

Lobbying with Integrity

Response to the Draft Revised OECD Recommendation
on Transparency and Integrity in Lobbying

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We hereby submit our response to the public consultation on the Draft Revised Recommendation of the Council on Transparency and Integrity in Lobbying and Influence.

Our submission addresses the three questions put forward in your call and contains 22 specific proposals for amendments as well as their rationale. The submission has been compiled by the International Secretariat of Transparency International and reflects the views of:

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2. Grzegorz Makowski, Senior Expert at Stefan Batory Foundation; Professor at Warsaw School of Economics, Poland
3. Ingrida Kalinauskiene, interim CEO, Transparency International Lithuania
4. Jan Dupák, Lawyer, Transparency International Czech Republic
5. Jesper Olsen, Chair, Transparency International Denmark
6. John Devitt, Executive Director, Transparency International Ireland
7. Judit Zeisler, Project Manager, Transparency International Hungary
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10. Louise van der Laan, Director, Transparency International Netherlands
11. Maruša Babnik, Secretary-General, Transparency International Slovenia
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We are at your disposal to clarify any queries concerning our submission. We look forward to further opportunities for contributing to the update of the recommendation.

Kind regards,

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Transparency International Secretariat

QUESTION 1

Does the draft revised Recommendation adequately reflect the emerging concerns and challenges in the lobbying and influence landscape? What additional challenges, if any, should the draft revised Recommendation address?

TRANSPARENCY INTERNATIONAL'S POSITION

The Transparency International movement works to ensure transparency, integrity and equal-access opportunities for lobbying. When present, all three conditions deter undue influence and safeguard the common good in policy making. Ensuring them has become more difficult due to the growing sophistication of forms, sources, and targets of undue influence and lobbying in OECD member states and beyond.

OECD sets standards not just amongst its members – its standards also have a global influence. OECD countries lead the way in developing integrity-enhanced regulatory frameworks, but they, too, are yet to meet the above-mentioned new challenges. OECD's Draft Revised Recommendation of the Council on Transparency and Integrity in Lobbying and Influence (henceforth 'Recommendation') provides a timely undertaking to close off opportunities for undue influence, safeguard the common good, and foster public trust in democracies.

In our responses to Questions 2 and 3, we suggest improvements to the draft Recommendation, by addressing the following five challenges:

1. **Persistent gaps between law and practice regarding transparency.** To date, lobbying is the least regulated area of public integrity systems and, where regulations exist, implementation is low. Limited openness of influence prevents public scrutiny of decision-making. The Recommendation must unequivocally state that governments should establish transparency registers, along with proactive disclosure by public officials and private actors, greater incentives for compliance (such as making registration a condition for conducting such activities) and stronger means for enforcement by oversight agencies, such as mandates and resources to conduct investigations and seek proportionate sanctions. As voluntary schemes so clearly show, non-existent or light administrative sanctions provide weak deterrence, resulting in low to no registration, reporting and disclosure.
2. **Growing sophistication of influencing techniques outdate integrity standards.** Undue influence finds a way around direct private-public interactions. It does so through funding of research, shaping public discourse and information ecosystems often unethically through misinformation or disinformation, and crowding out advisory bodies or delegations to intergovernmental fora such as climate-related negotiations. Actors engaged in influencing have multiplied, too, and include foreign entities, think tanks, former leaders and other influential individuals. Grassroots organisations, public discourse and information ecosystems, elections or intergovernmental fora are increasingly targets of influencing efforts. While the draft Recommendation does well to expand its scope to influencing efforts other than direct lobbying, it is yet to strengthen deterrence against these newer threats.
3. **Persistent risks of conflicts of interests.** Conflict of interest situations are presented when former public officials are promised jobs or transition into the private sector not just as lobbyists. Risks of regulatory capture also arise when part-time office holders, such as legislators or experts in advisory bodies, are offered opportunities for secondary employment, and when private sector representatives crowd out government delegations to international fora. Many

countries' existing secondary, pre- and post-employment restrictions –i.e., relating to revolving doors and cooling-off periods- have grown inadequate to deter or shed light on these corruption-prone private-public connections. As the lobbying-and-influence-industry draws from pools of former high-level officials with insider knowledge and connections, there is high risk of views from other concerned stakeholders to be outweighed if they do not have the same opportunities.

The draft Recommendation must tackle coercion, capture or crowd out risks by promoting integrity obligations for private sector representatives advising governments, as well as standards applying to all public officials moving into roles in the private sector (not just as lobbyists, but also as counselors, board members and similar positions).

