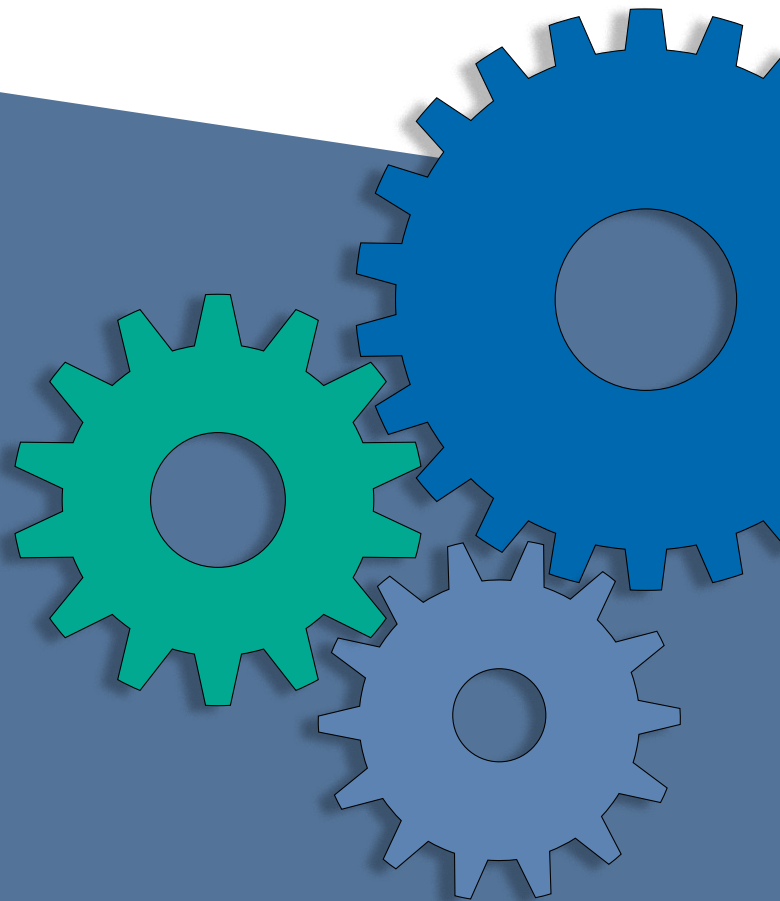




TRANSPARENCY
INTERNATIONAL

AUSTRIAN CHAPTER

VEREIN ZUR KORRUPTIONSBEKÄMPFUNG



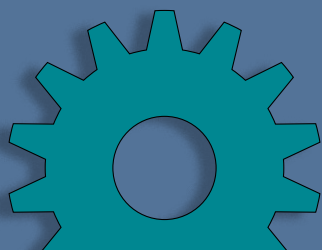
Lobbying

in

Austria

IN WHOSE INTEREST?

WHAT ARE WE ALLOWED TO KNOW?



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Transparency International (TI)

is an independent nonprofit Movement of like-minded people all over the world who have dedicated themselves to fighting corruption worldwide.

TI was founded in 1993 in Berlin. The international Secretariat of TI carries the organisation's global work. It supports and coordinates the work of the National Chapters, who are active in more than 100 countries.

Transparency International – Austrian Chapter (TI-AC)

aims to raise awareness against corruption and for transparency in Austria, and advocates for appropriate measures and reforms. TI-AC is a politically and institutionally independent nonprofit organisation.

For more information about our work please visit:
www.ti-austria.at

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1. SUMMARY AND RECOMMENDATIONS

Lobbying is a buzzword. In Austria, it is negatively connected to influence that occurs behind closed doors. The opacity of lobbying is a worrying trend as it goes against an important part of democracy; information should continuously flow between organisations, businesses and interest groups on the one hand, and politics, parliament and the public administration on the other. The basic idea of lobbying is the involvement of people and organisations in the social decisions and developments which affect them. However, this „voice“ must be sufficiently open and transparent.

The first Austrian lobbying and interest representation law came into force on January 1, 2013. The law was introduced as a result of recent developments, in which the system of social partnership, an Austria-specific version of corporatism, has become challenged by “classical” lobbying as it is practised internationally. This is a significant historical development since the social partnership system has prevailed since the reconstruction of the Austrian Republic following World War Two.

The law established the lobbying register and the explicit prohibition of acting as a lobbyist for public officials and politicians. Both these developments are certainly positive.

Nevertheless, there is still need for action, both in terms of the lobbying legal framework, as well as the environment in which lobbying takes place.

Even lobbyists themselves complain about the lack of transparency in the current system and point to much needed improvements. To this end, both lobbyist interest groups in Austria are calling for an appropriate tightening of the system.

As part of the 2012 transparency package which contained the lobbying and interest representation law, improvements were made in the areas of anti-corruption and party financing. However, on the margins remain shortcomings regarding transparency including inadequate freedom of information. The related regulatory authorities struggle to fulfil their duties, which if nothing else is due to lack of staff.

The Transparency International – Austrian Chapter therefore demands an overhaul of the lobbying law and register according to the following points:

- **Public access to the lobbyist register:**
The general public cannot view the register of lobbyists de facto, nor do they have the option to find out who, when, by whom, what for or for what amount has been invested in lobbying. This is virtually impossible in the current form of the register, and in this respect the register of lobbyists does not exhibit sufficient transparency.



- **Equal footing for all lobbyists:**

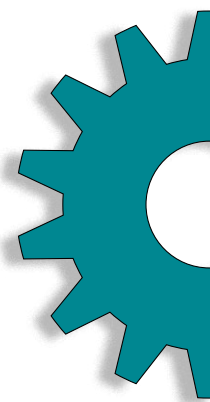
Many groups involved in lobbying are excluded entirely from the provisions of the law, such as social security institutions or recognised religious communities. Others are largely excluded, in particular from the penalties incurred when the law is violated. If, indeed, transparency is to be created in the Austrian lobbying scene, it is first necessary to guarantee equality for all those involved in lobbying. The sole criterion should be the activity itself, and not the status or function of the lobbyists.
- **Introduce effective control mechanisms:**

Nearly two years after its introduction, the lobbying register is showing clear gaps. So far, none of the sanctions provided for in the law have been implemented. This has been due to the exemption of two of the four groups defined in the law from any kind of penalty, as well as a lack of effective control mechanisms.
- **Bilateral disclosure:**

The lobbying register is the first step towards transparency on the part of the lobbyists. Conversely, there are absolutely no disclosure requirements for those that are being lobbied. Additionally, in the various codes of conduct for the civil service, dealing with lobbyists is not mentioned, which means that there is no guidance for public servants.
- **No more loopholes:**

Although the lobbying law prohibits politicians and public officials from working for a lobbying agency or as an independent lobbyist, additional activity for a private firm is allowed (though it must be declared) even if it is in their PR or lobbying department. This is an area where loopholes must be closed.
- **Cooling-off period for politicians:**

Currently in Austria there is no mandatory cooling-off period for politicians and civil servants before moving from politics to business. Companies can therefore recruit specific ministers and high level civil servants to lobby their employer in their new position in government. Transparency International – Austrian Chapter calls for a waiting period of at least one year prior to changing to a company, if a correlation between the activities carried out so far and the intended activities after leaving can be established.



