1 Lobbying in the 21st Century

This chapter outlines the current context in which implementation of the Recommendation on Principles for Transparency and Integrity in Lobbying is being assessed. It highlights how an inclusive and transparent policy-making process, conducted with integrity, leads to better policies, and how undue influence and the monopoly of influence can block progress in all policy areas. The chapter also shows that lobbying is broader and more complex than the direct communication between a lobbyist and a public official. It describes how the importance of lobbying is still underestimated, and how the COVID-19 crisis revealed that risks of undue influence persist.

Introduction

Lobbying in all its forms, including advocacy and other ways of influencing public policies, is a legitimate act of political participation. It gives stakeholders access to the development and implementation of public policies. Lobbyists, as well as advocates and all those influencing governments, represent valid interests, and they bring to policy makers' attention much-needed insights and data on policy issues. A wide variety of interests and stakeholders can help policy makers learn about options and trade-offs. An inclusive policy-making process provides opportunities for better informed and ultimately better policies.

However, the evidence is that policy making is not always inclusive. At times, a monopoly of influence may be exerted by the financially and politically powerful, at the expense of those with fewer resources. Inequity in power and lobbying budgets exacerbates the disadvantages of groups lacking in the capacity and capability to engage in formulating policy. Policies may be unduly influenced by evidence or data that is biased or intentionally misrepresented, as well as by manipulating public opinion. Public policies that are misinformed and respond only to the needs of a special interest group result in suboptimal outcomes. Moreover, attempts to influence public policies to interfere with competitors' businesses or to secure economic advantages may even be found to be anticompetitive, and therefore illegal.

On 18 February 2010, the OECD Council adopted the Recommendation on Principles for Transparency and Integrity in Lobbying [OECD/LEGAL/0379 and C/M(2010)3/PROV] (OECD, 2010[1]) (hereafter "Lobbying Principles"). The Lobbying Principles were the first set of international guidelines for governments to address risks of undue influence, as well as inequity in the power of influence. They were part of a broad set of OECD initiatives set in motion by the 2008 financial crisis, to set standards and principles for a stronger, cleaner and fairer economy, and to avoid making policy choices in the interests of the financially and politically powerful.

The Lobbying Principles provide decision makers in OECD members and non-members who have adhered to the Recommendation (hereafter "Adherents"), with directions and guidance on how to promote equal access to policy discussions for all parties concerned, how to enhance transparency, and how to encourage a culture of integrity (Box 1.1).

Box 1.1. OECD Principles for Transparency and Integrity in Lobbying (extract)

I. Building an effective and fair framework for openness and access

1. Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.
2. Rules and guidelines on lobbying should address the governance concerns related to lobbying practices, and respect the socio-political and administrative contexts.
3. Rules and guidelines on lobbying should be consistent with the wider policy and regulatory frameworks.
4. Countries should clearly define the terms 'lobbying' and 'lobbyist' when they consider or develop rules and guidelines on lobbying.

II. Enhancing transparency

5. Countries should provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities.
6. Countries should enable stakeholders – including civil society organisations, businesses, the media and the general public – to scrutinise lobbying activities.

III. Fostering a culture of integrity

7. Countries should foster a culture of integrity in public organisations and decision making by providing clear rules and guidelines of conduct for public officials.
8. Lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying.

IV. Mechanisms for effective implementation, compliance and review

9. Countries should involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance.
10. Countries should review the functioning of their rules and guidelines related to lobbying on a periodic basis and make necessary adjustments in light of experience.

Source: For the full text, see OECD/LEGAL/0379 and C/M(2010)3/PROV.

In 2014, the OECD issued a first report on the Implementation of the Recommendation of the Council on Principles for Transparency and Integrity in Lobbying [C(2014)7] (hereafter “2014 Report”), also published as “Lobbyists, Governments and Public Trust, Volume 3: Implementing the OECD Principles for Transparency and Integrity in Lobbying” (OECD, 2014[2]). The report concluded that the issue of lobbying was receiving increased attention, and that some Adherents were adopting relevant regulations or policies. However, while these efforts had resulted in more awareness of the risks of lobbying practices, and more openness about them, this had often been driven by the pressure of public and political scandals, which left room for loopholes and weak transparency mechanisms. It had at times also resulted in overshooting, where countries responded by going above and beyond what was needed to address the concerns. The report also showed that compliance with regulations and policies was uneven. Meanwhile, opening up access to the decision-making process not simply to specific interests, but to stakeholders from the private sector and the public at large, remained a challenge.

The present report takes further stock of the progress that countries have made in implementing the Lobbying Principles. The importance of recognising lobbying as a legitimate tool for influencing public policies on the one hand, and the governance risks associated with it on the other, remain as high as ever.

This report therefore discusses lobbying in the light of three key pillars of the Lobbying Principles: transparency (Chapter 2), integrity (Chapter 3) and access (Chapter 4). However, an assessment of the context in which this analysis takes place has revealed that:

- Lobbying is a broad and complex activity.
- Major global challenges are strongly influenced by lobbying practices.
- COVID-19 highlighted governance frameworks' susceptibility to undue influence.

