbles, refinements and exceptions, in the best “Italian style”.

There are only a few examples of self-regulatory initiatives.

One of these is represented by “Il Chiostro”. It is the Italian association of lobbyists, lobbying firms, academics, researchers and experts aimed at fostering a culture of transparency and regulation in the field of lobbying. The membership of the association includes more than 120 professionals in the field. However, this amount represents only a small share of lobbyists in Italy. The association has provided itself with a code of ethics, addressing the members’ professional conduct. Among the provisions established by the code, there are rules requiring lobbyists to disclose relevant information about their clients. These rules address political financing, in-kind contributions to public officials and situations of incompatibility.

Another example is constituted by “Ferpi”, the Italian Federation of Public Relations. Ferpi is an association gathering together public relations professionals from all over Italy. The membership is widespread and lobbyists are just one of the many PR categories covered by the Federation. For this reason, the code of conduct of the association does not specifically regulate lobbying. Instead, it provides some provisions concerning the sector and in very general terms. Article 20 of the Code of Conduct provides specific duties for those who legitimately represent private interests towards public institutions at national and local level. For instance, a set of integrity standards is established for public affairs professionals. They are forbidden to offer any in-kind contribution to public officials, except for in instances of mere courtesy. According to the Code of Conduct, each Ferpi member has to oversee the other members’ compliance to the provisions.

Apart from the list of members of each individual organisation, there is no example of a lobbying register run by any association.

BOX 6
SELF-REGULATION OF LOBBYING
by Ermanno Cappa
Lawyer at Cappa & Associati

and Paolo Zanetto
Lobbyist, Partner and Founder of Cattaneo Zanetto & Co.

Since a regulation of lobbying is yet to arrive in Italy, lobbyists are given the opportunity to adopt codes of conduct to self-regulate their profession.

Of course, identifying, under the Italian law, a strict and legal definition of lobbying is a rather hard task. The lack of a definition implies a weakened punishing power in the case of a
violation of the rules of the codes.

On the other hand, a "private" or "social" sanction, such as banning a lobbyist who does not respect the rules, may be more effective than any legally established punishment.

Having said that, in the very brief notes that follow, we will refer to a typical tool of self-regulation: the Code of Ethics (better if accompanied by an organisational and oversight model).

**CODE OF ETHICS**

Defining and endorsing a code of ethics is, ultimately, a basic commitment. In Italy, a relevant example is the Code of Ethics defined by "II Chiostro", the private association bringing together professionals in the field of institutional relations and public affairs. The members are required to sign and comply with the Code. Any failure to do so may result in the member being expelled from the organisation. The association's Code is a good example for everyone to learn from.

In addition to this example of a code of ethics for the professional category, each lobbyist or lobbying firm may and should consider adopting a code of conduct. A code of conduct should be shaped based on the specific features and expertise of the company.

In addition to the Code of Ethics, a further idea is to adopt an organisational model. According to Legislative Decree no. 231/2001, an organisational model should be established, accompanied by the appointment of an ad hoc oversight body to ensure implementation of the model.

These tools are to be applied with extreme pragmatism. They should be free from focus on reality in order to ensure they are effective in preventing acts of corruption.

The effectiveness of a code of ethics and organisational model would be enhanced if these tools were endorsed by lobbyists’ partners and clients. After all, they too play a fundamental role in the lobbying process.

**WATCHDOGS: THE ROLE OF THE MEDIA AND CIVIL SOCIETY IN MONITORING LOBBYING**

Partial independence of the media

A 2014 report issued by the UN Rapporteur on freedom of opinion and expression described the Italian national legal framework as being mostly in line with the relevant international standards. Yet the actual independence of the media in Italy is still questionable. Areas of concern include: conflicts of interest of senior government officials with holdings in the media; cross-ownership of broadcast

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65 UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 29 April 2014
and print media; and the appointment processes for the management of the Public Broadcasting Services (RAI). Also problematic is the membership of the board of independent administrative entities, such as the Communications Regulatory Authority, as well as the dissemination of information on ownership and control of private media. According to the Open Society Institute, RAI appeared in 2008 to be particularly prone to political influence. The "service agreement" between RAI and the ruling administration requires certain procedures that should, at least theoretically, guarantee internal pluralism and balanced information in the public broadcaster. Nevertheless, it appears that the behaviour at RAI is heavily influence and determined by political parties, especially the ruling coalition.

The Italian newspaper market, on the other hand, is less concentrated, as it is characterised by fragmented ownership. International NGOs have expressed their concerns about the government's policies regarding the media. Throughout the past year, severe alerts on the risks for reduction of freedom of information have been published by Reporters without Borders. The alerts raised several concerns, for example about the proposed so-called "gag law", on the restricting of the publishing of phone taps.

The media's links with politicians, economic groups and owners are public and visible. The vast information regarding journals and TV channels available on the web ensures the possibility of being well informed about such links without any difficulty. Finding the relevant information may, however, involve some proactive searching.

One of the main concerns about the media sector's independence is related to financing - both public and private financing. Public resources are allocated to the media directly by a department of the Council of Ministers. The advertising sector can, however, reduce the capacity of the media to investigate or report something negative against them. The allocation of private resources in public/private media companies can explain the conflicts of interest.

In Italy (as in many other countries), economic groups, political parties, or members of the Executive, have relations with the media. Such relations are sometimes of economic nature (advertising or ownership). This creates some limitations in terms of the actual independence of the media. Having political or economic interests vested in the media may serve to control what information is published, even if direct censorship is not enforced.

Pressure on journalists can be exerted by an instrumental use of justice. Journalists are often the target of libel suits. They are forced to sustain high legal expenses that are unaffordable for many journalists who do not have legal assistance from their media companies. The UN Rapporteur on

66 Open Society Institute, Television across Europe: more channel, less independence. Follow-up report, 2008
67 Id.
68 The L’Espresso group stands out as the most important group; it owns La Repubblica, three magazines – including L’Espresso, an important left-wing political magazine – and 15 local paid-for newspapers, some of which are among the most widespread dailies (as they are distributed in several regions). The RCS Media Group owns Il Corriere della sera, La Gazzetta dello Sport, the free newspaper City and two magazines. The Caltagirone Editore group owns the national newspaper Il Messaggero and four local paid-for newspapers. The Mondadori group, controlled by Silvio Berlusconi’s family, owns about 40 magazines.
69 «Government wants to clamp down on online video» (01/2010), «Google conviction could lead to prior control over videos posted online» (02/2010), «State broadcaster suspends political discussion programmes ahead of regional elections» (03/2010), «Last chance for senators to block ban on publishing phone taps» (04/2010), «July 9th, the information blackout in Italy : “A foretaste of what could happen in Italy...”» (07/2010), «UN’s special rapporteur on freedom of opinion and expression joins the OSCE in calling for withdrawal of “gag law”» (07/2010), «Investigative reporters and website again threatened by proposed “gag law”» (10/2011), «Prison for press law violation in EU founding member» (09/2012).
freedom of opinion and expression identified the criminalisation of defamation in Italy as a key concern. This can stop journalists in their activities against powerful or rich subjects. In 2012 for instance, the request of compensation asked to RAI was 300 million euro and 246 million were addressed to an Italian investigative programme alone (although it has lost only one case).