2. „NO MORE EXCEPTIONS!“ – INTRODUCTORY WORDS

Transparency International, in cooperation with 19 EU countries, has undertaken a research project entitled „Lifting the Lid on lobbying: Taking Secrecy out of Politics in Europe,“ which this report is a part of. The project aims to not only create a picture of the current European lobbying landscape, but also to contribute to more transparent and responsible lobbying, both at EU level and in each participating country.

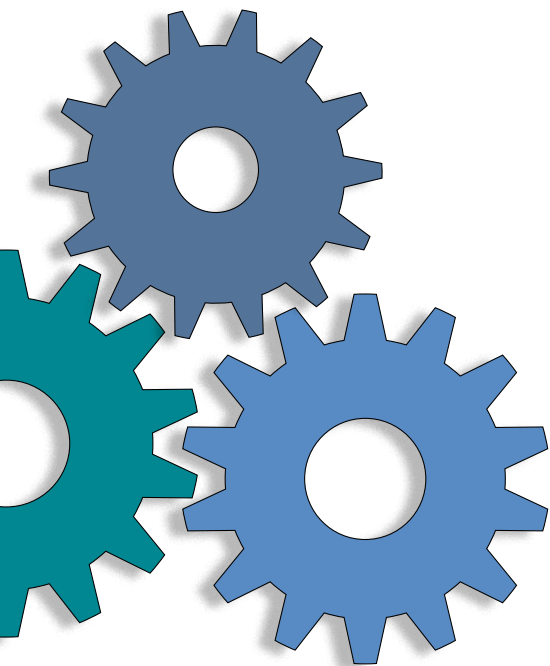
TI defines lobbying as direct or indirect communication with government officials, policy makers and representatives for the purpose of influencing the decisions made by or on behalf of an interest group.

Lobbyists are individuals who exercise influence or try to exercise influence professionally or voluntarily, in their own interests or on the behalf of legislation in the wider sense. Lobbyists use their influence in an attempt to search for, establish and maintain contact with members of parliament and their staff, party officials, government officials and/or members of ministries and government institutions.

Over the years as a board member of an international corporation, I was responsible for „Governmental and Industrial Relations“ among other things. Lobbying used to be a straightforward administrative task for international corporations. It did not have dubious connotations.

In recent years, the topic has been increasingly implicated in scandals. The term „lobbying“ is misunderstood and is often mentioned in the same breath as wheeling and dealing, cronyism and influence behind closed doors. This is a worrying trend because it threatens to tarnish an entire profession with a negative image caused by a few „bad apples“.

Lobbying does not equal corruption, but the two sometimes overlap. This is a question of transparency for the public. The basic idea of lobbying is the participation and involvement of citizens and organisations which are affected by societal developments and/or policy decisions.





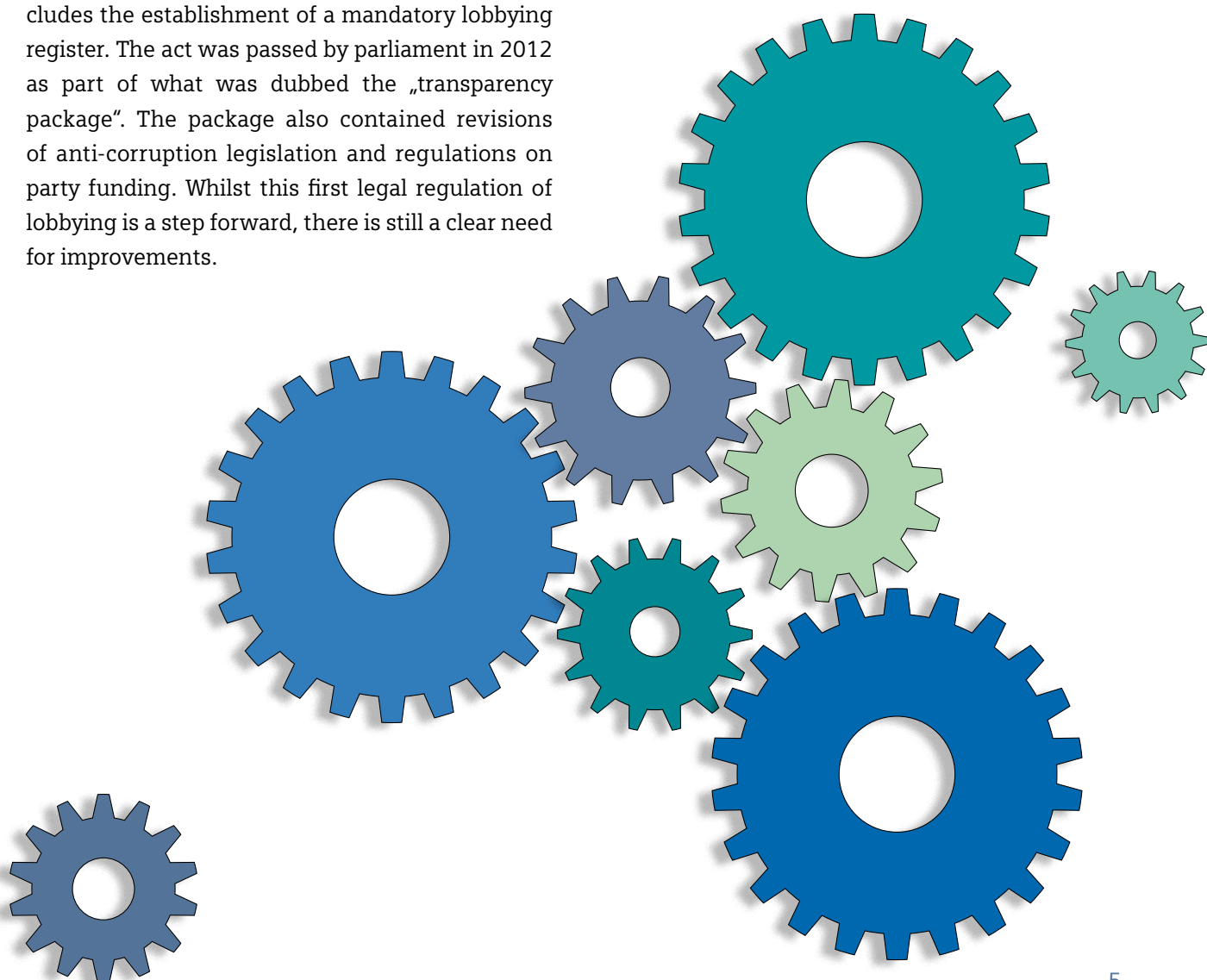
But lobbying must be sufficiently open and transparent, so that the interests of the weak are heard, as well as those of the powerful. The opportunity for each citizen's interests to be represented in the political process should not depend on financial resources.

The Austrian Lobbying and Interest Representation Transparency Act (das Österreichische Lobbying- und Interessenvertretungs-Transparenz-Gesetz) has been in force since January 1, 2013. It includes the establishment of a mandatory lobbying register. The act was passed by parliament in 2012 as part of what was dubbed the „transparency package“. The package also contained revisions of anti-corruption legislation and regulations on party funding. Whilst this first legal regulation of lobbying is a step forward, there is still a clear need for improvements.

