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**From:** Stapleton, Aine  
**Sent:** 26 September 2013 16:55  
**To:** siobhan.masterson@ibec.ie  
**Cc:** loughlin.deegan@ibec.ie; majella.fitzpatrick@ibec.ie; Beausang, William; Nolan, Joyce; Orr, Bernie  
**Subject:** 2013.09.26 Response to IBEC note on Regulation of Lobbying

Siobhán,

Our recent telephone conversation refers. As you know Alan had sent us some points for consideration on 7<sup>th</sup> August last. It is helpful to us to consider these issues in detail in the course of the drafting of the text of the Bill.

It is worth noting at the outset that the much of the information which is to be captured on the register under the Bill would currently be available in response to requests under the Freedom of Information Act, in response to Parliamentary Questions, on the websites of public bodies (e.g. Secretary General's diaries detailing meetings, details of membership of groups, committees, etc.) and in responses to press queries.

The Government's policy objective in establishing the register is to capture information in a more systematic way in one location to provide greater transparency as to who is in communication with whom and in respect of what. From a public policy perspective, it would be undesirable if the register were less transparent in providing information than other information sources which are currently available.

The Government also has a clear objective of further enhancing our international reputation as a good place to conduct business by bringing greater transparency to lobbying activity. I note in this regard, that this was a consideration of the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, in the context of their pre-legislative scrutiny of the Protected Disclosures Bill where the Committee commented positively on the enhancement to our international reputation by having such legislation in place.

As I mentioned to IBEC at our last meeting, the detailed provisions relating to issues you raise will of course be teased out further in the course of drafting the text of the Bill by the Office of the Parliamentary Counsel (OPC). However, it might be useful to set out the broad policy direction in the General Scheme in relation to the specific points raised.

**Communications initiated by Government:**

Issue 1 – serving on Government Boards / Committees: The policy intention of Head 4 3 (xi) is to exempt such groups, etc. established by a Minister / Department subject to the group operating in a transparent manner. This provision will be supplemented by the preparation of a transparency code by the Minister for PER.

Issues 2 and 3: - structured dialogue processes / information sought by public bodies: The policy intention of Head 4 3 (iii) is to firstly to exempt purely factual information sought by public bodies. The purpose of this exemption is to minimise the burden registrants in relation to registration requirements and to ensure that the register is not overload with voluminous information. The concept of identifying factual information is not new in Irish legislation. It has been a feature of the Freedom of Information legislation, for example, since its enactment in 1997. The General Scheme of the Bill also provides safeguards against inadvertent breach of the legislation. The registrar will have a specific statutory mandate to provide education and advice to aid compliance. The General Scheme at Head 22 also proposes that a person who is unsure as to whether a requirement to register arises may seek advice from the Registrar. They will of course also be able to liaise with the particular public body involved. In addition, the Minister has advised that the offences and

investigation aspects of the legislation will not come into force on its commencement but that he will allow time for organisations to familiarise themselves with the registration requirements.

### **Administrative Penalties:**

The policy underpinning the General Scheme is to support compliance with the legislation. Experience with overseas lobbying regulation suggests that there are few criminal prosecutions as the nature of the breaches would not, in the normal course, be sufficiently serious. The advice from administrations overseas, based on their practical experience, is to provide a range of tools for the regulator to aid compliance. These range from the (i) the regulator being able to take account of steps taken by a person to correct any error or omission in registration (ii) the imposition of administrative penalties such as “name and shame” provisions (iii) low level “on the spot” fines and (iv) in the case of serious offences the possibility of prosecution.

The administrative penalties issue is one we will be considering further in consultation with the OPC in the course of drafting the Bill. The intention is that administrative penalties would focus on low level breaches of the legislation.

### **Investment Environment:**

You will be aware from our previous discussions that the General Scheme contains two proposals to deal with this concern. Firstly, as you point out, a Minister has the option to decide on delayed registration in accordance with Heads 10. In addition, a person may seek to delay registration on the grounds of the commercial sensitivity of the information in accordance with Head 11. These provisions are unique to the Irish legislation and go considerably further in relation to protecting information of this nature than that provided for in other jurisdictions. The Minister has also spoken publicly about his plans for the phased implementation of the legislation. In relation to public servants, it is intended that the legislation will apply on commencement to senior civil servants and senior officials in local authorities. Officials from the IDA and Enterprise Ireland will therefore not be designated officials on commencement of the legislation. The phasing of the legislation to other areas of the public service including the IDA and EI will be informed by the implementation issues arising including any practical issues arising the first review of the Act. This review will of course encompass any concerns emerging in relation to the operation of the provisions proposed in Head 10 and 11.

### **Registration Process:**

Issue 1: Updating the register if not engaging in lobbying activity: It is not the intention to confer unnecessary reporting requirements on registrants who are not active. We will discuss this issue further with OPC.

Issue 2: Registration should be based on an organisation rather than an individual basis: Head 9 1. (v) refers and states that it is the person with primary responsibility for the lobbying who will be named. Organisational details will also be required but not details of all staff involved in lobbying.

Issue 3: Frequency of registration: From a public policy perspective, the draft legislation seeks to balance the desire for timely information on the register with the need to avoid excessive reporting. Taking into account the measures detailed in the General Scheme to minimise the amount of detail to be registered, the draft legislation proposes that the register be updated at four monthly intervals i.e. at end April, end August and end December each year. It is essential that the information is timely so that it is meaningful and fulfils the objectives of the legislation. It is of course an aspect of the legislation which will be reviewed as part of the first review of implementation issues, twelve months after commencement.

### **Implementation issues:**

Issue 1: Implementation Advisory Body – As we have mentioned previously to you, we will have an Implementation Advisory Group.

Issue 2: Period where register would not be publicly available: It would be our intention, in association with the registrar's office (SIPOC), to have a pilot testing phase involving members of the advisory group, before the information becomes publically available. This would take place prior to the commencement of the legislation.

**Further points of clarification:**

Issue 1: Charging of Fees: It is not the intention to charge fees under the legislation.

Issue 2: Commercial process for government suppliers /procurement process: We're not clear on the points made here but perhaps we can clarify them further when we next meet with IBEC. Our understanding would be that canvassing in relation to tenders is not permissible. It is the policy intention that communications on questions or clarifications of a purely technical nature arising during the course of a procurement process would be exempt.

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**From:** alan.okelly@ibec.ie [mailto:alan.okelly@ibec.ie]  
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**To:** Stapleton, Aine  
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**Subject:** Lobbying note

Aine,

As discussed please see attached a note summarising some of the feedback and further thought/issues regarding the lobbying proposals. As always, we would welcome the chance to discuss this directly with you.

Thanks

Alan

*(See attached file: IBEC lobbying response\_August2013.pdf)*

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