4. **Protecting freedom of association and expression while curbing abuse of not-for-profit legal forms to advance commercial interests.** Another challenge stems from the difficulty of striking a balance between disclosure requirements for public interest advocacy carried out by civil society organisations on the one hand, and the requirements for lobbying by trade and business associations that adopt similar legal forms (so-called 'business NGOs' or 'BINGOS') on the other. The latter comes with an additional challenge that is, discerning whether individual corporate positions of a member or a donor are presented as the position of the association it is affiliated with. The challenge consists in heightening standards without imposing unnecessary burdens that could impinge upon freedom of association and speech of ordinary citizens.
5. **Cross-border activities that allow covert foreign interests influencing domestic policy.** Over recent years autocratic governments increasingly seek to exert bold and transgressive influence over politics, public discourse and policy making in democratic countries with means other than just diplomacy. Autocrats take advantage of complex or opaque ownership structures (parent/subsidiaries) of state-owned corporations, aided by concealment of beneficial ownership data, or covert foreign political financing in cash or in-kind, to name two examples.

QUESTION 2

What are, in your view, key aspects related to the lobbying and influence landscape that should be added to the draft revised Recommendation?

TRANSPARENCY INTERNATIONAL'S POSITION

Transparency International has proposed 22 amendments to the draft Recommendation - which include calling for governments to establish mandatory public registers and to prevent and sanction trading of influence - as follows:

1. **Mandatory, open and centralised public register**

Governments must establish mandatory, centralised and open public registers for interest representatives to register and disclose relevant information online, in machine-readable formats, free of charge, timely, downloadable, open licensed, and interoperable with other relevant public information (e.g., campaign donations, asset and interest declarations, business ownership). In contrast to the 2010 Recommendation, this provision is inexplicably omitted in the current draft.

Without mandatory public and open registers, public officials cannot understand what interests their interlocutors have. Nor can watchdogs from government and society detect, expose and counter infringements. Centralised public registers, when well implemented, build public trust and improve accountability.

2. Deter risks and impose sanctions on trading in influence

The offering or promising of an advantage in exchange for improperly exerting influence over public decisions is an inherent risk of private-public interactions. This serious violation of public integrity is not rare. Indeed, risk is highest when lobbyists make financial contributions to the candidates and political parties with which they engage.

Yet, the Recommendation does not refer to trading in influence or other grave offences connected to lobbying, nor does it call for banning lobbyists' contributions parties and candidates.

To ensure that there are proportionate and deterrent sanctions, the Recommendation must include liability beyond administrative accountability. It should encourage governments to implement Article 18 of the UNCAC on criminalising trading in influence and make it a key part of their influencing and lobbying frameworks. The Recommendation should also call for interest representatives to refrain from making financial contributions, which is an essential part of responsible lobbying conduct.

QUESTION 3

What changes, if any, would you recommend in the draft revised Recommendation?

While higher standards are needed to protect the integrity, transparency and equal access of lobbying and influencing activities, we recognize that over-prescribing may be counterproductive in contexts in which lobbying is not regulated and opaque. Our recommendations strike a delicate balance between both goals. When in doubt, we side with transparency:

TRANSPARENCY INTERNATIONAL'S PROPOSED AMENDMENTS

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the standards developed by the OECD in the area of public governance, regulatory policy, public integrity, corporate governance, anti-corruption, public procurement, and responsible business conduct;

Proposed amendment

RECOGNISING that serving the public interest is the fundamental mission of governments and public institutions, lobbying and seeking to influence government decisions are legitimate to the extent that all concerned stakeholders should have a fair and equitable opportunity to participate and support public decision-making processes by providing valuable data and insights for effective public policies;

Rationale:

The Preamble must strongly register governments' obligation to ensure that public decision-making processes safeguard the public interest. Other OECD legal instruments, for instance the 'Recommendation of the Council on Public Integrity' and Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service', include this recognition in similar terms. The Preamble must also recognise that lobbying and influencing should serve the public interest, not least by ensuring equality in participation.