Parliamentarians, officials and lobbyists are responsible. Their words and actions must be characterised by transparency and integrity.

Prof Eva Geiblinger

Chairperson of
Transparency International – Austrian Chapter



3. THE AUSTRIAN LOBBYING LANDSCAPE

3.a A BRIEF HISTORY OF LOBBYING IN AUSTRIA

Article 1 of the Constitution of Austria states: „Austria is a democratic republic. Its law emanates from the people“. The Austrian democracy is indirect (the people contribute to the decision-making of the state through elected representatives) and parliamentary (MPs are not bound by instructions, known as „free mandate“). Austria is divided into nine federal provinces: federal and state governments have their own legislation and enforcement, but act (by federal council or federal government) each with the legislation of the other. Mutual cooperation is also provided in its administration (the provinces in the administration of the federal government through the indirect federal administration as well as the federal government in the administration of the provinces through indirect state administration). Federal and state governments have their own finances, respectively.¹

Therefore, when looking at the Austrian lobbying landscape both the federation and provinces should be considered. Likewise, both levels of administration should be taken into account when discussing lobbying legislation. To elaborate on the history of lobbying in Austria, it is also necessary to explain briefly the system of social partnership specific to Austria. This is defined as:

... a wide and complex network of institutionalised, formal or informal interactions between the large umbrella organisations, and between them and the government ...²

After the Second World War, a system of corporatism was formed in the context of cooperation between the political forces with the aim of structuring the country. This involved the inclusion of large organisations when making government decisions, which led to a close link between the government, parliament and associations. Dominant lobbies are the Chamber of Economics, Labour, and Agriculture as well as the trade union confederation.

The tasks of social partners in the policy-making process are very similar to those of lobbyists. They advise and assess ministerial drafts and regulations, as well as prepare decision-making principles, regulations and laws.² The level of involvement of social partners in the policy and decision-making processes is heavily dependent on the respective subject area.

Social partnership is neither grounded in the Constitution nor laid down in other laws, but is organised on a voluntary basis. To a large extent it is implemented informally and confidentially, in a way that is hardly accessible to the general public.⁴

¹ See Frank, P 4ff

² Bareis, P 13

³ Bareis, P 20

⁴ cf. www.bmeia.gv.at/aussenministerium/oesterreich/staat-und-politik/sozialpartnerschaft.html

Since Austria joined the European Union in 1995, the conditions for interest groups have slowly but steadily changed. Significantly, if decision-making processes take place directly at EU level, agreements at national level no longer need to be reached. Accordingly, there has been a decline in the influence enjoyed by social partners. Meanwhile, the meaning of „strategic lobbying“, including targeted, professional lobbying activities is increasing.⁵

In 2011, following the „Strasser case“ (see below), the Austrian Ministry of Justice made the first steps towards introducing a lobbying register and new lobbying legislation as part of the „2012 transparency package“. Both of these initiatives came into force on January 1, 2013. One issue which the government parties discussed at particular length was whether, for example, chambers and interest groups should come under the new law. The final draft declares they are exempt from sanctions. This is one of the reasons the final bill was dubbed „a limp handshake of a compromise“.⁶

CASE STUDY: THE „CASH FOR LAWS“ AFFAIR/STRASSER CASE

In Austria on March 12, 2011 it was announced that Ernst Strasser, who at that time was head of the ÖVP delegation in the European Parliament, spoke to reporters from the „Sunday Times“ posing as lobbyists. Strasser said that he would make proposals in the EU Parliament about legislative changes for the benefit of lobbyists. In a secretly filmed video he agrees to be paid an annual fee of €100,000 and is promised to be given jobs at supervisory boards in return. In the video, the MEP says among other things, „of course I’m a lobbyist“. He also said that he already works for 5 clients who each pay him €100,000 per year.⁷

The politician denied the allegations, claiming he simply played along in order to expose the two lobbyists and to report them to the police. In the following weeks the Prosecutor’s Office against Corruption, and a little later OLAF (European Anti-Fraud Office), began investigations and Strasser resigned.

The public outrage in Austria caused by the case led to the „Transparency Package 2012“. The package also contains the first lobbying act and lobbying register, in force since January 1, 2013.

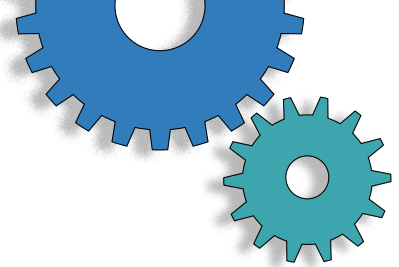
In 2013, Strasser was sentenced to four years in prison for corruption. The verdict was subsequently overturned by the Supreme Court because of a formal error and remanded to the first instance. In the second case in 2014, there was a new conviction. Yet Strasser’s sentence was reduced to three and a half years. On October 13, 2014, the Supreme Court upheld the conviction but reduced the sentence one more time to three years.

⁵ Bareis, P 20f

⁶ <http://derstandard.at/1317019955141/>

Lobbyisten-Gesetz-Von-Gaunern-Goennern-gestregenen-Gesetzen

⁷ cf. <http://orf.at/stories/2153074/2152245/>



CURRENT LEGAL SITUATION

In Austrian criminal law, both requesting and promising advantages for a dutiful or wrongful act or negligence of official duties are punishable. This corresponds with the relevant article in the United Nations Convention Against Corruption⁸ and the Council of Europe Criminal Law Convention⁹ on Corruption. Article 308 of the Austrian criminal code also regulates „illicit intervention“.

This is defined as those, who for themselves or on behalf of a third party request or offer, grant or promise to exert undue influence on the decision of a public official or referee, are liable to prosecution.

A LOBBYING REGISTER HAS EXISTED IN AUSTRIA SINCE JANUARY 1, 2013. REGISTRATION BEFORE ENGAGING IN LOBBYING ACTIVITIES IS MANDATORY FOR THE FOLLOWING FOUR GROUPS¹⁰:

- (a) **Lobbying companies:**
Companies that lobby for clients in return for payment.
- (b) **Companies:**
Companies that employ corporate lobbyists, provided no more than 5% of their time are used for lobbying activities.
- (c) **Self-governing bodies:**
Legally established professional interest groups and other legally established self-governing bodies. Includes the Economic and Labour Chamber, as well as trade associations, provided lobbying is the sole or at least predominant activity.

- (d) **Interest groups:**
Private legal association of individuals, provided that lobbying is the sole or at least predominant activity. Includes association members, NGOs (with restrictions)

The following groups are completely excluded from the scope of the Lobbying Act (and are not obliged to join the register):

- Political parties and their party-affiliated organisations
- Religious groups
- Austrian towns and municipalities, whose social security institutions including their main association's interest organisations which do not employ staff for lobbying purposes.

⁸ United Nations Convention Against Corruption (UNCAC) – ratified by Austria in 2006

⁹ Council of Europe Criminal Law Convention on Corruption – signed by Austria in 2000, but not yet ratified.

