

**APRI RESPONSE TO OECD ONLINE PUBLIC CONSULTATION ON THE DRAFT REVISED
RECOMMENDATION ON TRANSPARENCY AND INTEGRITY IN LOBBYING**

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First and foremost, the Spanish Public Affairs Association ([Asociación de Profesionales de las Relaciones Institucionales](#), henceforth APRI) welcomes the OECD Recommendation on Principles for Transparency and Integrity in Lobbying. Lobbying is an essential part of the democratic process through which citizens may make their views on public policy and public services known to politicians and public servants. Organizations such as interest groups, representative bodies, industry and civil society organizations, NGOs, charities, and third-party professional lobbyists all provide necessary input and feedback to politicians and public servants through the communication of their views and concerns. However, there are many Governments that find difficulties adopting lobbying regulations, remaining unregulated, as is the case in Spain. All of this is despite the fact that various organizations such as the OECD make these recommendations. Additionally, the Group of States against Corruption (GRECO) through the Evaluation Round Compliance Report, and the European Commission through the Rule of Law Report which issues annual recommendations on lobbying. As lobbying regulations remain an outstanding issue, we are hereunder responding to OECD questions on lobbying recommendations and detailing those aspects which APRI considers must be taken into account for the development of regulation of interest groups, applicable for both the executive and the legislative.

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?

Many of the OECD recommendations concede with APRI's lobbying regulation proposal in Spain. Below we list OECD recommendations that adequately reflect the emerging concerns and challenges in the lobbying and influence landscape:

- **LOBBYING DEFINITION:** The extensive nature of lobbying definitions is quite comprehensive. We fully subscribe that:
Defining lobbying by an activity carried out by all kinds of agents, done with any type of public employee, including officials that form part of the decision-making process. APRI subscribes that lobbying should always be defined by what is being done and not only by who is doing it. This definition will guarantee that the same activity receives the same treatment of law, even if those who carry it out the activity are diverse and heterogeneous groups or individuals in their nature or interests.

- **CONFLICT OF INTEREST WITH MEDIA AND POLITICAL ACTIVITIES:** We totally agree that lobbying groups should fully disclose if they invest, control, or have conflicts of interest with the media or political parties. Media are not an interest group as such, but, in any case, although media in the exercise of journalism is protected by freedom of the press and the right to information and it totally differs from the lobbying activity, they are an essential tool for the activity.
- **REVOLVING DOORS:** We fully align with the OECD recommendations on the cooling-off period subjected to temporal, geographic, and subject limits. We believe it is necessary to include a cooling-off period for those public officers that want to move to the private sector to develop lobbying activities in economic sectors or civil society organizations related to the issues in which they participated directly in the decision-making process. In this context, we totally agree that there should be cooling-off periods, subject-matter limits, and time limits. Obviously, this premise does not include other work areas which are not connected to lobbying activities.

In this same line, we recommend performing in the opposite direction of the revolving doors when the movement is made from the private sector to the public one. In this case, APRI proposes to include in conflict of interest regulation the “suitability concept”, which establishes a cooling off period for high authorities, to accept a public position in areas where they have been developing lobbying activities in the past, and in this context, have been registered for those lobby activities.

- **LOBBYING SANCTIONS:** We fully align with that lobbying regulation should seek effective, proportionate, and dissuasive sanctions for non-compliance. However, the recommendations do not specify the sanctioning regime or the necessary independence of the sanctioning power. In APRI we understand that the obligations imposed in the Lobbying regulation cannot be enforced without an adequate framework for defining sanctions for non-compliance.

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

We consider that the following aspects of lobbying regulation should be included in the recommendations since they form part of advanced regulations already in force and are essential to ensure transparency in lobbying activity:

- **LEGISLATIVE FOOTPRINT:** A legislative footprint is a comprehensive public record of lobbyists’ influence on a piece of legislation. The aim of such disclosure is to document lobbyists’ influence on policies and legislation. The footprint is a key instrument to guarantee public transparency and confidence in the adoption of public decisions at every level. The “Better regulation: guidelines and toolbox 2021 of the European Commission” already defends a legislative footprint which creates a clear overview of how laws are being made and who might influence them throughout the process.

The important thing here is to define what type of initiatives are required to meet this level of transparency. Here again, APRI makes an ambitious but reasonable approximation. It is common to refer to a legislative footprint, however, we think that the term is incomplete because it would exclude from its implementation all public policy actions susceptible to being lobbied. For this reason, APRI proposes a wider meaning, and we prefer to use public action footprint

- **PUBLIC AGENDAS:** For a lobbying regulation to be effective should include a mandatory and voluntary disclosure of meetings between public officials and interest groups. In this context, we think that public official is responsible for complying with a transparent public agenda.