Proposed amendment

RECOGNISING that public decision-making processes that are shielded from undue influence and supplied with relevant inputs **from the plurality of concerned stakeholders** are crucial **for public decision making that safeguards** the public interest, especially as the information landscape is becoming more complex and it is more difficult for public officials to navigate through the information and documents they receive;

Rationale

As in the previous paragraph, the plurality of stakeholders that must have opportunity to provide 'relevant inputs'; one-sided lobbying is inconsistent with safeguarding the public interest. Lobbying can be carried out by organisations/persons for their own interests or by persons/organisations for the public interest, both need be weighed in consideration of the public interest (e.g., consider conflicting interests in the environmental sector between profiting off one's property vs urban development restrictions to safeguard vulnerable ecosystems). The importance of safeguarding the public interest should not be taken for granted in lobbying and inputs provided by either commercial or not-for-profit actors. Hence the need to qualify the statement.

Proposed amendment

RECOGNISING the evolving lobbying and influence landscape, with particularly new and more diverse mechanisms and channels of influence, such as through **social media disinformation and malinformation online, opaque funding of research, political parties and candidates via straw donors, personal social connections and networks**, and lobbying and influence by foreign commercial and political interests, including foreign governments and their affiliated organisations and multinational enterprises;

Rationale

The Preamble should explicitly recognise disinformation and malinformation practices as those are intentional strategies to distort public discourse to influence decision making. Likewise, the acknowledgment of donations via third parties as means of influencing shall contribute to making a case for their mandatory disclosure. Moreover, the reference to personal connections will make the Preamble more attuned to the fact that influence communications happen irrespective of place and medium, often below the radar (this reflects the EU acquis).

Proposed amendment

RECOGNISING that the increasing risks connected with undue influence on public decision-making processes make it more important for governments to tackle undue influence and set up a strong, effective and resilient framework for lobbying and influence activities **that is consistent with the broader public integrity framework and whose implementation is independently monitored, enforced, and liable to proportionate and dissuasive sanctions**;

Rationale

The Preamble must state the measures needed to ensure compliance and implementation. At least a reference to a basic standard would strengthen the Recommendation and substantiate the need to include further measures to close persistent gaps between law and in implementation practice. The implementation, enforcement and sanctions must be considered alongside frameworks themselves. Moreover, the reference to the broader public integrity framework stresses that for effective prevention of undue influence on public decision-making, lobbying regulation requires complementary measures such as those setting standards of integrity for public officers and PEPs through codes of ethics and guidelines on conducting communications with lobbyists and influencers; post-employment regulations for public

employees holding posts that involve regulatory and inspectorate functions; and regulations that support access to information, to name a few.

RECOGNISING that integrity, proactive disclosure, transparency, openness, and equity in public decision-making are necessary for both the creation of optimal policies and citizens' trust in government;

RECOGNISING that influence actors and companies are under increasing scrutiny and that there is a need for a clear integrity framework regulating the engagement with public decision-making processes;

RECOGNISING the need to reflect the evolving lobbying and influence landscape and assist actors in government, business, and civil society to reinforce the frameworks for transparency and integrity in policy-making;

RECOGNISING the need to implement international standards related to the protection and promotion of civic space, open government, and independent and plural media;

RECOGNISING that opaque lobbying practices, different forms of undue influence and limited or absent opportunities for equitable participation in public decision-making negatively impact the achievement of the 2030 Sustainable Development Goals, and, more specifically, jeopardise efforts to address the global climate crisis, preserve democratic values and the rule of law, and promote human rights;

CONSIDERING that while the responsibility for ensuring transparency, integrity and equity in public decision-making rests primarily with the government, at all levels of government, and by all public institutions, it is also shared with influence actors and therefore this Recommendation is relevant at all levels of government and for all actors involved in lobbying and influence activities.

On the proposal of the Public Governance Committee:

Proposed amendment

- I. AGREES** that the purpose of this Recommendation is to provide guidance on how governments can maximise the benefits of inputs into public decision-making **to safeguard the public interest**, while fostering transparency and integrity in lobbying and influence activities, restricting undue influence of government policies, and increasing equity in stakeholder participation, by building or strengthening a coherent, comprehensive, effective and enforceable system, consistent with the wider policy and regulatory frameworks, and ensuring proper implementation, compliance and review.

Rationale

As per our comment on the first consideration (see above), governments must weigh inputs to public decision making in terms of safeguarding the public interest.