¹⁰ Federal law, which ensures a federal law's transparency when exercising political and economic interests (Lobbying and Interest Representation Transparency Act – LobbyG) the Court Fees Act will be amended:
Download from www.parlament.gv.at/PAKT/VHG/XXIV/III_01465/index.shtml



Moreover, the following activities are not explicitly stated in the lobbying act:

- Activities of officials
- Representation by lawyers, notaries, business trustees, trustees of clubs, patient advocates, debt counsellors
- Exercise of non-entrepreneurial self-interests
- Exercise/representation of the interests of a party in administrative or judicial proceedings
- Foreign policy interests
- Activities at the request of an official (e.g. attending an expert group by invitation)

Those who do not belong to the excluded groups must include the following data in the register:

- (a) **Lobbying companies:**
Basic data, code of conduct, names of lobbyists, orders, clients, areas of responsibility
- (b) **Corporate lobbyists:**
Basic data, code of conduct, names of lobbyists working in the company, information on whether the annual spending on lobbying exceeds €100,000
- (c) **Self-governing bodies:**
Basic data, number of stakeholders, estimated lobbying expenditure
- (d) **Stakeholders:**
Basic data, number of involved stakeholders, estimated expenditure

The freedom of information legislation in Austria includes the duty of disclosure law at federal level and the duty of disclosure in the basic law on provincial level. There is however no entitlement to access public records, as is the case in Germany. On the contrary, Austria is the only country in the EU, in which the „official secret“ is in the Constitution. In recent years, several initiatives were formed, whose aim is to improve the freedom of information.¹¹ In March 2014, a first draft of a new Freedom of Information Act was submitted for approval. Supporters and critics were dissatisfied.

For the authorities, the new draft went too far, and for the critics of the current situation it didn't go far enough.¹²

Austria is already several steps ahead with regards to the financing of political parties. Since July 1, 2012, political parties have been obliged to specify all of their donors whose total donations in a calendar year exceed €3,500. Donations greater than €50,000 must be reported to the Court of Auditors. There are also regulations which state from whom parties may not accept donations.

¹¹ e.g.: www.transparenzgesetz.at, www.informationsfreiheit.at or the task force freedom of information act of the Open Knowledge Foundation Austria www.okfn.at/arbeitsgruppen/ifg

¹² cf. <http://derstandard.at/1399507043139/Aemter-wollen-weiterhin-schweigen-duerfen>

These include parliamentary clubs, public bodies, and companies and organisations in which the state holds at least a 25 percent stake. Also prohibited are donations in exchange for certain benefits. The Code of Conduct of the Austrian Public Affairs Association (ÖPAV) states:

In pursuing their own interests, ÖPAV members will not exercise unfair, irrelevant, inappropriate or unlawful influence on ranking officials, especially not by direct or indirect financial or other material incentives.¹³

3.b INTENSITY AND EXTENT OF LOBBYING

On September 29, 2014, almost two years after its launch, the Austrian lobbying and interest representation register comprised 245 entries from companies, organisations and other stakeholders.¹⁴ However, the public only has access to the company name and the names of (in groups A – lobbying firms and B – companies) lobbyists registered for the respective company. In groups C (self-governing bodies) and D (interest groups) only the name of the registered institution is available.

It is assumed that in Austria around 3000 to 4000 people are professionally engaged in lobbying – 60% of them in the chambers. An estimated 15% work for, or in, companies and about 15% work for associations. The remaining five to 10% are self-employed „agency lobbyists“.¹⁵

A 2014 survey of 357 members of the Economic Forum of Managers (WdF) showed that 62.2% of the Austrian companies surveyed practice lobbying. Companies either do this through their own employees, associations or by using external consulting firms.¹⁶ Apart from the lobbying register, which only makes publicly available a minimal amount of information, official figures do not exist.

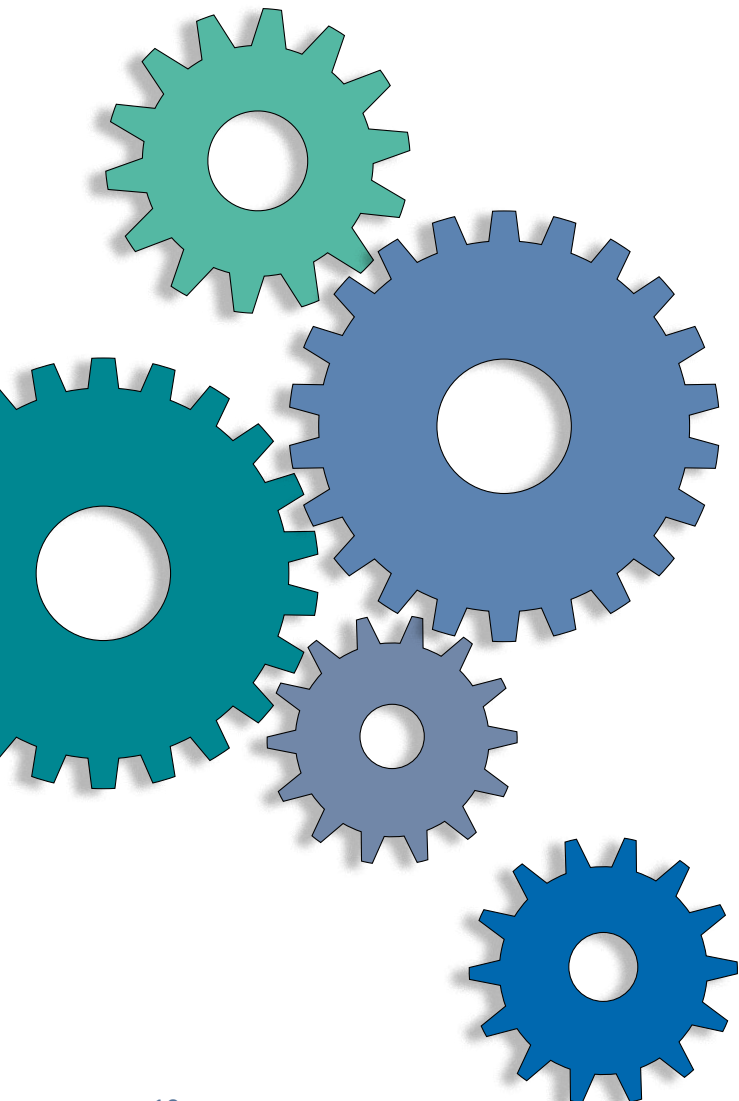
Accordingly, there are no official figures on annual lobbying spending in Austria.

¹³ www.oepav.at/de/verhaltenskodex/

¹⁴ www.lobbyreg.justiz.gv.at/

¹⁵ Schickinger, P 31

¹⁶ cf. <https://www.wdf.at/content/site/home/blitzumfrage/f/index.html> and/or www.publicaffairs.cc/lobbyingstudie-2014/



Although lobbying agencies with a greater annual expenditure in the previous year than €100,000 must report to the lobbying register, the information they submit remains inaccessible to the public. The most open of lobbying agencies are reluctant to name an average cost on the grounds that their clients' contracts differ too greatly. In an interview, an Austrian lobbyist named the sum of €60,000 for a „standard project“.

As for the different types of lobbying in Austria, the active lobbyists of the country are making efforts to ensure that „direct lobbying represents by far the most important form of lobbying“.¹⁹ Occasionally, if appropriate, lobbyists also work to ensure that successful „grassroots lobbying“ is used. Grassroots lobbying may particularly be used on issues of public interest, such as interests being represented by NGOs. When talking about informal lobbying, the question arises as to whether those lobbying activities not covered by the lobbying register, automatically lie within the scope of informal lobbying, or whether such lobbying activities are not recognised by the state. Activities outside of the register include lobbying through religious groups, social security institutions or NGOs and interest groups without specialised, competent staff. Yet the following also applies for companies listed in the register: the public is not able to access information on who actually has contact to officials and what the objectives of these relationships are.