Regarding the disclosure of the documents delivered in a meeting between a public official and a lobbyist, a conflict can be shaped between the guarantee of transparency and the need to maintain the confidentiality of certain information. Therefore, we understand that to protect commercial secrets or for other reasons, there should be a confidential character of certain documents when one of the parties considers that this information shouldn't be disclosed.

The obligation to communicate to the public the commercial or strategic information of the organization would lead the organization to not give all the information required, and hence the public authorities would not have all the information to understand part of the negative or positive consequences of the decisions made.

Therefore, it must be legal to maintain the confidentiality of certain information, like those directly related to commercial secrets, those necessary to preserve the competition between companies or regulatory demands or issues related to personal data protection. Our proposal is that the representatives of interest groups can indicate which of the information provided should be confidential, however, it should still be disclosed in the agenda of the public official and the members of the interest groups which participate in the meetings.

Moreover, the application of transparency criteria for the agenda must be homogenous for all of the parts involved in order to avoid any kind of discrimination between groups.

- **CODE OF ETHICS:** The registration in the transparency register must be accompanied by the express submission to a code of conduct, which includes the promise of acting in a transparent and non-dishonest way when a lobbying activity is undertaken.
- **CONFLICTS OF INTEREST:** As mentioned above, conflict of interest and revolving door control should be undertaken in both ways, when passing from the public to the private sector and vice versa. Basically, any movement between the private and the public sector.
- **SANCTIONING POWER:** To guarantee proper lobbying supervision and sanctioning power, APRI considers that the supervision body for lobbying activity should depend on an independent body and that, in the case that the executive power adopts that supervision, the most appropriate supervision body is the one that looks after transparency and good governance.

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

We recommend that the OECD includes the following essential aspects for an effective regulation.

- a. **Definition of interest groups or their representatives.**
- b. **A register for interest groups.**
- c. **Appointment of the register to an independent organ.**
- d. **Subjects of the mandatory registry.**

- e. **Definition of public officials and obligations of the registry.**
- f. **Publicity of agendas and confidentiality of the information submitted.**
- g. **Code of conduct.**
- h. **Public action footprint.**
- i. **Conflict of interests and revolving doors.**
- j. **Sanctioning regimen.**

a. **Definition of interest groups or their representatives.**

The basic principle of all lobby regulation is that “it is the lobbyist who lobbies.” Therefore, it is mandatory to include all of those who perform identical activities in the Register of Interest Groups. As the OECD says, *“if lobbyists do not declare themselves as such and do not give information to the registers, the game of transparency is over.”*

Interest groups are all entities, independent of their nature, that attempt to influence the process of the adoption of a public decision. Regardless of if they are physical or legal persons, if they are professionals dedicated to the only and exclusive activity of influencing the public powers or only in a partial or circumstantial way, paid or unpaid, whether an association, grouping of interests, a business or an organization, or a person representing any collective without or without legal personality. However the collective or action takes form, it must be identified as an interest group along with its representatives.

Defining the interest groups for which registration is mandatory from the point of the object (identical activity) and not from the subjects (necessarily heterogeneous) is how the more advanced regulations thus far have done it as it is what guarantees equality of treatment and non-discrimination in the application of the law in demanding compliance of the obligations (of transparency and ethics) and to recognize the rights (of free access, equal treatment and non-discrimination in the participation via activities of influence).

Therefore, the proposal from APRI is the creation of a universal transparency registry in the regulation of lobbying (applicable through the realization of certain activities defined in the laws for all), and mandatory with the aim of not detracting efficacy from the objective of the regulation, and that the activities of influence are treated under equal conditions by the law, and that anyone that exercises or wants to exercise this influence are subject to the obligations derived from the Register and its Code of Ethics, and to the foreseen sanctions, like the rest of those registered, without discrimination.

If exclusions were allowed for certain types of organizations that carry out activities of influence in addition to their other activities, the lobby regulation would lose credibility. It would create two classes of interest groups: those with an obligation to transparency and a code of ethics and those who are not for the same activities of influence. This would generate risks for the representatives and public positions, and for the administration by having a vague distinction between those who carry out identical activities and by not enjoying the protection of the regulation for their relationships with representatives of these “special” organizations. These relationships in the end will not avoid the opinion of the public either way.

b. **A register for interest groups.**

APRI proposes the creation of a Transparency Register that is mandatory, public and free, and electronically accessible in order to be able to meet with any institution or public administration when they carry out an activity

of influence. Interest groups that are not registered will not be able to meet with public officials nor participate in open consultation processes.