- II. AGREES** that, for the purposes of the present Recommendation, the following definitions are used:

Proposed amendment

- **Lobbying and influence activities** refers to actions aimed at or capable of influencing public decision-making, and targeted at public officials or institutions carrying out the decision-making process, its stakeholders or a wider audience **irrespective of context in which the actions take place.** ~~It does not cover to influence activities exercised through official consultation processes whereby transparency and integrity is already ensured, and influence by foreign governments through formal diplomatic channels.~~

Rationale:

The Recommendation rightly widens its scope beyond traditional lobbying –e.g., written or oral interactions and communications- to also include ‘influence activities’. Two implications derive from this policy choice. First, the definition must explicitly acknowledge that influence activities carrying the risk of leading to undue influence often take place in non-institutional contexts (e.g., social gatherings; print, broadcast or online media, etc.). Second, the definition thus broadened makes the exemption created in the second sentence redundant. Rather than eliciting a definition of ‘official consultation processes’ (to clarify when “transparency and integrity are already ensured”) we suggest eliminating the exception because the Recommendation makes itself applicable to some actors or instances of official consultation processes, such as advisory panels (see IV).

Considering its broader scope, the Recommendation must also define those who engage in influence activities without necessarily engaging in traditional lobbying. We suggest ‘Interest representative’ serves that purpose. Already several countries that regulate lobbying use equivalent terms (e.g., Germany, Estonia, France, etc.), as it refers to natural and legal persons conducting lobbying and influence activities. The term would then cover all forms of influencing practices, even those where the influence on public decisions is only an indirect consequence of, say, grassroots communications or the use of mass media targeting public opinion. Not least, using the term could avoid the negative connotations ‘lobbyist’ carries outside the Anglo-Saxon contexts where the concept first originated.

Proposed amendment

- **Advisory and expert group** refers to any committee, board, commission, council, conference, panel, task force, **delegation to an intergovernmental forum**, or similar group, or any subcommittee or other subgroup thereof, that provides governments with advice, expertise or recommendations. These may be made up of public and/or private-sector members, **including by companies in which the government has a controlling interest**, and/or representatives from civil society, and may be put in place by the executive, legislative or judicial branches of government or government subdivisions, either on an ad hoc or standing basis. **Where the recommendation refers to advisory and expert groups it is taken to refer also to the physical or legal persons acting as "advisor and expert", as a member of a group or delegation, or individually.**

Rationale

Our suggested amendments recognize the influence of one person, or of different people, acting individually. Should the original text be approved, a person appointed on trust would therefore not be recognised as having a position of influence which could lead to undue influence. While persons appointed on trust should be bound by separate rules on integrity and conflicts of interest, there are instances where, rather than a group, a Minister appoints an individual to act in an advisory and expert role, e.g., a consultant or advisor appointed in an individual capacity to advise the Minister or the public officer in the taking of or in relation to public decision-making. (This does not refer to legal advisors providing legal advice on matters which are unrelated to public decision-making processes)

While it is likely that, in democratic governance, a government would appoint an advisory group, nothing prohibits a minister or public official from appointing a single advisor or several advisors acting in their individual capacity rather than as a group. There are instances where ministers and public officials appoint a legal entity to advise and provide expertise and recommendations. This is likely to be riskier where the advisor so appointed is the choice of or

easily influenced by a lobby group or has his/her own interests in the sector on which he/she is advising.

The insertion of “delegation” recognises concerns about the influence of private sector expertise in international fora shaping international rule and frameworks, such as the United Nations Framework Convention on Climate Change.

Proposed amendment

- **Oversight function** refers to an **independent** public institution, dedicated or with broader competencies, adequately resourced and empowered to **investigate and** enforce policies and regulations concerning lobbying and influence activities, and monitor and promote their implementation **free from interference**.

Rationale:

The designated public institution should explicitly be able to perform their functions with independence, regardless of the level or standing it has. Such independence should at least be provided for in their mandates and resources and enable them to perform their oversight and promote enforcement without interference.

Proposed amendment

- **Regulatory footprint** refers to a **centralised public record of** documentation that details the stakeholders who sought to influence the decision or were consulted in its development **from its drafting to its approval**, and shows what inputs into the particular decision-making process were submitted and what steps were taken to ensure inclusiveness of stakeholders in the development of the regulation.

Rationale

For a regulatory footprint to serve its purpose, public officials must centralize the information in a public record. The use of unique identifiers for pieces of regulation, as we explained with regard to recommendation III.b), is necessary to make centralisation possible.

Proposed amendment

- **Undue influence** refers to an act of attempting to influence the design, implementation, execution and evaluation of public policies and regulations administered by public officials, whether by providing covert, deceptive or misleading evidence or data, by manipulating public opinion, by **promising an undue advantage or using** other practices capable of manipulating the decisions of public officials, **irrespective of whether the act was completed, or its purpose achieved**.