Accordingly, the opinion of representatives of the industry regarding the lobbying act is not encouraging: „So far, the experience with the lobbying act is rather sobering. Though some companies have entered into the register, it has not led to greater transparency, nor to a greater understanding of lobbyists' activities.

The cause for this probably lies in the fact that this law was created on the back of a negative event. It was not created to define the rights and obligations of a profession in the context of such a register for positive motivations“.¹⁷

In the Austrian lobbying register, companies in the following sectors are currently represented: energy (31); finance (19); pharmaceutical industry (15); IT/telecommunications (13); infrastructure/transport (8); tobacco (5); and three respectively from the gambling, construction and chemical industries; as well as six that fall under the category „other“ and could not be clearly allocated to a sector (e.g. Siemens). Furthermore, 64 lobbying/public affairs/consulting agencies are registered, and while they must list their clients when joining the register, this list is not accessible to the public. This is an obvious problem of the register. If, for example, a fourth, well-known gambling company were not to appear in the lobbying register, it could either mean that the company does not engage in lobbying, that it lobbies exclusively through agencies, or that it merely engages in hidden or informal lobbying. In any case, a company of this kind would have, consciously or not, decided against public, transparent lobbying.

In addition, the lobbying register currently comprises 18 self-governing bodies and 53 interest groups (exact definition see page 11). These latter groups have been conferred a special status as they are eligible for greatly reduced disclosure requirements and they are also exempt from the penalties for non-compliance.

¹⁷ Dr Alfred Autischer, Gaisberg Consulting
(www.gaisberg.eu)

Most lobbying activity takes place in Vienna (the majority of lobbying companies are also located here). Due to the federal structure of Austria, the number of contacts at state and local level involved in direct corporate lobbying is particularly high. Mostly, these have been in existence for years and were created independently of specific contracts. The potential risks borne of these long-term close relationships are not explicitly covered by the lobbying act. In anti-corruption law, however, there is the punishable offense of „bribery“. Bribery is defined in the law as granting benefits to a public officials solely to gain their favour (without requiring a specific service in return).

3.c CULTURAL UNDERSTANDINGS OF LOBBYING

The term „lobbyist“ has a rather negative image among the Austrian population. This is well known by those active in the industry. Austrian actors are trying to rebrand the term lobbying. This contrasts to Germany, where lobbyists are attempting to establish „advocacy“ as the positive counterpart to the negatively regarded „lobbying“. To rehabilitate their profession, lobbyists are to some extent, lobbying for lobbying. To improve the image of lobbying is one of the goals stated by the Austrian Public Affairs Association.¹⁸ Its President Dr Peter Köppl said in an interview: „In every industry there are certain individuals who fail to keep to laws or codes, then their exploits are colloquially dubbed „lobbying“.

It should be in everyone’s interests – including politics, media and NGOs – to be objective and serious when dealing with the conceptual distinction between lobbying as a democratically legitimate and legal instrument of advocacy, and corruption as clearly defined in criminal law“.

¹⁸ www.oepav.at/de/

The fact that lobbying has become a hot topic in Austrian society in recent years is illustrated by the following example: when the draft of the Lobbying Act stood for review, an unusually high number of comments – considerably more than 100 – were submitted. This also led to numerous adaptations of the original legal text.¹⁹

Lobbyists themselves complain that the concept of lobbying is often equated with corruption due to scandals in recent years in which those accused of corruption referred to themselves as lobbyists.²⁰

The Austrian perception of lobbyists is correspondingly poor. A survey conducted by the PRVA in 2010 showed that 65.4% thought that lobbying doesn’t have a good image in Austria. Meanwhile, 54.2% of those questioned considered lobbying to be part of PR. For 43.9%, however, the area is its own discipline within communication.²¹

3.d SELF-REGULATION OF THE INDUSTRY

In Austria, there are two organisations that represent the interests of lobbyists: the Austrian Public Affairs Association (ÖPAV) and the Austrian Lobbying and Public Affairs Council (ALPAC). ÖPAV and ALPAC each have a code of conduct for their members, which can be found on their respective websites.²²

¹⁹ cf Building Trust through fairer decision making: in-depth report on progress made in implementing the OECD recommendation on principles for transparency and integrity in lobbying, P 81

²⁰ cf e.g. <http://derstandard.at/1297820910907/> Lobbying-Affaere-Ernst-Strasser-tritt-zurueck (Strasser case) and <http://derstandard.at/1353207287154/> Mensdorff-Pouilly-Netzwerk

²¹ www.ots.at/presseaussendung/OTS_20101124_OTS0230/aktuelle-prva-umfrage-image-von-pr-in-oesterreich

²² www.oepav.at/de/verhaltenskodex/ and www.alpac.at/kodex/

Furthermore, the Austrian Public Relations Association (PRVA) published a lobbying manual in 2012, which contains a summary of quality standards and a code of conduct.²³

Both the ÖPAV and the ALPAC require their members to comply with their code of conduct. The ÖPAV counts both individuals and companies among its members.

Currently, it has nine institutional members and 108 individual members, who are listed on the website.²⁴ The ALPAC membership „is basically open to all independent advisors and partners of consulting companies who are full-time employees in lobbying and public affairs and other forms of policy advice“.²⁵

In addition to the code of conduct, the implementation of the ALPAC compliance directive is mandatory for all members. ALPAC publishes no names or numbers of its members on its website.

In Austria there is no voluntary association list as in Germany. Both the ALPAC and the ÖPAV stress however, that they were actively involved in the establishment of a national lobbying register to improve transparency in the industry.²⁶

CASE STUDY: TRANSPARENT LOBBYING AGAINST HARD DRIVE TAX

Since 2010, a standard “hard drive levy” has been demanded by collecting societies in Austria. These societies reimburse rights holders for private copies of their works based on the copyright tax or blank tape levy in existence since 1980. With this “hard drive levy”, the existing blank tape levy should be extended to all devices that have a digital memory.

26 production and sales companies joined to form a „platform for a modern copyright law“.²⁷ The aim of this was to lobby against the in their opinion problematic hard drive levy and to identify alternatives.

