

Appendix 2

Template submission response.

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Have any unintended consequences occurred, in your view?

- There has been a spike in the Freedom of Information requests made on foot of lobbying register returns made in September, January and May for the preceding four-month periods.
- There has been an over-reporting of activity by some organisations, which has included reporting of interactions on *non-relevant* matters with officers of this Department who are not *Designated Public Officials*
- There is considerable confusion over the suggested extraterritorial application of the Act which could have significant knock-on reputational impacts for Ireland. The extraterritorial application of the Act has been the subject of significant media commentary in Brussels. *See sample commentary below from Politico Brussels dated September 2015 and March 2016.*

2015-09-21

THE IRISH QUESTION: *What impact, if any, is the Emerald Isle's radical new lobbying legislation going to have on Brussels? We thought we had put that question to rest months ago when the head of Ireland's lobby regulation, Sherry Perreault, told us that both MEPs and some Irish officials working in the Irish permanent representation to the EU would come under the Lobbying Act in 2015. We took that to mean that, as of next year, lobbyists contacting Irish MEPs and perm rep officials would need to sign up to the Irish lobbying register — even if the lobbying were occurring 700 kilometers from Dublin. It was big news for Brussels lobbyists with an interest in Irish affairs. But then...*

AN IRISHMAN WALKS INTO A BAR: *We were contacted by the Irish perm rep after mentioning the Act in passing last week to be told that the thinking on this had changed. The Irish government had sought clarification and they could now tell us that the Act "does not apply to lobbying activities taking place outside the [Irish] state." Phew! That will come as a relief to local lobbyists, who were facing the prospect of having to update their Irish registry details every time they bumped into an Irish official at the kids' hockey match in Tervuren or at Thursday night drinks at one of those faux-Irish places around P-Lux. It was always going to be difficult to enforce, what with Belgium being another country and all. Read the penultimate paragraph (or even the whole article): <http://politi.co/1Q3Hhfa>*

ONGOING UNCERTAINTY: *You'd expect lobbyists planning to contact Irish officials in Brussels would be jumping with joy. They're not. They have legal advice telling them that under the Act, both MEPs and the three top officials of the perm rep would be affected. This could be tricky: The national delegations to the EU are an important part of any lobbyist's strategy. In fact, it is for this reason that the European Council has been reluctant to extend the Commission's transparency regime to Council officials. The reason for this is crystal clear: Member states do not want transparency measures extended to their perm reps and are concerned that the Commission's transparency approach would lead to just that. But now, according to some lobbyists, Ireland has gone and undermined the Council's position with a piece of legislation which cannot be (easily) changed.*

IRISH LOBBYING, THE NEVER-ENDING STORY: *It gives us no pleasure to have to return to this, but every time we speak to a lobbyist with an Irish connection we get a different story. Public servants we have consulted in Dublin are adamant that if you want to approach an Irish MEP or senior Irish diplomats in Brussels, you have to report the interaction to the Irish Register of Lobbying. But when we speak to Irish diplomats, they tell us that, no, it's all a terrible misunderstanding: Lobbying outside of Ireland does not require anyone to report to the Register. Could it get any more confusing?*

IRISH LOBBYING GETS OUT OF HAND: To be sure. Speaking to lobbyists with Irish connections we were told that the rule of thumb for them is whether they are lobbying the Irish politicians or diplomats on Irish or EU affairs. The first category requires them to report to the Irish register; the second does not. To support their position they are quoting this 2015 written answer to a parliamentary question — the answer coming from the then minister for public expenditure and reform, Brendan Howlin. But that just adds to the confusion: Howlin says those contacting Irish officials abroad can't be compelled to report it to the Register. But they should. If possible. It would be nice if they did. Please.

What suggestions for changes, if any, would you make?

