

## **Public Consultation on the First Review of Lobbying Act**

Submissions please by: Friday 30 September 2016

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### **Template submission response.**

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What are the positive features of the Act?

The key positive impact of the Act is the availability of an accessible and transparent process for identifying lobbying activities into the Government policy-making process in Ireland.

Such a transparent process has, at the same time, enhanced the reputation of lobbying (and lobbyists) as an essential part of the democratic process by challenging the legacy pejorative perception of the activity and allowing it to demonstrate its valuable contribution to evidence-based policy making.

Does the Act fulfil the objectives it set out to achieve?

In practical terms, the implementation of the Act has delivered the key objectives i.e. publicly available information on who is lobbying who , on whose behalf, about what and what is meant to be achieved in the lobbying. In addition we now have a Regulator of Lobbying through SIPO as well as a code of conduct on lobbying and a specific cooling off period for former senior officials having left Government employment before these officials can begin lobbying.

However, it is difficult at this early implementation phase of the Act to conclude whether the transparency requirements of the new lobbying regime is contributing to a higher quality policy outcome – which one

would expect to be an overarching objective of the legislative measure.

Have any unintended consequences occurred, in your view?

There is no evidence that any significant unintended consequences have arisen.

There are concerns at an implementation level that the scale and scope of the measures require more resources and time than expected – especially for sectoral lobby groups. However this is not an unintended negative consequence that dilutes the effect of the measures; rather, it raises issues that can be addressed between the lobbying community and the regulator.

While not evident to date, an unintended consequence may be to change the nature of lobbying so that currently defined lobbying

activities are avoided for the purpose of reporting. The powerful and rapidly evolving digital communications area including social media may be used in the future to deliver targeted messages to policy makers through means other than current standard formats e.g. email.

However at this point, we do not see significant unintended consequences that would merit consideration in the current review of the Act.

Do you think the Act can be improved in any way and, if so, how?

We understand that one of the issues under review is the extension of the definition of a Designated Public Official (DPO) to the rank of Principal Officer (PO) or equivalent.

At one level this seems sensible in that the wider the definition of DPO, the more formal and informal contacts will be captured in the lobbying register. With this approach, one could argue for including other grades even below PO in the DPO classification. However, quantity of contacts is less an issue than the substance of the discussion/interface with the DPO and there is no evidence to date that the threshold of Assistant Secretary or equivalent is an obstacle to the achievement of the Act's objectives or that any significant impactful lobbying activities are taking place outside the current DPO

designation.

Therefore we would suggest that this issue is kept under review to be reassessed at the next phase of the legislative process. At that stage more evidence will emerge on the effectiveness of the current arrangements than is available at this early stage of implementation.

One area of serious concern relates to the exemptions in the Act regarding **Governance of Commercial State bodies**. The exemption refers to communications by or on behalf of a commercial state body made to a Minister who holds shares in, or has statutory functions in relation to, the body, or to designated public officials serving in the Minister's department, and which are made in the ordinary course of the business of the body.

Commercial State bodies compete with private sector companies in the provision of a range of very important services to the Irish consumer. These competitive activities may arise at both wholesale and retail areas of the market and are by any definition "*the ordinary course of business*" of the commercial state body. Significantly, these commercial business activities - by both commercial State bodies and private sector companies - are in general governed by a complex mix of public policy measures including economic regulation and consumer protection.

In cases where a Minister (and relevant DPOs) has both a shareholder and a statutory policy function in relation to the body (and the market in which it competes) and where the outcome of that statutory function has a clear impact on the relative power of that company to compete in the market, it is not appropriate that communication

between the commercial bodies and the DPOs should be exempted from the reporting obligation – a scenario facilitated by the current definition of the “ordinary course of business”

It would be helpful, as part of the review, to examine the Lobbying Returns in the relatively short period of implementation so far and assess the relative number of returns from commercial State entities (compared to the number of returns from the private sector) in order to understand if there is a disproportionate use of the exemption in particular relating to any policy measures or legislative initiatives in the period. This would provide further evidence on whether a review of this exemption might be appropriate at this stage.

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

The specific matter regarding exemptions for commercial bodies needs to be addressed. The definition of ordinary course of business should be restricted to confidential matters of direct relevance to the shareholding role of the Minister.

Communication on any matters that impact on the business strategy and commercial activities of those companies including communication on legislative and administrative matters should be explicitly included in the reporting obligation to the Regulator of Lobbying.