Efforts were made to remain transparent, as far as is possible in the Austrian legal system. To this end, the platform’s website made it clear who was responsible for it and what its objectives were. The platform used the services of a lobbying and public relations agency and was listed on their website as a customer.²⁸ The agency, in turn, was entered in the lobbying register. The platform not only works through personal discussion with decision makers, but makes it a point to share content and viewpoints through the media.²⁹

²³ Available for download from <http://prva.at/wissen/arbeitskreise/abgeschlossene-arbeitskreise/62-wissen/arbeitskreise/abgeschlossene-arbeitskreise/102-lobbying>

²⁴ www.oepav.at/de/mitglieder/

²⁵ www.alpac.at/mitglieder/

²⁶ cf. www.alpac.at/bloggt/Lists/Beitraege/Post.aspx?ID=2 and www.oepav.at/de/news/20/positionspapier-des-oepav-zum-lobbyg

²⁷ www.modernes-urheberrecht.at/

²⁸ www.communicationmatters.at/kunden/

²⁹ cf. e.g. <http://futurezone.at/netzpolitik/festplattenabgabe-total-daneben/24.588.373>, <http://diepresse.com/home/wirtschaft/recht/3816974/Verfassungsdienst-hat-falsche-Modelle-gepruft->

3.e WATCHDOG OR DOGSBODY? – THE ROLE OF THE MEDIA AND CIVIL SOCIETY

On a global scale, Austria has a relatively free press: in the World Press Freedom Index compiled by Reporters without Borders, Austria came in at number 12 of 180.³⁰ Moreover, in the Freedom of the Press 2014 report compiled by Freedom House, it came in at position 30 of 197.³¹

There is a culture of investigative journalism. Numerous corruption scandals in recent years would not have come to light without investigative journalists.

Lobbying is usually the subject of negative headlines – be it people who describe themselves as lobbyists being suspected of corruption or lack of transparency surrounding political decisions. The system of social partnership is rarely associated with lobbying.

Austria's civil society has become increasingly active in recent years. The sheer number of organisations has risen sharply in recent years.³² There is no data on the status of the country's civil society in the Civicus Civil Society Index. Nor has Austria ever appeared in the Global Integrity Report to date.

In the report *Zivilgesellschaft bewegt* (civil society moves), presented by the NPO-Competence Center of Vienna University of Economics and Business, a „precarious institutionalization“ of civil society has been brought into question. This is because civil society is barely involved in political decision-making processes at the current time. Nevertheless, it is clear that civil society organisations with alliances within the public sector or cooperation with businesses or media, have achieved a lot in recent years. This has occurred often despite initial political opposition.³³ Seen in this light, representatives of civil society are successfully lobbying. However, they are excluded from a substantial part of the requirements of the Lobbying Act.

The number of organisations that deal specifically with lobbying transparency, anti-corruption and open government is reasonable. Yet most are very active in their respective sub-area. Hence, for example, initiatives such as the Freedom of Information forum³⁴ are striving towards a Freedom of Information Act, as exists in other countries.



³⁰ <http://rsf.org/index2014/en-index2014.php>

³¹ www.freedomhouse.org/report/freedom-press/freedom-press-2014#.U3ItvZ6Z2Q8

³² www.gemeinnuetzig.at/zivilgesellschaft_bewegt

³³ Download from: www.gemeinnuetzig.at/zivilgesellschaft_bewegt

³⁴ www.informationsfreiheit.at

4. REGULATING LOBBYING: TRANSPARENCY, INTEGRITY AND EQUALITY OF ACCESS

Transparency International has developed a standard questionnaire for the 18 countries involved in the „Lifting the Lid on Lobbying“ study in order to evaluate the context in which each country conducts lobbying. The following sub-sections are based on the results of the evaluation of this questionnaire. The percentage figures indicate how far Austria is on the way to transparency, integrity and equality of access to lobbying. A score of 100% would be a perfect result. The further the actual score deviates from this, the longer is the road that lies ahead of Austria.

The complete questionnaire is available for download from www.ti-austria.at

4.a FOR MORE TRANSPARENCY

Since the introduction of the lobbying law and lobbying register, Transparency International – Austrian Chapter has criticised the current regime for not creating more transparency. The results of this TI study clearly show this. Austria performs worst in the following areas: „Register monitoring and sanctions“ (19%) and „Pro-active disclosure – legislative footprint“ (13%). Hence, there is an acute need for action on these fronts.

The only information in the register which is accessible to the public is the name, register number, registration department (which of the four groups) and „details“ (contact details, as well as names of lobbyists in groups A and B). All other information is exclusively available to authorised people (clients, contractors, officials). So, interested members of the public cannot find out who lobbied what, for whom and when. They can only look up who entered the register with the intention of lobbying. When categories C and D enter the register they are not obliged to specify a majority of their details. These two groups are also exempt from punishment for failing to enter the register, while for groups A and B there are severe penalties (an administrative fine of up to €60,000 and removal from the lobbying register).

Standardisation is urgently necessary. The industry complains that „there is a need for change on many points in order to improve the law and register, and equal treatment and legal certainty for all stakeholders ...: Clear formulations and equal treatment of all professions ... closing of loopholes and workarounds ... as well as the abolition of the distinction between lobbying and advocacy – this is not comprehensible and leads to a lack of transparency“.³⁵

³⁵ Interview with Dr Peter Köppl, President of the ÖPAV



Transparency looks even bleaker on the other side of the lobbying debate. Officials are not obliged to report which lobbyists they consulted, or the topic of their discussions. In addition, regarding the legislative footprint, the transparency of the formulation of a law is not very clear. On the parliament website, there are bills and comments submitted in writing to the parliament during the

review period as well as the final legal text. However, if an individual was involved in the original draft or provided input during a personal discussion, there is absolutely no detailed documentation available, unless voluntarily provided by the respective officials.

CASE STUDY: BANK TAX

In an intergovernmental agreement at the end of 2013 (following the national general elections in December 2013), it was decided that bank tax assessment should change. Soon thereafter the first plans for change, which incidentally were highly beneficial for a few large Austrian banks, were made public. As a result of a change in bank tax assessment, one bank would pay considerably less on their total assets, than they had on their total derivatives, as was the case until now. Meanwhile, another bank would gain advantage due to their structure, on account of the exception of all institutions that generate total assets of less than one billion Euros.³⁶ Reports of these kinds of changes always come with complaints: the bankers took advantage of their good personal contacts with Austrian politicians to gain advantages.

The current lobbying register brings no greater transparency in this regard. Even if the respective institutes are registered, their lobbying activities, who they meet, or even the topics they lobby, are not accessible.

There is also no duty for policy makers to disclose whom they met or spoke to, or the subjects they discussed. This also makes it difficult for those who are not guilty to make allegations using clear and unambiguous documentation showing that there were no unfair activities. Conversely, those who use their entrusted power for their own benefit ultimately profit from the current lack of transparency.

The responsibility of monitoring the lobbying register falls with the respective district administrative authority.

The authority is also required to impose administrative sanctions. Yet no indication could be found that a sentence of this kind has already been imposed in the first year and a half since the register was created.

³⁶ cf e.g. <http://diepresse.com/home/wirtschaft/economist/1509793/Regierung-hilft-der-Erste-Bank?from=suche.intern.portal>, http://diepresse.com/home/wirtschaft/economist/1593582/Lobbying_Alle-gegen-Raiffeisen-?from=suche.intern.portal, <http://wirtschaftsblatt.at/archiv/printimport/1549954/Tirols-Banken-mussen-kunftig-fast-die-doppelte-Steuer-zahlen?from=suche.intern.portal>

In addition, groups C and D are exempt from punishment in every case. In 2013, in a first inquiry regarding the non-registration of interest groups that engage in lobbying the then Minister of Justice said:

... the Federal Ministry of Justice advises that no legal basis can be assigned to the Lobbying and Interest Representation Transparency Act (LobbyG) to become officially engaged and to check whether all potential interest groups liable to register are in compliance with the registration requirements of LobbyG. Even if an interest group liable to registration does not enter the lobbying and interest representation register (LIVR), the administrative offenses in accordance with § 13 LobbyG are not applicable. In this case Federal Ministry of Justice has as little authority to impose penalties as the administrative authorities who are actually responsible for prosecuting offenders for not complying with registration requirements.³⁷

This statement from the justice minister points out that for a considerable number of those liable to register, contravening the lobbying law will remain unsanctioned. This makes registration for these groups a cursory task instead of an actual obligation.