Positive signals are, however, coming to light. According to the World Press Freedom Index 2014, Italy ranks 49th with a slight improvement compared to the previous year. In fact, the report notes that the only improvement in the south of Europe was in Italy, “which has finally emerged from a negative spiral and is preparing an encouraging law that would decriminalize defamation via the media.”

Weak investigative journalism

In the context described above, investigative journalism in Italy is insufficiently developed. This was indicated in the findings of TI Italy’s report on the country’s National Integrity System, published in 2012. The study showed that often journalists report on what politicians say. However, journalists often copy interviews and comments from other newspaper articles. Hence, any in-depth analysis is lacking. As a result, journalists provide limited effective information to the public. Despite this, the quality of the existing examples of investigative journalism is high. This is testified by the high number of judicial decisions that ended in an acquittal, resulting from journalists’ involvement in the process. Press, rather than television, offers more examples of investigative journalism. This is especially the case in magazines or books. The sector is growing signified by the trend in creating the first associations of investigative journalists (Investigative Journalists Association in 2007 and the Investigative Reporting Project in 2013). Moreover, the launch of the first edition of the Festival of Investigative Journalism in 2014, also suggests the sector is developing. Nevertheless, some constraints remain. In addition to the high number of libel suits, investigative journalism suffers in Italy from the lack of fact-checking mechanisms and low salaries.

A scandal-driven approach of journalists to lobbying

According to research on media articles at the House of Deputies press review (Galietti 2011), the term lobby was mentioned 10,586 times between 1st January 2000 and 1st March 2010. However, articles usually lack a real and deep analysis of the phenomenon. Instead, they just highlight political scandals. For this reason, lobbying has a negative connotation in the media. Binomials including politics/lobbying and corruption/fraud represent a “successful media equation” (Sgueo, 2012).

Few civil society watchdog initiatives on lobbying

In the absence of a transparent process of lobbying as well as an in-depth analysis of the phenomenon by the media, citizens have few opportunities to access information on the topic. Following this, they have limited scope to play an active role in monitoring it. There are no associations targeting lobbying specifically, apart from those promoted by lobbyists. This includes the

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70 UN General Assembly, Human Right Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 29 April 2014
71 Cause Rai per 300 milioni Il cavallo di viale Mazzini azzoppato dalle denunce, IL GIORNALE, 23rd February 2012
74 IRPI: nuovi modelli italiani di giornalismo investigativo, INTERNATIONAL JOURNALISM FESTIVAL , 5th May 2014
above-cited “Il Chiostro”, that explicitly advocates for more transparency in lobbying. There are, however, good examples of associations that promote access to information. They can indirectly promote more transparency in the sector, by publishing articles or by reporting on parliamentarians’ activities. One of the most famous examples is represented by Openpolis, that has created the online platform Openparlamento. The platform gives daily updates on the works of parliament. It monitors discussion and votes on a specific subject. In addition, it oversees the activity of a single MP, including their absenteeism and productivity rate. Openparlamento even keeps a record each time an MP expresses a vote contrary to his or her party.

**BOX 7**

**CIVIL SOCIETY ACTION FOR TRANSPARENCY IN LOBBYING**

by Gianluca Sgueo

Post-Doc Researcher in Democracy – University of Coimbra (Portugal), Department Director at I-Com, author of the book “Lobbying & lobbismi” (Egen, 2012)

The gaps in the legislation have been, in part, filled by private actors. During the last few years, we have been witnessing a proliferation of initiatives to promote transparency of lobbying by research institutions, NGOs and think tanks. The stated goal of most of these initiatives is specifically to remedy the deficiencies of public decision-makers in ensuring the transparency of lobbying. In addition to Transparency International, among the most celebrated cases are Maplight and Legistorm in the United States, the Italian Openpolis, the French Regards Citoyens, and the European Lobbyplag.

However, there are many doubts over the efficacy of this. Oftentimes, these are very short-lived projects, limited in time to the duration of a specific media campaign. Consequently, it is difficult, if not impossible, to monitor the legitimacy and scientific accuracy of data. In other cases, the activities are more structured. Yet they go by fits and starts, due to a lack of funds and the voluntary nature those who contribute to the projects. When private initiatives receive public funding, their independence can be threatened. Moreover, there is no third party formally appointed to monitor their work.

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75 [http://parlamento17.openpolis.it/](http://parlamento17.openpolis.it/)
76 [http://maplight.org/](http://maplight.org/)
78 [http://www.openpolis.it/](http://www.openpolis.it/)
REGULATING LOBBYING: TRANSPARENCY, INTEGRITY AND EQUALITY OF ACCESS

In this section, we provide a more detailed assessment of the regulation of lobbying and related activities in Italy. We focus on transparency, integrity measures and equality of access to decision-makers.

TOWARDS TRANSPARENCY

When looking at transparency around lobbying practices, our research sought to answer the following overarching question: to what extent does the public have sufficient knowledge of (a) who is lobbying public representatives (b) on what issues they are being lobbied (c) when and how they are being lobbied (d) how much is being spent in the process (e) what is the result of these lobbying efforts? We also sought to investigate whether the onus for transparency is placed on both lobbyists and public officials/representatives.

Our findings offer a rather bleak picture with regard to transparency of lobbying in Italy. Transparency has a total score of 11%. This percentage comes from partial scores of different aspects of transparency which point out a very discouraging scenario. ‘Access to information’ is the best performing section, yet it has a very low percentage (33%). This is followed by ‘Registration and disclosure by lobbyists’ (10%). An alarming lack of transparency emerges from the scores of the two further sections: ‘Oversight of register and sanctions’ and ‘Legislative footprint’ - both stuck at 0%.81

The public knowledge of lobbying activity is far from extensive. The reason for that lies in part in the absence of any national legislation regulating the sector.82 In fact, it is rather difficult to make the public aware of who is lobbying whom, on what issues, when and how, whilst there are no rules.