Only a mandatory, public, and free register guarantees compliance with the objectives of this regulation. Not making the register mandatory impedes the guarantee of its efficacy, and, furthermore, would generate asymmetries and discrimination of treatment, taking away the ends that the register pursues.

c. Appointment of the register to an independent organ.

For the Register to have the necessary credibility, it must be considered independent from the functional and administrative point of view as well as by the public opinion. Therefore, it must be avoided that a government organ decides over infractions and sanctions that correspond to other members of the same executive. In the case of the General Administration of the State, the most appropriate organ is that which also watches over Transparency and Good Government. In the case of the Parliament, for the same reasons, they should depend on representative collegiate organs of the majority of the Parliamentary groups with the necessary technical advice while avoiding the concentration of the application of the sanctioning regime in one single person when exercising the maximum representation of the chamber.

d. Subjects of the mandatory registry.

APRI's proposal establishes that the obligation to register should apply to those who exercise the activity of lobbying, whether a physical person representing the interest of a collective or a legal person regardless of the size and function of the type of activity to which it is dedicated. This includes small territorial organizations, of a specific subject matter, or transitory in time such as large organizations like managements and unions, professional corporations, or large offices if they carry out activities of lobbying. Their inclusion in the register does not limit their rights, rather it is an instrument of development that adds transparency and rules of conduct. Not including others when exercising the labor of lobbying would generate two classes of lobbyists; those obligated to register and respect the code of conduct and those who are not. We will briefly discuss the most controversial situations.

- **Small organizations or organizations exclusively dedicated to citizen participation or to ideological, local, or temporal interests.**

The typical argument to exempt small organizations or those dedicated to citizen participation, local, territorial, etc... is to guarantee equality between them by unequally treating the unequal and permitting them to lobby without registration. However, this reason does not make sense in regards to the obligations the registration imposes given that they are basic standards of ethics and transparency with a minimum bureaucratic position (equivalent to any solicitude or telematic interaction with the administration) to which they can comply without any problem.

The creation of collectives that lobby, but are excluded from the register will provoke, with all probability, that some of the organizations with the obligation to register themselves will create organizations that are not subject to said obligation with the objective of lobbying without having the obligation to register to evade the obligations of those who do have to register themselves.

- **Inclusion of Managements or Unions in the register when they exercise lobbying outside of the dialogue function granted by the constitution.**

A register that exempts the mandatory nature to entities that carry out activities identical to lobbying, outside of that which is strictly entrusted in the Spanish Constitution (social dialogue), would generate the inequality of treatment and discrimination in the demand for transparency and ethical obligations that are difficult to justify when the activities are the same, pursuing the same objectives of influence in public policy.

These organizations carry out two types of functions: constitutional (social dialogue function) and those of influence (lobbying). The constitutional ones remain outside of the scope of the register, and therefore it would only be obligatory to register when realizing activities of influence so that these activities have the same regulatory treatment without discrimination.

One must take into account that Managements and Unions have a wide and extensive network of action with territorial units in each autonomous community, province, and many municipalities in addition to a sectorial network that covers all sectors of the economy. As a result, they defend a multitude of sectorial and territorial interests with thousands of people dedicated to them. Therefore, they cannot remain excluded from the obligations that the rest of the lobbyists and interest groups have that carry out the same functions.

APRI shares, then, that said organizations cannot remain excluded from the register when exercising lobbying activities outside of their social dialogue function and must have the same sanctions facing the same infractions as any other lobbyist.

e. Definition of public officials and obligations of the registry.

APRI proposes that the subjects of institutions, organs, or administrations that participate directly in the configuration of proposals or public projects will not be able to meet with anyone that is not registered. The proposed mechanism to guarantee this obligation is that of public agendas, among other obligations.

The problem that could be raised here is at what level of the organizational ladder should these obligations be imposed? According to APRI, this identification should not be carried out for the functional level of the implicated person, but rather for the role said person undertakes in public action. APRI's proposal contemplates that all members of the administration or public institution that are working with third parties that are foreign to the administration in the definition of a decision must declare with whom they have met and be subject to the rights and obligations established for those who meet with lobbyists.

f. Publicity of agendas and confidentiality of the information submitted.

The application of transparency criteria to the agenda must be homogenous for all actors to avoid discrimination between one collective and another. Furthermore, it is important to discern between the public scope and that of the particular or private scope of public officials. They must identify the participation of interest groups in agenda meetings or in the public action footprint.