4.b PROMOTING INTEGRITY

The biggest concern on the subject of integrity is the lack of regulations in Austria for cooling-off periods for politicians and civil servants before and after their political activities. On this topic, Austria is at a meagre 8%:

The Lobbying Act states that politicians are not allowed to be politicians and lobbyists at the same time. Nor may State employees work part-time for lobbying companies. However, they can work in other private companies, even if the position is in their lobbying department. Both groups must report additional incomes.

In Austria there is no regulation regarding a revolving door. This would determine the period of time before a politician is permitted to be active in certain potentially problematic sectors after ceasing their political activities. Theoretically, they can take any position on the day after the end of political employment, even as a lobbyist. There are a few cases of ex-politicians joining lobbying agencies, or even establishing them. Conversely, there are also politicians who have switched from lobbying to politics. The subject has been resumed, and a draft bill should be submitted by the end of 2014.³⁸

In addition to the rather poor legislation, there are numerous codes of conduct for the civil service. One key scheme published by the Federal Chancellery was „The responsibility lies with me – Code of Conduct for Prevention of Corruption“ (Die VerANTWORTung liegt bei mir). This first appeared in 2007 and was subsequently revised in 2012.³⁹ As the name suggests, the focus of the code is anti-corruption measures, it deals extensively with issues such as acceptance of gifts and sponsorship. However, some portions of the code are relevant for dealing with lobbyists. This includes conflicts of interest (e.g. from secondary employment that is not liable to be registered), acceptance of gifts and dissemination of information. Yet, lobbying and/or dealing with lobbyists

³⁷ www.meinparlament.at/show_ticket_list.php?tag=Lobbying-Register

³⁸ As of November 2014, cf. <http://diepresse.com/home/politik/innenpolitik/3884024/CoolingoffPhase-fur-ExMinister?>

³⁹ Download from: <https://www.oeffentlicherdienst.gv.at/publikationen.html>

does not get its own specific mention. In addition, there are other codes of conduct by individual ministries or administrative bodies. Such examples include the Code of Conduct of the Federal Ministry of the Interior,⁴⁰ or the guidebook „A Question of Ethics“ issued by the city of Vienna.⁴¹ As for anti-corruption, these codes also fail to address the issue of transparency when dealing with lobbyists in the same way that the Code of Conduct for Public Service of the Federal Chancellery does. A particularly interested employee could, however, find recommendations from the guidelines on conflicts of interest, bias and secondary employment.

In recent years, the city of Vienna has developed an online anti-corruption training course for its workers. This is available to all civil servants at city and provincial level from the Association of Austrian Cities and Towns website.⁴²

As to the other side of the lobbying process – the lobbyists themselves – the Lobbying Act decrees certain rules of conduct (which are covered in two of the four specified by law categories of lobbyists with sanctions for non-compliance). So far, however, lobbyists have not been prosecuted. This raises the question of what is needed to prosecute. After all, if the authorities do not actively monitor compliance, the lobbyists themselves would have to report competitors or functionaries to the police.

The law requires a code of conduct from lobbyists; the conditions developed by the ÖPAV and the ALPAC were positively received by the industry.

It was also emphasised in the interview that „naturally the lobby industry and public affairs specialists have an interest in the profession being perceived as a serious business and not being singled out and cast in a bad light“.⁴³

Neither of the codes of conduct require their signatories to make public their clients. However, they have to disclose with whom they lobby, when they first contact decision makers. In interviews, most industry representatives say they do not publish their customers' details, as this is not ordinary nor in the interest of the customer.⁴⁴ Often there are also contractual confidentiality obligations in the way that a legal requirement to disclose information would facilitate a transparent process. To mention a positive exception in Austria, Communication Matters⁴⁵ and mastermind Public Affairs Consulting,⁴⁶ publish their customers on their website.

For secondary employment in lobbying, the codes of conduct of the industry are stricter than the law. However, there is no supervisory body that can verify this. The codes are purely optional.

⁴⁰ Download from: www.bak.gv.at/cms/BAK_dt/service/downloads/start.aspx

⁴¹ <https://www.wien.gv.at/verwaltung/internerevision/ethik.html>

⁴² www.staedtebund.gv.at/services/tools/tools-details/artikel/wohlverhaltenskodex.html

⁴³ Dr Alfred Autischer (Gaisberg Consulting)

⁴⁴ Schickinger, P 78

⁴⁵ www.comma.at/kunden/

⁴⁶ www.mastermind.cc/netzwerk/kunden-aus-wirtschaft-und-gesellschaft-verbaende-und-ngo/



4.c EQUALITY OF ACCESS

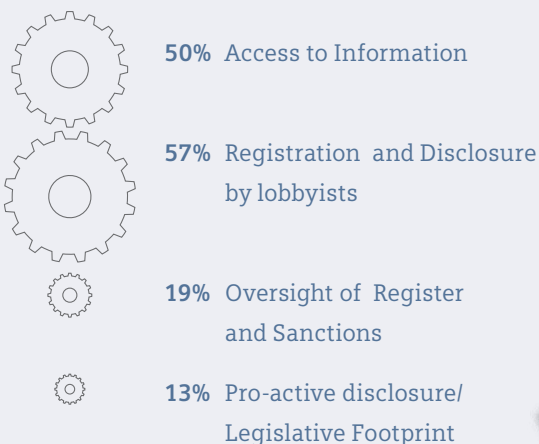
Regarding the legislative process in Austria, definite attempts are made to collate numerous opinions. To this end, ministers, state governments and social partners are sought as part of the review process before a bill is introduced. After that the draft is published on the parliament’s website, at which point the public has the opportunity to submit comments. The public’s comments are subsequently published on the website after the submission deadline. However, the minister reviewing a complaint is not obliged to explain why an amendment or criticism was or was not considered.

According to the review process, transparency is ensured as follows: on the Parliament website, it is possible to see who has submitted written proposals for amendments. However, anyone who was involved prior to the first draft of the law is not included.

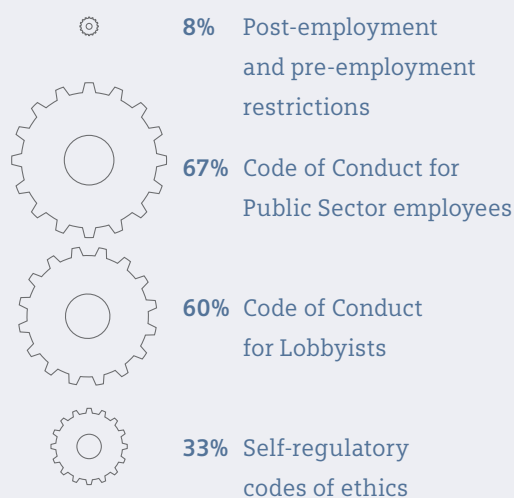
There is also no legal obligation for a balanced meeting of expert groups. In practice, however, the effort is usually made.