81 See Annex 2 for the questionnaire and overall scores
82 Media and some politicians do the rest.
The term ‘lobbyist’ is commonly perceived to include professional lobbyists, private sector representatives, public affairs consultants, representatives from NGOs as well as from for-profit corporations and professional associations. Yet the definition is somewhat blurred to the extent that it is not clear whether it may also cover trade unions representatives or think tanks, to name but a few. On the other hand, it is also difficult to assess who is the target of lobbying. It is widely acknowledged that legislators and executives - at national as well as local level - fall within this category. However, what about other individuals affecting the decision making process as executive advisors or representatives of regulatory bodies?

The lack of a clearly stated definition of lobbying specifying the subjects involved undermines the entire profession and the transparency of the legislative process.

For the time being, the public’s right to information and access to government data is regulated by the law. However, it is deemed to not be fully satisfactory. In practice, citizens face many difficulties when trying to access information on public sector activities. Hence, in order to overcome these difficulties, many experts, journalists and civil society organisations demand for a Freedom of Information Act (FOIA) to be soon introduced.

Moreover, the present decree on access to information does not cover lobbying activities. So, an FOIA improving citizens’ right to access public sector data would be even more welcomed if lobbying information was included.

One of the sources of information of lobbying activities towards public sector representatives is a register of lobbyists. Unfortunately in Italy, as has already been pointed out, there is no national compulsory register enlisting all the individuals or groups who are allowed to lobby public representatives. There are a few examples of lobbyist registers for particular central institutions (Ministry of Agriculture) and regional institutions (Tuscany, Molise and Abruzzo). These registers have proven not to be fully effective since they do not apply to the whole range of lobbying targets. Furthermore, they are merely voluntary registers and the regulation does not provide any effective incentive to register.

In such a vacuum of a national legislation, there is of course no legal obligation for public disclosure of relevant information by lobbyists or any other organisations performing lobbying activities. Consequently, citizens are totally unaware of who is lobbying whom and in representation of which interests. Furthermore, it is not possible to get information on lobbying expenditures or other type of contributions. The regulations provided by the law on political financing are the only instrument on the basis of which it is possible to monitor the flow of money between lobbyists and political parties, or candidates for office.

There is no regulation of lobbying and no lobbyist register has been settled so far. Hence, there is also no oversight mechanism or monitoring entity in charge of verifying lobbying activity and detecting anomalies.

Monitoring the entire decision-making process is a rather tough task to accomplish. In particular, it is difficult to attain information regarding the initial stages of a draft of law, when it goes through the parliamentary commissions. It is also difficult to trace the process of consultation of government or other public representatives with relevant stakeholders. Few mechanisms exist on public participation and their reporting. What is lacking the most is a legislative footprint detailing all the information

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83 Legislative Decree March 14th, 2013, n.33,
about legislators and public officials’ meetings with stakeholders. These are yet to be added to legislative records.

CASE STUDY 1
THE LOBBY OF TAXI-DRIVERS

In almost every legislature in Italy,84 there was an attempt to liberalise taxi activities. So, taxi drivers rose up. Without entering into the content of different reforms, what is interesting for the purpose of this report is the level of transparency of the lobbying process.

One of these dates back to New Year’s Eve 2009. On the 30th December 2008, the government issued a decree.85 This so-called “Milleproroghe” (which means “one thousand deferments”), is usually provided in the last days of every year. It decides for the temporary postponement of certain deadlines. The government decree is then passed into law through the parliament, which can introduce some changes.

An amendment supported by taxi drivers, was accepted by parliament in 2009. It modified an article of the decree (art.29), which, despite the title (“Aeroportoual concessions”), was integrated with article 1-bis until 1-quaterdecies on rules about taxi-drivers and service “hire car drivers”. The “hire car” is a rental service and different from taxi-drivers. It is based on booking and pre-arranged tariff and is usually used for long distance purposes. The amendments substantially restricted the service of “hire with drivers”, in favour of taxi-drivers. The amendment was introduced even though the decree referred to urgent deferments but the amendment did not strictly fall into this category. The amendment was introduced through a maxi-amendment which changed the entire decree. Although the maxi-amendment was published online,86 it was difficult to access the reasons behind the amendment. The rashness of the procedure, the complexity of the decree and the lack of publicity of interests at stake contributed to the challenge for citizens, in particular, to understand the rationale behind the amendment.

Finally, the decree arrived in parliament but only just within the acceptable time limit (60 days). The government decided to proceed with the vote of confidence, which limited the possibility to change the decree. The decree became law on the 27th of February 2009.87

At the same time, “hire car drivers” rose up and gave voice to their interests through a different channel. They invalidated the application of the above-cited law. A new legislative decree on “urgent measures for the support of industrial sector in recession” was issued on the 10th of February.88 So, simultaneously to the other decree, and which became law in April 2009,89 this decree called for the suspension of the effectiveness of the previous law.

84 Michele Ainis, Privilegium, Rizzoli, 2012.
85 Law Decree 30th December 2008, n.207.
86 http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Emend&leg=16&id=394765&idoggetto=442797
88 Law Decree 10th February 2009, n.5.
In this case, the amendment was also published online but the consultation and conflict took place behind closed doors.

This is an example on how poor transparency in the legislative process and in lobbying activities can lead to the creation of deliberately urgent and intricate decrees. At the same time as creating burdensome and conflicting legislation. Such legislation comes at the expense of citizens. It also harms the development of an effective democratic system. In particular, a consultation report and the publication of a legislative footprint would have offered a clear overview of different interests. It would likely have also generated a more linear and efficient legislative process.

**FOSTERING INTEGRITY**

Transparency of lobbying must be embedded within a broader public sector integrity framework. Such a framework mitigates the risks of conflicts of interest when important decisions are being taken. Our research sought an answer the following overarching questions about integrity: is there a robust ethical framework for lobbyists (and companies) and lobbying targets in the country? If so, to what extent is it working? Is the onus for integrity placed on both lobbyists and public officials/representatives?

Again, the Italian situation leaves a lot to be desired. 27% is the final score for integrity. The assessment on ‘Code of conduct for Lobbyists and ‘Post-employment and pre-employment restrictions’ reveals an almost absolute absence of regulation (respectively 0% and 8.3%). More encouraging are the ‘Code of conduct for public sector employees’ and lobbyists’ self-regulation. Each section scores a 50% level of integrity.

No robust ethical framework provided for by law is in place regarding lobbying activity. This is particularly true when it comes to the so-called phenomenon of “revolving-doors”. Italian legislation does not regulate the lobbying profession., Hence, there is no specific restriction or cooling-off period for public servants, members of parliament, ministers or any other senior public official willing to become a lobbyist.