It is a longstanding principle of statutory interpretation that, unless otherwise specified, Ireland's legislation applies only within the State. This Department has already clarified with the Department of Public Expenditure and Reform the position in respect of extra-territorial application and this was made clear in a reply by Minister Howlin to a Parliamentary Question [29112/15] in July 2015. See attached. However, the guidance note provided by the Standards in Public Office Commission via Lobbying.ie contradicts this, stating *inter alia*: "It is recognised that **there may be difficulties with extra-territorial enforcement of the Act.**" It is difficult to reconcile the possibility of enforcement with the language of the Act, which contains no express language on extraterritorial reach. For this Department, with 80 missions abroad, this is not just a practical enforcement issue; it is important to have clear guidance as to whether the Act applies in the first place.

This Department, via DPER, has obtained detailed advice from the Office of the Attorney General and on foot of this has suggested that the guidance on the Lobbying.ie website concerning communications that take place outside of Ireland be amended to read as follows:

A communication that meets the definitions contained in the Act (that is, a person within the terms of the Act, communicating with a Designated Public Official about a relevant matter), but that takes place outside or partially outside of the State, may still fall within the scope of the Act in certain circumstances. Lobbying is defined in the Act as not only making a relevant communication, but also managing or directing such a communication. Each case will have to be reviewed to determine whether the Act applies to the communication. The Regulator is available to provide guidance on the applicability of the Act in individual cases.

In circumstances where the Act applies, it is recognised that there may be difficulties with extra-territorial enforcement. However, all those lobbying Irish Designated Public Officials outside of the State are encouraged to comply with the legislation and are invited to register and report all communications with Designated Public Officials to ensure transparency.

See below current text of FAQ 11 from Lobbying.ie

[11\) Does the Act apply to communications that take place outside of Ireland?](#)

A person or organisation communicating with any Designated Public Official where that interaction meets the definitions contained in the Act (that is, a person within the scope of the Act, communicating with a Designated Public Official about a relevant matter) is required to register as a lobbyist and report the communication in their return for the relevant period. The Act makes no distinctions regarding where the communication takes place.

Determining whether a communication falls outside of jurisdiction is not based solely on whether it physically takes place outside of the country. Each case will have to be reviewed based on its own set of facts to determine in what circumstances a communication would fall within or outside of jurisdiction, and whether and how the Act may apply.

It is recognised that there may be difficulties with extra-territorial enforcement of the Act. All those lobbying Irish Designated Public Officials outside of the State are encouraged to comply with the spirit of the legislation to ensure transparency.

Deputy Helen McEntee asked the **Minister for Public Expenditure and Reform** if he is satisfied that there is a legal obligation under the Regulation of Lobbying Act 2015 for persons based outside of the jurisdiction, but engaged in lobbying activities on a relevant matter as defined under the Act, to register their activities and adhere to the Act; and if he will make a statement on the matter. [29112/15]

The Regulation of Lobbying Act 2015 sets out arrangements for bringing transparency to lobbying activities through a web-based register.

The Act does apply to lobbying activities which take place within the State even though the lobbyist is based abroad. Foreign lobbyists who run a lobbying campaign aimed at Irish officials within the State cannot assume that their activities are exempt from the Act.

As regards lobbying activities which take place outside of the State, in line with the objectives of the Act, I would hope that a person or organisation who is based outside the State and is lobbying an Irish Designated Public Official outside the State would register such communications on the new web-based register from 1 September next. However, they would not legally be obliged to do so as there are practical and legal difficulties in terms of the extra-territorial application and enforcement of Irish law. Notwithstanding the issues in relation to the extra-territorial application and enforcement of the Act, I would expect such communications to be registered as each person or organisation lobbying would need to take into account reputational issues if they fail to register relevant lobbying communications with Irish designated public officials.

I have ensured in the legislation that there will be a review of the operation of the Act one year after commencement. I intend to keep this aspect of the legislation under review during that period including any need for appropriate protocols for designated public officials when operating abroad.

Please remember to include in your submission

* specific examples from your own experience which confirm your position where you are making points regarding the Act, and

* reasons for any suggestions for changes or improvements to the Act and sufficient and appropriate current evidence / data / examples to support these suggestions.