There are no legal provisions to prohibit lobbyists and corporate representatives from attending expert groups. However, the industry code of conduct does not recommend that they do. In the Lobbying Act, they are even explicitly exempt from the law if they were invited to participate in an expert group.

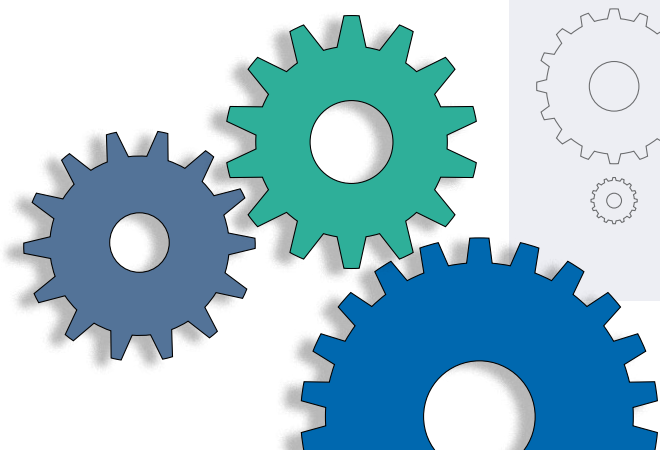
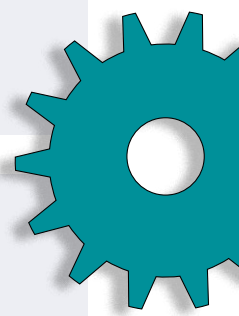
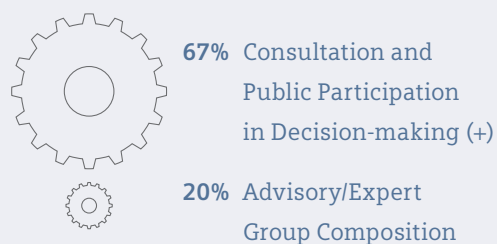
Transparency



Integrity



Equality of access



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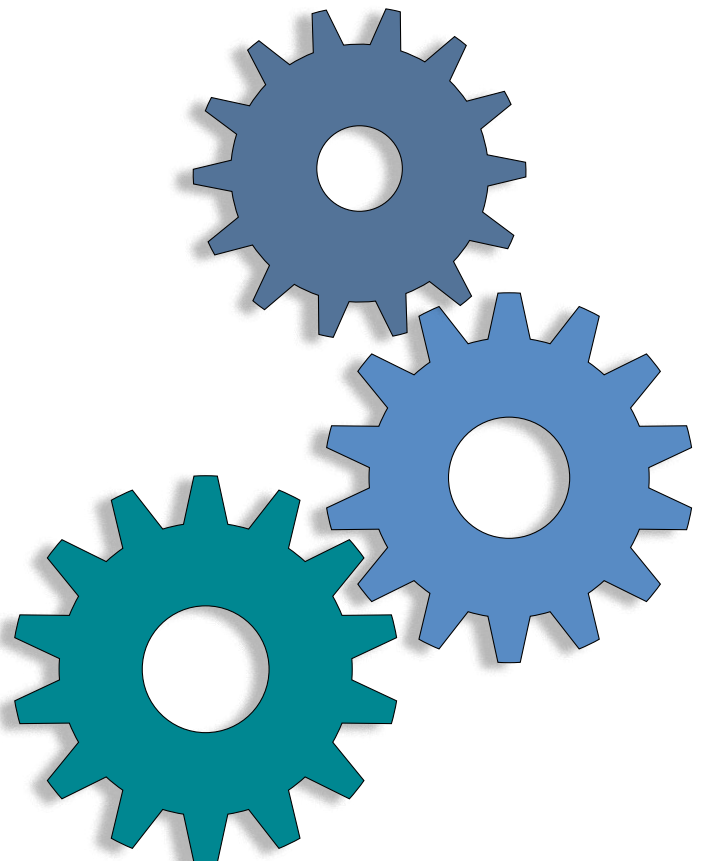
Interviewees:

Dr. Alfred Autischer

Founder and Chief Executive of
Gaisberg Consulting

Dr. Peter Köppl

President of the ÖPAV,
Founder and Chief Executive of
Mastermind Public Affairs Consulting



Appendix: Methodology and quantitative assessment

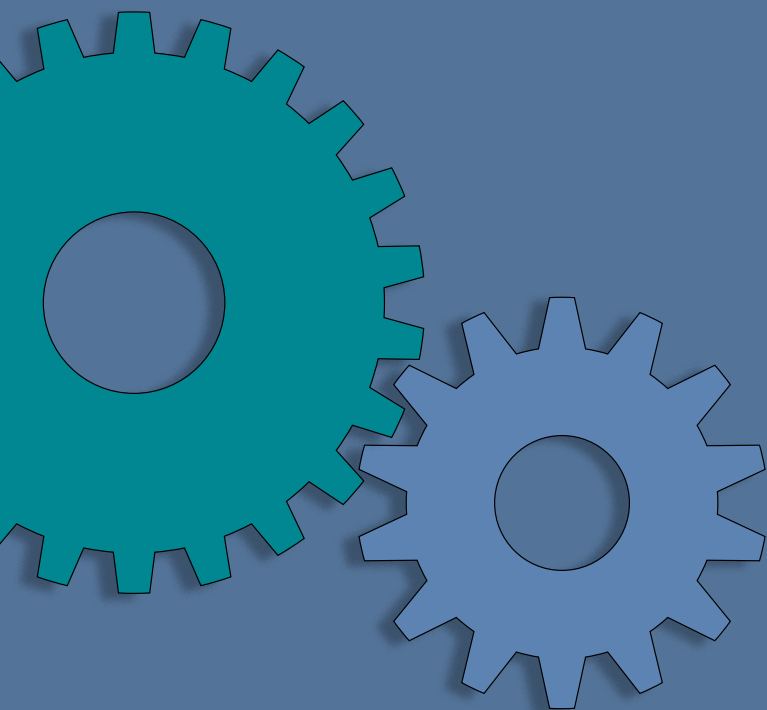
This report is part of the European Commission funded 'Lifting the Lid on Lobbying' project, which sees 19 European countries assess the situation with regard to lobbying and its regulation in their country.⁴⁷ The report aims to assess existing lobbying regulations, policies and practices in Austria. It compiles evidence about corruption risks and incidences related to lack of lobbying control and highlights promising practice around lobbying found in Austria. It also provides recommendations and solutions for decision-makers and interest representatives in the public and private sector.

According to the methodology of Transparency International, initially the national context for Austria was presented and discussed, followed by a description of lobbying regulation. Case studies in the text underline the need for regulatory action in the subject area.

The data for the report was collected between March and July 2014. The last updates were made in November 2014. The evaluation was conducted using a questionnaire developed by TI. A 3-point scale was used to score the indicators, with a minimum score of 0 and a maximum score of 2. In order to calculate the overall scores for the country, and for the three dimensions of Transparency, Integrity and Equality of Access, a simple aggregation was performed.

The full methodology and questionnaire are available at www.ti-austria.at

⁴⁷ The participating countries are Austria, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, and the United Kingdom.



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