

**Public Consultation on the First Review of the operation of the
Regulation of Lobbying Act 2015**

Submissions please by: Friday 30 September 2016

Email to: lobbying@per.gov.ie using subject line "Review of Lobbying Legislation"

Or post to: Ms. Bernie Orr
Government Reform Unit
Department of Public Expenditure and Reform
7-9 Merrion Row
Dublin 2

Name (Organisation name or name of individual)	Ervia (including Gas Networks Ireland and Irish Water)
Address	Webworks, Eglinton Street, Cork. <u>And</u> Colvill House, 24/26 Talbot Street, Dublin 1
Phone	021-4239000 And 01-8230300
Email Address	Cecilia.Ogle@ervia.ie

What are the positive features of the Act?

Ervia (including Gas Networks Ireland and Irish Water) welcomes the opportunity to submit observations in response to the Public Consultation on the first review of the operation of the Regulation of Lobbying Act 2015 ("the Act") published by the Department of Public Expenditure and Reform.

The Act aims not to restrict the flow of information or views on policy or legislation but to bring about significantly greater openness and transparency with respect to lobbying activities. In Ervia's experience, the commencement of this legislation has not inhibited any necessary lobbying activities carried out by Ervia on behalf of the Group.

The Act provides for the establishment and maintenance of an on-line Register of Lobbying. This ensures that lobbying activities are conducted in an open, transparent way.

Ervia is eager to ensure that it complies with its obligations under all aspects of the transparency regime and has been proactive in implementing measures to drive awareness within our organisation about the requirements of the Act and to consider the content of communications with Designated Public Officials and whether these would potentially be construed as "relevant communications" for the purpose of the legislation.

In November 2015, a Transparency initiative was launched on the Ervia website. This is a voluntary scheme initiated by Ervia to enhance its accountability and deliver a better understanding of how the organisation and its subsidiaries, Gas Networks Ireland and Irish Water, operate. In recognition of the need to develop and maintain a strong reputation, we are making available information about the organisation and its activities in an easily accessible manner. By publishing information previously not available on our website, we hope to deliver a better understanding of how Ervia and its main operating subsidiaries operate and of the organisation's role in delivering important national infrastructure and services to support the social and economic development of Ireland. Ervia's returns submitted in accordance with the Regulation of Lobbying Act 2015 are also made available on the Transparency section of the Ervia website.

Ervia has developed a Transparency Policy in order to enhance its accountability and in recognition of its duties as a responsible corporate citizen. By improving disclosure of factual information to stakeholders, including the general public, Ervia hopes to deliver a better understanding of how the organisation operates and to provide assurances through open disclosure to address issues of public concern. The policy applies across the Ervia Group, covering Irish Water and Gas Networks Ireland. Ervia expects that the impact of this policy will result in increased public confidence in the organisation and its operations. Ervia wishes to be at the forefront of best practice in corporate governance by recognising the importance of maintaining transparency and making available details of its business activities as a commercial semi-state to interested parties, including elected representatives and the Irish public.

A positive feature of the Act was the delay in the commencement of Part 4 of the Act to allow professional lobbyists and large organisations, such as ours, a lead in period to become familiar with the requirements of the Act, to develop a standardised definition of what construes lobbying, and procedures to ensure that the reporting of relevant communications is centralised and that returns are published in a timely fashion without the fear of incurring sanctions during this initial period.

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

The primary objective of the Act is to provide information to the public about:

- Who is lobbying?
- Who is being lobbied?
- On whose behalf is lobbying being carried out?
- What are the issues involved in the lobbying?
- What is the intended result of the lobbying?

The establishment of the online register, which is freely accessible to all members of the public ensures that this objective is met.

Ervia is a progressive organisation which strives to ensure that it adheres to best practice and relevant corporate governance requirements. However, many organisations, particularly charitable organisations and SME's who do not have resources designated to the review of new legislative or corporate governance requirements may not be aware of their obligations under the Act. There should be a continued outreach programme to meet with organisations to promote awareness.

Have any unintended consequences occurred, in your view?

The lack of clarity around the provisions in relation to the recording of lobbying activities might lead to a response where the activity in question did not actually amount to lobbying. For example, a matter which may be construed as the provision of "technical information" or "implementation" by an organisation, may, in fact, be interpreted as a "relevant matter" by a DPO or indeed an interested member of the public. Accordingly, in the absence of more prescriptive guidance, non-relevant matters will continue to be reported for fear of reputational damage for not reporting.

It was unclear until recently where the reporting obligation lay in the case of lobbying activities carried out by a professional lobbyist on behalf of a client i.e. where the activity occurs in tandem as opposed to independently. This has since been clarified in the FAQ's in SIPO's website, but should, perhaps be reflected in the legislation.

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

The Act provides a list of “excepted communications” which are not regarded as “lobbying activities” and therefore, not registrable. One such category includes:

“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.”

No official guidance has been provided in relation to what constitutes “ordinary course of business” and therefore, it has been left open for interpretation by commercial state bodies. It would be useful if guidance in relation to this particular exception was provided to ensure consistency in terms of reporting by the commercial state bodies, including Ervia.

On the commencement of the legislation on 1st September 2015, it was highlighted that the list of Designated Public Officials would be expanded and that, perhaps this would be extended to Principal Officer grade within the civil service. In the event that this occurs, it will create an unnecessary administrative burden for large organisations, including Ervia given our structure, and the extent of the interactions with PO’s in Government Departments on a daily basis.

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

As stated above, further guidance on what is construed as the “ordinary course of business” should be provided.

Currently, the obligation to record “relevant matters” resides with the body in question, regardless of who initiates the “lobbying activity”. Consideration should be given to place some onus on the DPO themselves to disclose the instances where they have, in fact initiated the discussion which may construe a lobbying activity for example, where a TD or Councillor endeavours to influence the extension of the gas network or the prioritisation of upgrade of a wastewater treatment plan within their constituency etc.

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.