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89 Law 9th April 2009, n.33
90 See Annex 2 for the questionnaire and overall scores
The only restrictions provided for by the law are rather general and do not specifically address lobbying activity. A couple of provisions provide some limits for public officials. In particular, they concern the transition from a position in the private sector to the public administration and vice versa. Regarding the first scenario: a person is forbidden to function in executive and senior positions of a public administration if, during the previous two years, they had been working for a private entity regulated or financed by the public administration concerned.\(^\text{91}\) The opposite is also regulated. A public servant in a senior or executive position is forbidden for a three-year period to switch to a job in a private entity beneficiary of the activity of the public administration in which he was formerly employed.\(^\text{92}\) A provision regarding members of the government is also in place. It forbids them from performing professional activities in sectors related to their former institutional role for 12 months following the expiration of their term.\(^\text{93}\)

However, this legal context does little to prevent the revolving-door phenomenon. This is especially apparent if we think that parliamentarians are in no case touched upon by the aforementioned rules. Furthermore, it is quite easy to shift from one position to another; from the public to the private sector. This is because there is no requirement to get permission from an ethics office or a similar authority, even if there is a risk of lobbying the previous employer. This is a totally unregulated area, where no oversight authority exists. An oversight authority would put limits on employment conditions, investigate anomalies and sanction breaches.

**CASE STUDY 2**

**GAMBLING LOBBYSTS**

An often-cited lobbying case in Italy concerns the gambling industry. The sector is linked to politics through funds and revolving doors practices. Consider the powerful think tank “Vedrò”, of which the ex-prime minister Letta was a member, together with other politicians. Vedrò had two big gambling companies, Lottomatica and Sisal, as sponsors in 2010. Several politicians come from or go to the gambling sector. For example, Augusto Fantozzi, Minister from 1995 to 1998 under the Prodi government, became president of Sisal Holding Finanziaria and of SISAL S.p.A in 2010. Vincenzo Scotto, member of Parliament and minister from 1978 to 2011, has founded “Formula Bingo”, a company that organised bingo games and failed in 2004. In 2014, the ex-minister on gambling under the Letta government resigned. He was then offered the top position at Lottomanica.\(^\text{94}\) Yet he declined due to the controversy that arose around his possibly taking the position.

A recent case of lobbying regarding slot machines arose in the news in December 2013, under the Letta government. It concerned a decree aimed at introducing economic and financial measures to reduce the debt of local administrations (the so called “Salva Roma”). An amendment was quietly introduced to the decree. The aim of the amendment was to reduce funds to those regions and municipalities that restrict gambling. The amendment was

\(^{\text{91}}\) Legislative decree April 8th, 2013, n.39.  
\(^{\text{92}}\) Law November 6th, 2012 n.190, art.1 c.42.  
\(^{\text{93}}\) Law July 20th, 2004, n. 215, art.2 c.4.  
\(^{\text{94}}\) Retromarcia di Alberto Giorgetti: ritirate le dimissioni da deputato, CORRIERE DEL VENETO, 25th June 2014
brought into the public domain and interest by a specific party which opposed it. Civil society reacted with indignation. The amendment was justified by members of parliament for economic reasons (slot machines bring significant revenue to the public budget). However, it was clear that the amendment was contradictory with other state initiatives (such as support to the fight of pathological gambling). Moreover, several media\(^{95}\) indicated that the case involved non-transparent lobbying activity. Finally the amendment was withdrawn.

In this case, as in the previous one, a track record of the meetings held with lobbyists may have enabled a clear understanding of whether the gambling industry was involved in the legislative process or not. Furthermore, in the gambling sector, as in others, improved regulation on revolving doors could better avoid cases of undue influence and conflict of interests.

The scenario looks in part quite different when it comes to codes of conduct and codes of ethics of specific professional sectors. While a Code of Conduct for public servants does exist,\(^{96}\) it does not specifically cover lobbying-related provisions. On top of this, the Code does not address in a full and satisfactory manner all the issues strictly linked to lobbying. The present Code was approved and adopted in early 2013. It aims to support the institutionalisation of a culture of integrity in the public sector.\(^{97}\) To achieve this goal, a participative and evidence-based approach in drafting the Code was combined with awareness raising and enforcement mechanisms.

In practice, not all the issues covered by the Code are effectively regulated. This is true to the exception, of gifts and other hospitality issues, which are very well addressed in all areas.\(^{98}\)

On the other hand, 'conflict of interest' is dealt with in the Code of Conduct in a piecemeal manner. Few provisions are provided on this topic, and those which do exist are rather generic.\(^{99}\) The same goes for the issue of asset declarations, which is merely touched upon within the Code.\(^{100}\) The main problem with the provisions on asset declarations and conflict of interest is that they are only summarily formulated. No precise thresholds are set and ample discretion is given to particular institutions. Most of all, it is not identified who, within the administration, is in charge of implementing these provisions and monitoring public officers’ compliance.

The civil servants’ Code of Conduct is statutory. Any breach of the duties set out in it, will be prosecuted according to the civil law. However, specific complaint mechanisms allowing public officials or citizens to report violations are not provided for in the Code. Procedures may be set by individual institutions but their overall efficacy is limited.

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\(^{96}\) Decree of the President of the Republic April 16th, 2013, n.62.

\(^{97}\) OECD Integrity Review of Italy, 2013, p.10.

\(^{98}\) Art.4 of the Decree of the President of the Republic n.62.

\(^{99}\) Art.6-7.

\(^{100}\) Art.6 and art.13.
In the end, continuing the priority of raising awareness among public officers, trainings and formative programmes have been established.\textsuperscript{101} These activities are aimed at fostering a culture of integrity and transparency in the public administration. The idea is to ensure that public servants are fully aware of the provisions of the Code and are periodically (at least yearly) updated on relevant measures and regulations. Nevertheless, the trainings hardly touch upon the issue of lobbying, and how to deal with and involve stakeholders into the policymaking process.

Regarding the lobbying profession, national legal instruments do not provide any code of conduct to set standards on integrity and transparency of the sector. This is a clear indication of the fact that the profession is hardly legitimised by politicians. Indeed, regulation of the sector barely exists.