Rationale

We propose amending this paragraph to cover the premise of the most pernicious modality of exerting undue influence, ‘trading in influence’ –whose ban and penalization we strongly suggest be one of the deterrents this Recommendation integrates (see X)

- **Public decision-making process** refers to the development, implementation, evaluation or modification of any public policy or of any public programme, at all levels of government (federal, national, regional or local); the preparation or amendment of any law, including secondary legislation

such as statutory instruments and by-laws; the award, modification or withdrawal of any grant, loan or other financial support, contract or other agreement, or of any license or other authorisation involving public funds; and the nomination of key public officials.

Proposed amendment

- **Public official** refers to an individual carrying out **public functions or duties in legislative, executive, administrative or judicial offices, including for a public sector agency or state-owned enterprise**, at the central and subnational levels of government, whether appointed or elected, paid or unpaid, or in a permanent or temporary position, which **is/may be the subject** of lobbying and influence activities.

Rationale

Our proposed amendment heads the broad and accepted definition of public official provided by the United Nations Convention Against Corruption, article 2.a

Proposed amendment

III. RECOMMENDS that Members and non-Members having adhered to this Recommendation (hereafter the “Adherents”) strengthen transparency and openness in government decision-making processes in the executive, legislative, and judicial branches at all levels of government **by establishing systems to report, disclose and publish all information on** lobbying and influence activities, including from foreign governments and foreign commercial interests, **online, in regularly updated, machine readable formats, easy to access, free of charge, downloadable, open licensed, and interoperable with other public information and ensure transparency of**. To this effect, Adherents should:

- Make publicly available and easily accessible, **in a centralised**, timely, comprehensive and detailed **manner all** information on activities **(such as oral and written communications irrespective of media used, meetings, conferences, etc.)**, aimed at or capable of influencing **public government** decision-making processes **at all levels of government**, in particular on who is lobbying or influencing government, who is the target of such activities, and the specific policy issue **or regulatory act, the outcomes sought, and any supporting documentation received**;
- Require Establish** a **centralised** mandatory regulatory footprint in public decision-making processes with the information on **lobbying and influence activities per each regulatory act uniquely identified, the identification of the interest representatives and other stakeholders who sought to influence with what inputs, from its drafting to its approval, and what steps were taken to ensure inclusiveness of stakeholders in the development of the regulation**, made publicly available online, in an open data format, **which to** allow for cross-checking by third parties;
- Disclose, in an open data format, that is reusable for public scrutiny, all direct and indirect donations and contributions, received by the government, public officials, political parties and election campaigns from non-governmental actors, **natural or legal persons including the commercial or social entities affiliated with political parties and** from abroad;
- Foster the right to full access to information about lobbying and influence activities and timely responses to such requests for information, **including by assigning internationally compatible unique identifiers for public officials and interest representatives to ensure interoperability and cross-checking across jurisdictions**.

Rationale:

We understand this OECD Recommendation targets governments, public institutions and public officials rather than the legal entities and individuals pursuing lobbying and influencing activities. It should therefore explicitly set such a scope.

The introductory paragraph must make clearer what transparency and openness mean. Governments should establish registration, reporting and disclosure systems for public officials feeding to a publicly available record of lobbying and influencing activities of which they are targets.

We understand literal a) as establishing an obligation for public officials to report their own lobbying contacts or communications. Hence, it must stress that the information thus reported must be comparable and interoperable with the other tools that allow public scrutiny: a mandatory public register for lobbyists and interest representatives (see comment to VI) as well as the mandatory regulatory footprint (literal b). Moreover, the paragraph must include other minimal information to be reported therein.

With regards to literal **b), the mandatory regulatory footprint**, we propose to reflect on at least all elements provided in the definition.

The amendment proposed to c) reflects gaps in political finance laws in countries where political parties are affiliated with commercial or social entities. The text needs to address the transfer of funds or contributions to such entities, thereby closing a loophole in the financing of political parties and, therefore, influence.