In relation to the publicity of its content, a controversial element is the publicity of the exchanged information itself. There is a potential tension here between the guarantee of transparency and the need to maintain the confidentiality of certain information. We understand that certain information can retain a confidential character for the protection of trade secrets or other reasons. Our proposal is that the representatives of interest groups can expressly mark as confidential certain information supplied by them and not make it public.

g. Code of conduct.

The registration in the Register must be accompanied by an express adhesion to the Code of Conduct that includes a promise to act transparently and not dishonestly. The Code must be applicable to all that lobby according to what we have defined in our proposals. No one that lobbies should be excluded from compliance.

h. Public action footprint.

APRI proposes the creation of a public action footprint record which guarantees the traceability of the changes introduced in the elaboration of laws or design of public policies, including those which are consequences of intervention from interest groups. This is a key instrument to guarantee the transparency and trust of citizens in the adoption of public decisions at any level. It is proposed that every record of a public initiative indicate the changes made during the creation process of law or public policy from the first draft until its final approval.

It is common to refer to the legislative footprint, but this term is incomplete given that it would leave out of its application all public political actions from the executive, yet not from the legislative. It would also leave out all laws of an inferior rank such as ministerial orders and ordinances, or processes defining public policies that will be the base of future laws or public decisions. Therefore, APRI has configured a wider meaning of the public action footprint.

i. Conflict of interests and revolving doors.

It is indispensable to a calibrated regulation that guarantees the appropriate defense of public or private interest in every moment which is owed to by the professional in both public and private sectors without impeding the necessary professionalization of these experts. To avoid conflicts of interest in the defense of these interests, APRI proposes the inclusion of the concept of suitability which is established for the appointment of high positions but is not included in the register for lobby activities related to the public responsibility for the appointed during a sufficient cooling off period and vice versa. In the same line, one must act in a direction contrary to the “revolving door” when the path goes from the public to the private sector. This premise does not include other areas of work that do not have to do with the defense of the interests of said sectors or organizations.

The current regulation of conflicts of interest and the applicable incompatibilities on those in high positions establish a cooling-off period of two years. APRI believes that it is necessary to increase this period to three years so that those public officials who want to enter the private sector to carry out work in the management of interests before institutions or public administrations in economic sectors or civil societies related to affairs in which they have directly participated in their own regulation, circumscribed to the competitive and geographical field and of concrete material.

j. Sanctioning regimen.

The obligations imposed in the register will not be able to enforce compliance without an appropriate framework of infractions and the corresponding sanctions for noncompliance.

With the end of watching over the Code of Ethics associated with a certain register and, of course, of the obligations related to the Transparency Register, it is necessary the establishment of mechanisms and assignment of necessary responsibilities for its supervision and its adoption of sanctions for those that do not comply, including private subjects obligated by this law such as through a corresponding sanctioning regime to the public officials that do not comply with their respective obligations in dealing with interest groups.

About APRI

La [ASOCIACION DE PROFESIONALES DE LAS RELACIONES INSTITUCIONALES \(APRI\)](#) is an association of national scope, without profit or political character that represents professionals in institutional relations, public affairs and lobbying in Spain. We group and represent all those natural and legal persons who voluntarily wish to be part of it and whose main professional activity is institutional relations, public affairs or lobbying.

Founded in 2008 by public affairs professionals in Spain, APRI was born to fill a gap in the representation and partnership of this profession. Its main objective is to make lobbying a profession of recognised prestige and value for society in general, but also for those responsible of all sort of organisations, such as companies, NGOs or business associations. A profession that serves as an effective link between the legitimate interests of civil society and the general interest decisions, taken by policymakers such as the Government and the Parliament and other public powers of the Central Administration and its Autonomous Communities.

Since the very first day, the Association has taken transparency, professional ethics and integrity as key elements in the professional practice of public affairs. For this reason, since 2011 all members must sign a code of conduct, which represents a self-regulatory body, due to the absence of official rules on the activity in Spain.

APRI has around 200 professional members and 21 organizations who advocate for the normalisation of lobbying through the establishment of interest groups register, similar to the already existent EU Transparency Register, present in the European Parliament and the EU Commission.

APRI is also the founder and member of the [Public Affairs Community of Europe \(PACE\)](#) created in 2018 as a platform for all national organisations of European public affairs professionals, committed to contribute to the development of more transparent procedures in the adoption of public policies across Europe by consolidating a participatory democracy within member states.

APRI is additionally the founder and member of the Public Affairs Community of Europe (PACE), created in 2018 as a platform for all the national organizations of professionals in European Public Affairs who are committed to contribute to the development of more transparent proceedings in the adoption of European public policies by consolidating a participative democracy in all Member States.