In order to compensate for the lack of legitimisation and regulation of lobbyists by the government, lobbyists have created a Code of Ethics for themselves. The Code applies to the entire profession. As mentioned in the previous section,\textsuperscript{102} there are a couple of examples of codes of ethics on lobbying set by two Italian associations. One is issued by Ferpi (professional association covering the entire public relations sector). Furthermore, the most important one is Il Chiostro, the Italian lobbyist organisation. Il Chiostro has provided its members with a comprehensive code of ethics, which provides principles to address the relationship between lobbyists and public representatives. Specific guidelines on disclosure of relevant information are also given. Yet these provisions are limited since lobbyists commit to disclose information only about their clients. Moreover, they only do this in case it is required by the institution they are lobbying.\textsuperscript{103}

The Code of Ethics is clear about the issue of incompatibility of functions. In other words, if a lobbyist is elected to national, European or local legislative bodies, they may no longer be deemed eligible to remain as member of a relevant lobbying association. Likewise, an individual may have to forego their membership of a lobbying association if he or she accepts any appointment in the public administration.

A particularly notable flaw of this self-regulatory tool concerns mechanisms to report violations. Such mechanisms are totally absent. Hence, the possibility to monitor the compliance of members to the code and its overall efficacy is limited.

**EQUALITY OF ACCESS: LEVELLING THE PLAYING FIELD**

When regulating lobbying, transparency and integrity measures are crucial. However, they must be accompanied by rules that allow for equality of access to decision makers. This is essential to fairness and pluralism in the political system. Our research asked whether there are enough spaces in the system to allow for diverse participation and contribution of ideas. We also inquired over whether these ideas came from a broad range of interests that lead to policies, laws, and decisions. We wanted to know whether the interests represented best serve society and broad democratic interests.

\textsuperscript{101} Art.15.
\textsuperscript{102} See Chapter 3, Section “Self-regulation of lobbying”.
\textsuperscript{103} Il Chiostro, Code of Ethics, art.7.
The findings are mixed in this regard. The answers to a questionnaire given by experts highlight that access to the decision-making process is far from being equal (only 22% is the final score of this last section). This result is rooted in a low level of ‘Consultation and public participation in decision-making’ (33.3%) and in an even lower degree of equality in ‘Advisory/Expert Group Composition’ (10%).

The involvement of lobbyists is not provided for by the law. Despite this, there are some spaces for citizens, civic organisations and the private sector to take part in the decision-making process. National legislation does in fact provide participatory mechanisms. However, they are not well structured and tend to be unbalanced towards the most resourceful actors. These mechanisms consist mainly of informal consultations. They have included public calls for comment or meetings with relevant stakeholders, expert groups and public committees. More recently, online consultation processes have been also introduced.

The problem with these mechanisms granting public access to the decision-making process lies in the follow-up. In fact, once consultations have been held and comments and suggestions have been collected, they are not always disclosed to the general public. Moreover, public representatives are not compelled to take the public’s comments into consideration. Nor are they required to provide any justification about whether and to what extent public inputs have been included in the final decision. The introduction of the above-mentioned AIR (Analysis of the Impact of the Regulation), has tried to cover this gap but with insufficient results.

Being part of a group of experts is another way to get access to the decision-making process. Yet this channel is not institutionalised. Hence, not everyone is able to take part in an advisory group. Participation is at the discretion of the institution which set up the group. Consequently, balance in the composition of the group is not guaranteed. Moreover, it is rather difficult, if not impossible, to have publicly available information concerning the composition, agenda and minutes of such meetings.

\[\text{See Annex 2 for the questionnaire and overall scores}\]

\[\text{See page}\]
CASE STUDY 3

A POSITIVE EXAMPLE OF LOBBYING ACTIVITY: DRUGS FOR RARE DISEASES

A positive example of a virtuous lobbying process has been identified in the health sector. The process guaranteed a certain level of equal and fair participation in the legislative process for new stakeholders. It concerned the hospital expenses for medicines for rare diseases. It was a long legislative process, which led to the gradual change of an existing law thanks to the involvement of several stakeholders and an in-depth debate on the topic.

The starting point was in 2007, when the Law 222/2007, established an overall limit for hospital pharmaceutical expenditure. The law provided that, in cases where the agreed hospital budget was exceeded, pharmaceutical companies, chemists and wholesalers must repay the overrun.

This rule, in its original form, concerned all kinds of drugs. This includes the so-called “orphan drugs”, which are used to treat rare diseases. The origin of the name comes from the difficulty to find companies willing to invest in the development of this kind of drugs, due to their low profitability.

A group of small manufacturing enterprises of orphan drugs disagreed with the application of the repayment rule for that particular kind of drugs. According to them, this would have undermined the overall sustainability of orphan drugs. It would have further reduced the already limited earnings of the companies that invested in orphan drugs, with the risk of closure of Italian subsidiaries.

Therefore, the manufacturing enterprises addressed a lobbying agency to ask for the exclusion of orphan drugs from the medicines that were subject to the expenditure ceiling.

The first action of the lobbying agency was to create an informal group since no specific interest group on orphan drugs previously existed. The group was able to speak with one voice and had a good level of representativeness of the sector. Therefore, a Working Group on Orphan Drugs was established, and it became the sole qualified interlocutor with stakeholders.

The lobbying activity of the group ran for two years, involved two different governments and two different Ministers of Health. The objective was progressively achieved. First, a partial exclusion (50%) was obtained in July 2012. Then in August 2012, the total exclusion was granted. The process was completed in December 2013.

The lobbying activity was prepared first through the identification and evaluation of all possible technical solutions. This involved carefully evaluating both critical organisational aspects,

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106 Ilaria Vacca, Farmci orfani, i tagli mettono a rischio la loro futura disponibilità, O.Ma.R Osservatorio Malattie Rare, 7th March 2012
107 The name of agency is voluntarily not reported.
especially, the economic impact on public finances and the rest of the business sector.

The second step consisted in carrying out a careful analysis of different positions on the topic. The aim of this was to identify, for each possible technical solution, the favourable and unfavourable factors contributing to the action’s success.

This preparatory work allowed the group to challenge opposition from the pharmaceutical companies’ associations. In turn, this enabled the group to gain unilateral support. The group’s activities were thereafter addressed to MPs. This enabled the group to identify those MPs who were most receptive to the issue of orphan drugs and rare diseases. In other words, the group were able to find the MPs who could promote the initiative at parliamentary level.

At a later stage, the true lobbying activity began towards government, parliament and the health sector’s authorities. The lobbying activities consisted of communication actions (public letters, communications from the Working Group and dissemination of position papers). In addition, the lobbying group held individual meetings with the representatives of the above-mentioned institutions. The group explained its position to reach a cross-party consensus in parliament and have the support of the government and the National Agency of Drugs (AIFA). The lobbying group also took the time to acknowledge any objections.

