



## **Background**

Over the past 12-18 months IBEC has been engaging with a range of stakeholders regarding the proposed register of lobbyists' scheme currently under consideration by government. The following note summarises some of the key issues raised by members during the course of our discussion.

### **1. Communications initiated by government**

**Issue:** IBEC has a number of concerns about the treatment of communications with public bodies where such communications have been initiated by the bodies themselves. This issue falls into three broad categories.

In the first instance, a large number of people serve on government boards/committee/groups where they regularly interact with senior officials. Under the present definitions this participation would be considered "lobbying" and each member of the committee would have to make a separate return. However, in many instances, people are invited onto these committees to provide expert opinion or specifically to provide a business (or other) viewpoint. If there is a requirement to register this involvement, many people will not continue to participate on these groups and an important source of engagement will be lost.

**Proposal:** Our proposal is that the outside participants in such bodies would not need to make returns in respect of such participation; instead, the secretariat of each such body would make a return that sets out the attendees, the key issues discussed and other relevant information. This would achieve the objective of transparency while also minimising the regulatory burden and removing a potential impediment to participation

**Issue:** A similar issue arises in respect of certain structured dialogue processes. These, arise in different types of circumstances. For example, certain European Directives require Member States to consult with trade unions and employers representatives before transposing those Directives. Similarly, government agencies sometimes request

the formal or informal assistance of trade unions and employers' bodies in resolving industrial disputes and such resolution sometimes entails discussion of public policy issues. Involvement by bodies in such processes is not lobbying and serves a valuable public good. Such involvement would be discouraged and undermined by its inclusion in a definition of lobbying.

**Proposal:** As above, IBEC appreciates the desirability of having transparency in such processes. We propose that the public body which initiates the structured dialogue should bear the responsibility of reporting on it.

**Issue:** On the third element of this issue we remain concerned as to how the Department has decided to treat a situation where a public body requests information from a party. The scheme proposes that purely "factual information" would not be subject to registration as would information provided where it was intended for publication. However, our concern with this is that persons could inadvertently breach the legislation by not reporting something they considered to be factual which might subsequently be determined by a regulator to be other than factual.

**Proposal:** Again, we submit that the government department which requested the information should have the responsibility of reporting to the regulator that it sought information and received it. This would achieve the objective of transparency without making a criminal of a third party who in good faith answered a question believing his or her answer to be "factual" but who later falls foul of a regulator's different definition of the word "factual".

## **2. Administrative penalties**

**Issue:** The current scheme provides for administrative penalties for breaches of the code alongside a more severe set of criminal penalties. IBEC's view is that the regulation of lobbying is an area of law which is not suited to the imposition of administrative penalties.

**Proposal:** IBEC proposes that these provisions are not required and the scheme should rely on the civil penalties outlined in the bill.

## **3. Investment environment**

**Issue:** A key concern of IBEC was the effect this legislation would have on the investment pipeline if companies were required to record the fact they had met a government minister in advance of locating investment in Ireland and describing such a meeting as “lobbying” even where the contact was initiated by the minister or relevant state agencies. Our concern is that this could have a chilling effect on investment activity. We raised this on a number of occasions with the Department and while they have taken steps to address it we do not believe it is sufficient. Essentially the current proposals will allow a minister to issue a certificate that would exempt a company from reporting a particular lobbying activity for a period of time. We believe this proposed safeguard would be insufficient – even counterproductive – and the overall approach described in the General Scheme to be detrimental to creating a sound environment for investment.

**Proposal:** Our proposal would be that where a meeting with a minister (or with IDA and EI) is to facilitate investment decisions and is being facilitated by EI or IDA that this would be exempt from the legislation. Once again, we would reiterate that we believe that EI and IDA clients are not seeking to influence policy and having to register these meetings would undermine our investment environment.

#### **4. Registration process**

**Issue:** A number of IBEC members have raised the issue regarding the need for lobbyists to update the register regardless of whether they are lobbying or not once they have engaged with the system. For many companies (and other groups) they would have a limited or small number of engagements with the political system (1-2 times a year). In this case it is unreasonable to expect them to continue to record their interest in being on the register on an on-going basis, especially since being on the register does not confer any benefit. This provision will also entail a significant enforcement burden on the regulator, who will have an obligation to pursue every person who previously reported lobbying activity and who has not made a report.

**Proposal:** A mechanism within the registration programme is required to reflect this issue.

**Issue:** Once again we would like to reiterate our view that the registration should be based on an organisation rather than on individual basis. This is a matter of clarity as at different points in the draft heads it appears that both/or either may be required.

Furthermore, we would remain convinced that there should not be three filing periods in any given year; there should not be more than two.

## **5. Implementation issues**

During the implementation we recommend the following.

- An implementation advisory body is put in place with industry experts to advise on implementation.
- That during an initial implementation period the register would not be publically available.

## **6. Further points of clarification**

- We will be asking the Department to confirm that there will not be any registration fee for participants in this process.
- We will be asking whether the commercial process for government suppliers will be exempted from this process.
- We will seek to establish whether or not there will be an exemption for contacts/meetings with officials as part of a formal procurement process due to commercial sensitivity.