Proposed amendment

IV. RECOMMENDS that Adherents implement transparency and integrity frameworks for all bodies providing advice to **or acting on behalf** a government, notably **persons acting as advisor, expert or members of delegations to intergovernmental fora, of** advisory and expert groups, and external consultancy organisations. To this effect, Adherents should:

- a) Publicly disclose information on **the process of creation, selection criteria**, funding and functioning of these bodies, and information on their members and other persons who participate in providing advice to government, **including declaration of** their private interests and their current and past professional affiliations;
- b) Provide rules that promote transparency, integrity and inclusiveness in these bodies, such as procedural rules and standards of conduct, and rules on conflicts of interest. **Acting as advisor, expert or member of a delegation, and advisory and expert groups must be conditional on the declaration of private interests and current and past affiliations.**

Feedback

We welcome the idea that this Recommendation should apply to 'all bodies' irrespective of their legal entity or informal settings. We propose to adjust the wording of the introduction to reflect that individual advisors and expert must be subject to the same transparency and integrity standards, and other essential information for the public to understand their role and interests and ensure their integrity.

Proposed amendment

V. RECOMMENDS that Adherents ensure that government decision-making processes are inclusive

and allow public participation and equal opportunity. To this effect, Adherents should:

- a) Ensure the right for all individuals and groups to timely and meaningfully participate in public consultation processes at all levels of government, and the obligation for public officials to provide equal opportunity in exercising that right;
- b) Ensure effective public communication and disclosure of information on the issues and options under consideration, the methods of consultation, timeframes and corresponding rules for consultation and engagement with respect to all stakeholders;
- c) Require that public officials proactively seek the views of those stakeholders that may be underrepresented in the public decision-making process early on in the process, and provide sufficient time for preparation and provide responses;
- d) Publish all written and oral inputs received in a regulatory footprint, including the justification of any refusal of the right to participate, how the various views submitted were considered, and the justification of the choices made;
- e) Encourage innovation through public consultation methods that rely on informed deliberation by groups of citizens selected to ensure representativeness of the communities concerned.

Rationale

This Recommendation must outline the opportunities for the public at large to have open access to public decision making. The proposed amendments more explicitly define minimum standards for public consultation processes and are partly based on the ‘International Standards for Lobbying Regulation. Towards Transparency, Integrity and Participation’ proposed in 2015 by Transparency International, Access Info, Sunlight Foundation and Open Knowledge. Furthermore, our suggested amendments consider the principles proposed in OECD’s 2020 report Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave.

Proposed amendment

VI. RECOMMENDS that Adherents ~~take measures~~ establish a mandatory, centralised, publicly available register in order for persons and entities such as companies, trade associations, grassroots organisations, think tanks, research bodies, consulting and law firms and other organisations conducting ~~having a significant role in~~ lobbying or ~~and~~ influence activities to register and fully disclose relevant information online, in machine readable formats, free of charge, timely, downloadable, open licensed, and interoperable with the information referred to in paragraph III of this recommendation, and other relevant public information. To this effect, Adherents should ensure timely disclosure of:

- a) In the case of companies, their ownership, including beneficial ownership, senior executives, financing and, if applicable, lobbying clients;
- b) Political engagements, notably donations and contributions to the government, political parties and election campaigns, either directly or indirectly through third parties;
- c) Activities aimed at influencing public opinion or public decisions ~~either directly or indirectly~~, e.g. through trade associations, grassroots movements, think tanks, research bodies, charities, fundraising organisations, prominent experts and personalities, ~~or targeted ads via social media~~ communications or advertising on print, broadcast media or online platform

services aimed at influencing the outcome of an election, referendum, legislative or regulatory process, voting behavior or public interest issues’;

- d) ~~Companies’ disclosure of t~~ Their spending to these organisations and persons incurred in lobbying and influence activities (including in-kind, calculated to set criteria, in cost bands, if need be), the sources of funding for that spending, and their engagement with outside organisations such as ~~companies~~, trade associations, grassroots organisations, think tanks and research bodies, as well as with experts and personalities;
- e) ~~Companies’~~ Their board members, ~~and~~ senior executives, and outreach personnel declaration of interests, including their significant ownership or controlling position in any company and any prior roles as public official held by the individual and/or family members, membership and their engagement with outside associations, other companies, and state agencies, and other outside organisations such as trade associations, grassroots organisations, think tanks and research bodies;
- f) Ensure disclosure of media companies’ ownership, including beneficial ownership, and corporate interests. Media outlets shall label in a way that makes it distinguishable for their audience all sponsored content, advertising, as well as their journalists and contributors’ interests (such as memberships, affiliations, outside activities) connected to the content they create. ~~between the media content and the private interests of the owner(s);~~

Proposed new literal g)

- g) the subject matter of lobbying and influence activities and outcomes sought; the ultimate beneficiary or client of lobbying activities (where applicable); the targeted institution and/or the public officials concerned; the type of communications used; and any supporting documentation shared with the public officials.