As a first action, an MP, among those previously identified and met, was asked to file a motion on orphan drugs. The motion aimed for excluding orphan drugs from the requirement of payback outlined above.

The motion had no legal value but it was a request for commitment from the government to act on this topic and in a certain direction. Support from all political forces was achieved for the motion, due to its positive value and the absence of immediate effects. Despite its soft nature, the motion gave reasonable assurance of parliamentary consent on a future amendment.

In order to gain government support, several meetings were conducted with the political advisers at the Ministry of Health. The meetings primarily addressed financial concerns. A solution was presented that envisaged a distribution on all companies of expenditure exceeding for orphan drugs. This measure was opposed by other pharmaceutical industries, who undertook lobbying activities against it.

An agreement was also reached with the Ministry about which "legislative vehicle" to use for the amendment. It was named the "Spending Review 2" decree.

One of the selected MPs presented the amendment. After an intense discussion in the commission and with the approval of the government, the amendment was finally voted and approved by parliament.

The lobbying activity to reach a total exclusion of orphan drugs from expenditure limits, obtained in 2013, followed a similar pattern. It was based on cost-benefit analysis and persuasion consultations.

The case of lobbying is considered successful because it achieved its objective (the change of the law). On top of this, it shows how a not so powerful group of small manufacturing industries was able to lobbying for its interests. This was not achieved because of an already established power position or monopoly, but because of a persuasion process through the use of strong arguments. The Working Group on Orphan Drugs did not publish meetings and
materials online but this was partly because it was newly established and did not have a website. Regardless, it can show how good lobbying can work and what it can achieve.
ANNEX 1 – METHODOLOGY NOTE

This report is part of the European Commission funded ‘Lifting the Lid on Lobbying’ project, which sees 19 European countries assess the situation with regard to lobbying and its regulation in their country.\textsuperscript{108}

The report aims to:

- Assess existing lobbying regulations, policies and practices in Italy
- Compile evidence about corruption risks and incidences related to lack of lobbying control
- Highlight promising practice around lobbying found in our country
- Provide recommendations and solutions for decision-makers and interest representatives in the public and private sector in Italy

DEFINITIONS

The definition of lobbying for this project is “Any direct or indirect communication with public officials, political decision-makers or representatives for the purposes of influencing public decision-making carried out by or on behalf of any organised group.”\textsuperscript{109}

‘Lobbyists’ can include not only professional lobbyists, but private sector representatives (in-house lobbyists), public affairs consultancies, representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics.\textsuperscript{110}

We believe that regulation should capture all who lobby professionally and our definition purposefully excludes individual citizens lobbying on their own behalf as this is considered part of a normal healthy democratic process and not something which should be unduly regulated. A number of case studies are included, which highlight incidences of undue lobbying by taxi drivers and in the gambling industry, clearly showing there are risks for society at large when lobbying is allowed to take place in the shadows or without any regulation. More positively, we also include an example of promising practices identified in our research.

\textsuperscript{108} The participating countries are Austria, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Portugal, Slovakia, Slovenia, Spain, and the United Kingdom.


ASSESSING LOBBYING RULES AND PRACTICE – OUR APPROACH

Transparency is crucial if there is any chance of public trust in politics being restored. When looking at transparency around lobbying practices, our research sought to answer the following overarching question: to what extent does the public have sufficient knowledge of (a) who is lobbying public representatives (b) on what issues they are being lobbied (c) when and how they are being lobbied (d) how much is being spent in the process (e) what is the result of these lobbying efforts? We also sought to investigate whether the onus for transparency is placed on both the lobbyist and the public official/representative.

We believe that transparency of lobbying must be embedded within a broader public sector integrity framework which mitigates the risks of conflicts of interest when important decisions are being taken. To understand how well-insulated countries are against undue lobbying, our research sought an answer to the following overarching questions about ethical lobbying: Is there a robust ethical framework for lobbyists (and companies) and lobbying targets in the country and to what extent is it working? Is the onus for integrity placed on both lobbyists and public officials/representatives?

Finally, when regulating lobbying, transparency and integrity measures are crucial but they must be accompanied by rules that allow for equality of access to decision makers, which is essential to fairness and pluralism in the political system. Our research asked whether there are enough spaces in the system to allow for diverse participation and contribution of ideas and evidence by a broad range of interests that lead to policies, laws, and decisions which best serve society and broad democratic interests.

DATA COLLECTION AND VALIDATION

The research was carried out by Transparency International Italia during the period from March to July 2014. It is mainly based on information gathered from legal publications, professional papers, websites of institutions and lobbying associations, media articles. Moreover, a short contribution was asked to the experts of the Advisory Board, an expert roundtable formed by lobbyists, institutions, lawyers, the Chamber of Commerce and journalists, which was specifically created to assist the research phase.

The research was primarily qualitative; however a quantitative element was also included in order to evaluate the robustness and efficacy of national regulations and self-regulation mechanisms around lobbying and to allow for some comparison across the countries. To this end, a set of 65 indicators were scored by the researcher, based on the qualitative information gathered through the research.

A 3-point scale was used to score the indicators, with a minimum score of 0 and a maximum score of 2.[1] In order to calculated the overall scores for the country, and for the three dimensions of Transparency, Integrity and Equality of Access, a simple aggregation was performed. Specifically, a total score (as a percentage) was calculated for 10 sub-dimensions (Access to information, Lobbying registration systems, Verification and oversight mechanisms, Legislative footprint, Pre- and post-employment restrictions, Codes of conduct/ethics for policymakers, Codes of conduct/ethics for lobbyists, Self-regulation of the industry, Consultation and participation mechanisms in public-

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[111] A regional report compiling and comparing the national results is foreseen for publication in early 2015.
decision-making and Expert and advisory group composition). A simple average was then calculated to provide an overall score for the three key dimensions of Transparency, Integrity and Equality of Access. The overall country score was calculated by averaging these three dimensions.

This report provides a detailed look at the lobbying landscape in Italy and highlights key gaps and deficiencies in the approach to regulating lobbying, which are leaving society exposed to the risks of unclear and unfair decisions being taken by public officials and representatives in the name of the people. Our aim is to bring attention to the issue and promote positive change. To this end, the report puts forward a set of key recommendations and solutions suggesting how the weaknesses identified should be tackled.
ANNEX 2 – QUESTIONNAIRE AND SCORES

Di seguito riportiamo le domande del questionario e la risposta che ha trovato concordi la maggioranza degli esperti intervistati.

DEFINITIONS

1. To what extent does the law clearly and unambiguously define ‘lobbyists’ to capture all who lobby professionally including professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics?
   0 – No definition/Wholly inadequate definition covering a small proportion of lobbyists

2. To what extent does the law/regulation define ‘lobbying targets’ in a sufficiently broad manner to include members of national and subnational legislative and executive branches (including advisors) and high level officials in national and subnational public administration, regulatory bodies and private bodies performing public functions?
   0 – Lobbying targets are not defined in law/ Wholly inadequate definition covering a small proportion of lobbying targets

3. To what extent is the term ‘lobbying’/‘lobbying activities’ clearly and unambiguously defined in law/regulation to include any contact (written or oral communication, including electronic communication) with lobbying targets (see above) for the purpose of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government program, policy, or position?
   0 – No definition/Wholly inadequate definition covering a small proportion of lobbying activity

TRANSPARENCY

Access to information

4. To what extent is there a comprehensive access to information law that guarantees the public’s right to information and access to government data?
   1- Law exists but with inadequacies

5. In practice, to what extent do citizens have reasonable access to information on public sector activities and government data?
   1- In practice, access is not always straightforward/citizens often face obstacles to access

6. Do access to information laws apply to lobbying data?
   0 - No law exists/Law does not apply to lobbying data
Registration and disclosure by lobbyists

7. Is there a lobbyist register in the country?
   1 - Voluntary register exists / A register for a particular institution exists but does not apply to all lobbying activity

8. Where a register exists, to what extent does it capture all who lobby professionally including professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics in the country?
   0 - Wholly inadequate scope covering only a small proportion of lobbyists

9. To what extent are lobbyists required to register in a timely (within 10 days of beginning of lobbying activity) manner?
   0 - No compulsory registration

10. To what extent are lobbyists required to report regularly on their lobbying activities and expenditures in a timely manner (max real-time - min quarterly)?
    0 - No requirement to report / Reporting less often than annually

11. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant personal and employment information: name of the organization (if applicable); address and contact information; names of all active lobbyists working on behalf of the organization (if applicable)?
    0 - No information required to be publicly disclosed by lobbyists

12. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant information on lobbying objectives and clients: name of the persons or organizations paying for the lobbying activities; names of the lobbyists’ clients; specific subject matter lobbied?
    0 - No information required to be publicly disclosed by lobbyists

13. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant information on who they are lobbying and what they are advocating: name and title of the public representative or public body with whom the lobbyist engaged and the date and type of such engagement as well as any information and/or supporting documentation communicated to policymakers?
    0 - No requirement to report

14. To what extent are lobbyists and organizations that lobby required to publicly disclose lobbying expenditures, including spending on efforts to support lobbying, loans, sponsorships, retainers, or the purchase of tickets for fundraising events?
    0 - No information on expenditures required to be publicly disclosed by lobbyists

15. To what extent are lobbyists and organizations that lobby required to publicly disclose political donations to parties and candidates?
    0 - No requirement for public disclosure of political donations

16. To what extent are lobbyists required to publicly disclose ‘in kind’ contributions: In-kind contributions may include advertising, use of facilities, design and printing, donation of equipment, or the provision of board membership, employment or consultancy work for elected politicians or candidates for office?
    0 - No information on ‘in-kind’ contributions required to be publicly disclosed by lobbyists
17. Is information disclosed by lobbyists publicly available online in a searchable machine-readable open-data format?
0 - Information not available online

18. To what extent do the lobbyists register and provide sufficient/timely information in line with legislative obligations?
2 - Broad compliance with legal obligations

Oversight, verification and sanctions
19. To what extent is there an independent, mandated and well-resourced oversight entity charged with managing registration of lobbyists, offering guidance to individuals and organisations, monitoring returns, and investigating apparent breaches or anomalies (this includes powers to investigate complaints made but also to instigate investigations even where no complaint has been lodged)?
0 - No oversight entity exists

20. To what extent is there a pro-active verification mechanism to audit disclosures and reports and detect anomalies?
0 - No verification mechanism exists

21. In practice, to what extent are anomalies detected and followed up on by the oversight body?
0 - Little or no detection of anomalies

22. In practice, to what extent are anomalies detected and reported by others (e.g. investigative journalists) followed up on by the oversight body?
0 - Little or no detection of anomalies

23. To what extent does the law provide for penalties for knowingly filing a false lobbying registration return or failure to file a return?
0 - No penalties exists

24. To what extent are penalties for knowingly filing a false return or failure to file a lobbying registration return implemented in practice?
0 - Never

25. To what extent are oversight bodies required to publicly disclose the names of all individuals or organizations found to have violated lobbying rules or regulations?
0 - No requirement to publicly disclose names of those who violate rules

26. To what extent are the names of all individuals or organizations found to have violated lobbying rules or regulations published in practice?
0 - Never

Legislative footprint
27. To what extent does the law require the publication of a ‘Legislative Footprint’ (document that details the time, event, person, and subject of legislators’ and senior public officials’ contact with a stakeholder) as an annex to all legislative records?
0 - No legislative footprint foreseen in law

28. In practice, do legislators/public officials publish a legislative footprint including details of the time, person, and subject of contacts with stakeholders?
0 - No information on contacts publicly disclosed by legislators/public officials

29. To what extent are senior public officials required to pro-actively publish documentation related to meetings: calendars, agendas, documentation received from lobbyists etc?
0 - No requirement to make documentation related to meetings public

30. To what extent are public representatives (national and subnational legislators) required to pro-actively publish documentation related to meetings: calendars, agendas, documentation received from lobbyists etc?
0 - No requirement to make documentation related to meetings public

INTEGRITY

Post-employment and pre-employment restrictions

31. To what extent does the law provide proportionate moratoria or ‘cooling off periods’ before former members of parliament, senior public servants, ministers and advisers can work as lobbyists?
0 - No cooling off period in place

32. To what extent do ‘cooling off periods’ for those who wish to work as lobbyists apply to former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers?
0 - No cooling off period in place

33. In practice to what extent do former members of parliament, senior public servants, members of the executive and advisers move easily and directly into the lobbying sector?
1 - There have been a number of cases of former members of parliament, senior public servants, ministers, ministerial advisers to moving directly into the lobbying sector

34. To what extent does the law require former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers to receive permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer?
0 - No permission required

35. In practice, to what extent do former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers seek permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer?
0 - Never

36. To what extent is there an independent, mandated and well-resourced oversight entity charged with managing post and pre-employment restrictions, offering guidance to individuals and organisations, and investigating apparent breaches or anomalies?
0 - No oversight entity exists