Rationale

As we understand this Recommendation VI outlines disclosure standards for private sector and non-governmental interest representatives and lobbyists, we strongly recommend to unambiguously request governments to establish centralised, mandatory lobbying registers.

Such a register must observe the same type of qualities proposed for the information to be disclosed by public officials under Recommendation III. Ideally, the three key disclosure fields must be centralized in one single repository: public officials’ interactions with lobbyists and interest representatives; the regulatory footprint; and information on entities conducting lobbying and influence here described.

The absence of mandatory public registers would severely diminish the ability of public officials to understand the interests of their interlocutors, of watchdogs in society and government to understand whether lobbying and influence are conducted in a level playing field and to expose and counter infringements. Centralised public registers, if well implemented, can contribute to building public trust in public policy making processes,

We propose several other amendments:

- *To replace ‘having a significant in lobbying and influence activities’ with ‘conducting....’ as ‘significant’ is too vague and would prove difficult to establish unequivocal benchmarks, either in terms of areas of activity, core business dedication, number of meetings, influence actions or targets.*

- Replace the narrow reference to “targeted ads via social media” with a more precise reference to paid or unpaid communications on any media to influence elections, referenda, regulatory processes or public discourse. In our suggestion, we have drawn from the most recent debates on online political advertising legislation. The original text leaves out of the scope all forms of sponsored communications on media outlets to influence decision making.
- Extend obligations set out in d) and e) beyond ‘companies’ to all entities pursuing lobbying and influence activities
- Our wording clarifies the instances of ‘media content’ by including a reference to sponsored, paid-for and disclaimer by authors of opinion pieces and stories.
- Add all other basic information a reliable register must contain, as Transparency International consistently requests based on the 2015 International Standards for Lobbying Regulation.

Proposed amendment

VII. RECOMMENDS that Adherents promote a public integrity framework aimed at ensuring integrity when **entities such as** companies, trade associations, grassroots organisations, think tanks, research bodies and other **similar** organisations engage in lobbying and influence activities. To this effect, Adherents should:

- a) Take **regulatory** measures to ensure that **entities such as** companies, trade associations, grassroots organisations, think tanks, research bodies and other **similar** organisations adhere to public integrity frameworks by incorporating transparency and integrity standards in their own governance structure through policies, and engage responsibly in their lobbying and influence activities **refraining from trading in influence, in particular by making campaign donations to the targets of their lobbying activities;**
- b) Ensure that **entities such as** companies, trade associations, grassroots organisations, think tanks, research bodies, and other organisations ~~having a significant role in conducting~~ lobbying and influence activities take responsible business conduct and **transparency and** integrity standards into account when engaging in activities seeking to influence government decision-making processes;

Rationale

This recommendation asks adherents to take measures but does not say how and what type of measures. Our amendments propose the integration of regulations into corporate policies. For further avoidance of doubt, the text should indicate what these measures could include, e.g., clear standards, guidelines, codes of conduct. If a list of measures is included in the text, it should be specified that it is a non-exhaustive list. (in addition to the minimum standards)

Here, we insert an explicit reference to trading in influence by lobbyists, in line with our response to Question 2 in this submission. We reiterate that this recommendation must provide deterrence by encouraging governments to implement Article 18 of the UNCAC and establishing an incompatibility between professional lobbying and making campaign contributions.

Proposed amendment

VIII. RECOMMENDS that Adherents **proactively** promote **disclosure**, public integrity, **and equal opportunity** in the interactions between government and **all** stakeholders, notably **with** those with corporate interests, and establish a public integrity framework adapted to the risks of lobbying and influence activities for public officials. To this effect, Adherents should:

- a) Provide clear standards and guidelines for public officials, including tailored ones for at-risk positions, **particularly** on: (i) engaging with stakeholders, including checking their credibility; (ii) how to seek and assess information and evidence, in particular how to deal with possibly biased or false information and disinformation campaigns; (iii) receiving gifts, invitations and hospitalities, **(iv) proactively disclosing information on their interests, agendas, consultations and interactions with those seeking to influence decision making;**
- b) Provide, for public officials in at-risk positions and at-risk sectors, guidance, developing capacity and raising awareness about the risks of undue influence on government policies.