Codes of ethics for public sector employees

37. To what extent is ethical/responsible lobbying addressed in public sector codes of conduct (e.g. do they specify standards on how public officials should conduct their communication with interest groups, specify a duty of documentation of contacts, duty to report unregistered or unlawful lobbying to superiors?)
0 - No code of conduct exists for public officials and/or codes of conduct do not reflect ethical lobbying guidelines

38. To what extent do public sector codes of conduct specify standards on how public officials should deal with conflicts of interest issues?
1 - Codes of conduct address conflict of interest issues in a piecemeal or insufficient manner

39. To what extent do public sector codes of conduct specify standards on how public officials should deal with gifts and hospitality issues?
2 - Codes of conduct comprehensively address reflect gifts and hospitality issues

40. To what extent do public sector codes of conduct deal comprehensively with interest and asset declaration issues?
1 - Codes of conduct address asset declaration issues in a piecemeal or insufficient manner

41. To what extent is there a complaint mechanism allowing any public official or citizen to report violations of the public sector code of conduct?
1 - Complaints mechanism exists but is limited in scope

42. To what extent are there training and awareness-raising programmes for public officials on integrity issues, including lobbying rules and guidelines?
1 - Piecemeal and irregular approach to training/awareness-raising on integrity issues

Codes of ethics for lobbyists

43. To what extent is there a statutory code of conduct for lobbyists including clear sanctions for failure to adhere to lobbying regulations?
0 - No code of conduct exists

44. In practice, to what extent are sanctions applied for failure to adhere to lobbying regulations?
0 - Sanctions rarely/never applied

45. To what extent does the law and/or the lobbyists’ code of conduct require disclosure regarding and provide restrictions on lobbyists being hired to fill a regulatory, financial decision-making or advisory post in government?
0 - No disclosure requirements or restrictions in place

46. To what extent does the law and/or codes of conduct prohibit simultaneous employment as a lobbyist and a public official?
0 - No mention of prohibition of simultaneous employment as a lobbyist and a public official
47. To what extent is there a complaint mechanism allowing any policy-maker or citizen to report violations of the lobbying regulations?
0 - No complaints mechanism exists

Self-regulatory codes of ethics for lobbyists

48. To what extent are there self-regulatory code(s) of ethics managed by professional association(s) for lobbyists or by companies themselves?
2 - Code of ethics including sanctions exists

49. To what extent do existing self-regulatory codes of ethics for lobbyists include specific behavioural principles that steer lobbyists away from unethical situations?
2 - Codes of ethics for lobbyists include specific behavioural principles that steer lobbyists away from unethical situations

50. To what extent do existing self-regulatory codes require lobbyists to publicly disclose the identity of who they are representing and what they are lobbying for?
0 - No information required to be publicly disclosed by lobbyists

51. To what extent do existing self-regulatory codes prohibit simultaneous employment as a lobbyist and a public official?
2 - Code of conduct explicitly prohibits simultaneous employment as a lobbyist and a public official

52. To what extent is there a complaint mechanism allowing any member or non-member of the association to report violations of the lobbying code of ethics?
0 - No complaints mechanism exists

53. To what extent are there reasonably independent mechanisms for the monitoring and enforcement of compliance with the ethics code(s)?
0 - No monitoring and enforcement mechanisms exists

EQUALITY OF ACCESS - THE LEVEL PLAYING FIELD

Consultation and public participation in decision-making

54. To what extent is the Parliament required by law to allow citizens and the public (corporations and civic organizations) to provide equal input to members regarding items under consideration, with sufficient notice and time incorporated in the legislative process to receive this input?
1 - The legal framework allows for citizens and the public (corporations, civic organizations) to provide input to parliament, but it does not make any provisions regarding equal access, sufficient notice and time to receive this input

55. To what extent does the legal framework lay out in a law or a group of laws the varied means for public participation in the formulation, implementation, and evaluation of policies, including timeframes and specific mechanisms to disseminate public meeting information, attendance and participation rules, instruments and tools to submit comments and opinion on specific policies?
0 - There are no procedures and rules for participation in policy discussions and decision making processes, or they are ad hoc to each policy and decision making process.

56. To what extent does the legal framework explicitly require public authorities to ensure equal participation by all affected groups and stakeholders in decision-making processes?
1- Some provisions regarding the equal participation of affected groups exist, but they are not specific, or they are relegated to policy directives.

57. In practice, which of the following forms of public participation are routinely used?
Informal consultation with selected groups
Public notice and calling for comment
Public meeting
Posting proposals online
Advisory/Expert Groups
Preparatory Public Commission/committee

58. In practice, to what extent are consultations open to participation from any member of the public?
1 - Consultations are sometimes but not always open to any member of the public

59. In practice, to what extent are the views of participants in the consultation process made public?
1 - The views of participants in the consultation process are sometimes but not always made public

60. To what extent does the legal framework explicitly require public authorities to provide a detailed justification on why and how various submissions have or have not been taken into account in policy and decision-making processes after consultation?
0 - There are no provisions requiring public authorities to explain whether and how they have considered participation, or there is no participation provided for.

Advisory/expert group composition

61. To what extent is there a legal obligation to have a balanced composition (between private sector and civil society representatives) of advisory/expert groups?
0 - No requirement to have balanced composition

62. In practice, to what extent is there a balanced composition (between private sector and civil society representatives) of advisory/expert groups?
1 - Advisory groups are sometimes balanced, sometimes not

63. To what extent are lobbyists prohibited from sitting on advisory/expert groups in a personal capacity?
0 - Lobbyists can freely sit on advisory groups in a personal capacity

64. To what extent are corporate executives prohibited from sitting on advisory groups in a personal capacity?
0 - Corporate executives can freely sit on advisory groups in a personal capacity

65. With regard to advisory/expert groups, to what extent is membership information, agendas, minutes and participants' submissions required to be made public?
0 - Information not publicly available
### Transparency

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<th>SUB-CATEGORY</th>
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<tr>
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<tr>
<td>Registration and disclosure by lobbyists</td>
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<td>Oversight of register and sanctions</td>
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</tr>
<tr>
<td>Legislative footprint</td>
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<td><strong>Total</strong></td>
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### Integrity

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<tr>
<td>Code of conduct for public sector employees</td>
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<td>Code of conduct for lobbyists</td>
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<tr>
<td>Self-regulatory code(s) of ethics</td>
<td>50%</td>
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<tr>
<td><strong>Total</strong></td>
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### Equality of Access

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<td>Consultation and public participation in decision-making</td>
<td>33.33%</td>
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<tr>
<td>Advisory/expert group composition</td>
<td>10%</td>
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<td><strong>Total</strong></td>
<td><strong>22%</strong></td>
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