Rationale:

This recommendation must emphasise the three key goals that are at stake in lobbying and influence, namely transparency (here stressing proactiveness of disclosure), integrity and equal opportunity, all recognized in the Preamble. The scope of standards and guidelines must reflect those goals in equal terms.

Proposed amendment

IX. RECOMMENDS that Adherents implement an effective system to manage pre/post public employment risks and other conflict of interest situations, whether at the domestic or international level. To this effect, Adherents should:

- a) Establish specific policies, rules, and procedures for managing conflict of interest situations in connection to government decision-making processes, **including liabilities in case of infringements, whose implementation can be independently monitored, enforced, investigated by an independent oversight agency, and subject to proportionate sanctions for non-compliance.;**
- b) Ensure that the conflict of interest risks posed by individuals, including from abroad, entering the public sector from government regulated sectors, in particular into regulatory functions, are properly covered;
- c) Design effective rules and procedures such as cooling-off periods, subject-matter limits, time limits, **full public disclosure of post-term engagements by former holders of at-risk positions**, and prohibiting any use of any “insider” information after they leave the public sector, to manage the conflict of interest risks posed by public officials leaving the public sector for entities in government-regulated sectors, including abroad;
- d) **Establishing criminal liability for grave offences, particularly by legislating ‘trading in influence’ and prohibiting public officials to accept campaign donations from lobbyists.**

Rationale:

We insist that for integrity frameworks to provide effective deterrence, liability of sanctions must be an intrinsic part of them. Hence, our suggestion to explicitly refer to such liability in literal a), and the means to ensure it: an independent and mandated oversight body. With regards to literal c), we suggest that in the case of elected or high-ranking public officials taking new employments during cooling-off periods due to exemptions or else, these engagements

should be made public. The UK and to an extent, France, systems adopt such disclosure of engagements.

Proposed amendment

X. RECOMMENDS that Adherents safeguard those that scrutinise and/or report violations of the policies and rules on lobbying and influence activities, such as media, civil society organisations, and whistleblowers, by protecting their right to freedom of expression **and information**. To this effect, Adherents should:

- a) Promote pluralism and independence in media, and protect journalists and media outlets **and others involved in public participation by providing an enabling environment including protection from threats**, intimidation and abusive ~~defamation or libel~~ **cases lawsuits against public participation**;
- b) Provide clear **and effective** rules and procedures for whistleblowers reporting suspected violations of the policies and rules on lobbying and influence activities, and ensure protection in law and practice against all types of retaliation against whistleblowers as a result of reporting on reasonable grounds.

Rationale:

*This Recommendation should embed the obligation to protect all stakeholders identified in its first sentence. Referring to lawsuits against public participation (otherwise known as SLAPPs when used 'strategically'), provides clarity as the term is in common use and a wider scope of protections beyond defamation and libel, e.g., abuse of GDPR and privacy laws. Furthermore, the proposed wording reflects the call by international and regional institutions for the creation of an **enabling environment**, which is essential for proactive and successful protection.*

Proposed amendment

XI. RECOMMENDS that Adherents ensure there is an oversight function on lobbying and influence activities, **vested in a body with financial and operational capacity and independence** to enforce policies and regulations concerning lobbying and influence activities, monitor and promote their implementation and **investigate infringements and seek sanctions, free from interference of any kind**. To this effect, Adherents should:

- a) **ensure and** review the completeness, adequacy and timeliness of all the information disclosed for public scrutiny and the effectiveness of integrity standards;
- b) seek **and apply** effective, proportionate and dissuasive sanctions for non-compliance, **without restricting civic space**.

Rationale:

As presented in the Preamble, our recommendation is to stress the importance of ensuring the independence of the oversight function. Here we include two dimensions of such independence: financial and operational.

XII. RECOMMENDS that Adherents periodically review, in consultation with **concerned relevant** stakeholders, the functioning of their legal framework, public policies, rules, procedures and guidelines to ensure realignment with this Recommendation, in order to improve their enforcement systems and seek convergence towards best practices.

XIII. ENCOURAGES non-governmental stakeholders to follow and promote the use of this Recommendation.

XIV. INVITES the Secretary-General to disseminate this Recommendation.

XV. INVITES Adherents to disseminate this Recommendation at all levels of government.

XVI. INVITES non-Adherents to take due account of, and adhere to, this Recommendation.

XVII. INSTRUCTS the Public Governance Committee to:

- a) *Concrete actions to support implementation and dissemination to be added in the next version*