Lobbying is a broad and complex activity

Lobbying, as a way to influence and inform governments, has been part of democracy for at least two centuries. The term "lobbying" has traditionally been defined as the "oral or written communication with a public official to influence legislation, policy or administrative decisions" (OECD, 2010[1]). The avenues by which interest groups have influenced governments extend beyond this definition, however, and have evolved in recent years, not only in terms of the actors and practices involved, but also in terms of the context in which they operate (Benamouzig and Cortinas, 2019[3]; Mialon, Swinburn and Sacks, 2015[4]). These actors, practices, and context include:

- **lobbying activities through contracting with professional lobbying or public relations firms, law firms and self-employed lobbyists mandated to represent an organisation's interests**. These firms or individuals, usually established in key decision-making hubs, have an in-depth knowledge of policy-making processes in a given country and are able to better navigate institutional complexities. In countries with lobbying regulations, these actors are often referred to as "consultant lobbyists". Such agents represent what is traditionally understood as lobbying;
- **lobbying directly by companies**, usually through their government affairs or public affairs departments and in-house lobbyists;
- **lobbying indirectly through industry associations or trade associations**;
- **contributions to political parties, candidates and electoral campaigns**, including through trade associations and third-party organisations;
- **increased use of traditional and social media** to shape policy debates, inform, misinform or persuade members of the public to put pressure on policy makers and indirectly influence the government decision-making process;
- the use of **gifts and honoraria** to influence scientists, practitioners and policy makers indirectly;
- movement of public officials, business executives and experts between the public and private sectors (the so called "**revolving door**" phenomenon);
- the influence of special interests through participation in established institutional arrangements such as government **advisory and expert groups**, or **parliamentary inter-groups**;
- the **influence of foreign commercial and political interests** – including foreign governments and their affiliated organisations, such as state-owned companies, state-sponsored NGOs and media groups, and cultural associations – through lobbying and other practices mentioned above;
- the influence of government policies by and through **non-governmental organisations.** Non-governmental organisations (NGOs) are one of the largest and most diverse groups of non-state actors influencing policy-making processes. Their lobbying practices are similar to those of other stakeholders when they seek to increase focus on a policy issue, notably through research and advocacy. Whether grassroots, business-led or government-sponsored, these organisations receive funds, often from companies, governments or individuals, and represent specific interests and policy positions (Colli and Adriaensen, 2018[5]).

- influence through **academic institutions** (universities and university research centres) **or well-known experts and practitioners** that can shape major discussions on key policies and/or produce results favourable to some interests;
- **influence through think tanks and other policy institutes** to provide knowledge on specific policy issues and propose policy solutions.

A key factor to consider is the 21st-century context of information overload, at times contradictory, and in which millions of people, often ill-informed, are trying to influence public perceptions and governments on avenues such as social media. This has made the issue of lobbying and influence more complex and critical than ever before. It has created a challenging environment for all public policy in general, resulting in polarisation, reduced trust in institutions and in extreme cases, the rise of populism (Klein and Robison, 2019[6]). In an era of increased availability of information and use of social media, public officials today are subject to a high level of constant public scrutiny, which puts their reputations at risk of misperceptions or misrepresentations. This new context can therefore often restrict governments' scope of action and policy choices. Companies are similarly confronted with an amplified level of scrutiny, not only from the public but also from shareholders and investors, who increasingly see the lack of transparency over companies' lobbying and political engagements, and inconsistencies in their positioning on societal issues, as an investment risk, potentially jeopardising their commercial reputation (PRI, 2018[7]).

In addition to the complex issues and risks associated with lobbying, a perception of increasing policy capture is also at play (Edelman, 2020[8]; Blažek, forthcoming[9]). In this process, public decisions over laws, regulations or policies are consistently or repeatedly directed away from the public interest and towards the interests of a narrow interest group (OECD, 2017[10]). This is already resulting in calls by certain interest groups, usually non-governmental organisations, to exclude entirely from public policy discussions other interest groups, such as business. It may even mean, for instance, attempting to exclude the relevant industry from discussions of a given policy issue, something that goes against the basic tenets of democratic participation.

This complexity thus calls for effective inclusion, transparency and integrity in the policy-making process. To this end, lobbying needs to be understood and addressed in a broader sense, to avoid all current loopholes, opaque practices and most importantly, to change public perceptions and increase trust in the policy-making process. Addressing not only the type of policies we need, but also how these policies are informed, designed and shaped by various views, is essential to overcome increased scrutiny and mitigate reputational risks to which both governments and businesses are subject. It will also play a key role in designing and implementing the necessary policies to address major global challenges. Enhancing the understanding of lobbying in all its forms, as well as its transparency and integrity, is thus in the shared interest of lobbyists, businesses, policy makers and governments.

Major global challenges are strongly influenced by lobbying practices

Widespread concern is evident at all levels of society on numerous major global issues, such as widening inequality, the impact of climate change, unequal taxation systems, and challenges posed by social media and new technological developments. The central role that lobbying and other influence practices play in shaping how these challenges are addressed remains largely unacknowledged. Depending on how they are conducted, lobbying activities can greatly advance or block progress on these global challenges.

Lobbyists can facilitate access for stakeholders to complex government decision-making processes. Their objective is to make sure that the perspectives of companies and other organisations are heard and can influence decisions in parliaments, regulatory agencies and government entities. Lobbying for green cars, for strengthening legislation against online child sexual abuse, or for increasing competition in key economic sectors, are only a few of the examples in which lobbying can benefit not only those with a specific interest but also policy makers, by providing them additional information, and ultimately, benefiting society as a whole.

Nonetheless, situations of undue influence and inequity in influence power or monopoly of influence can also have negative consequences. New evidence regularly emerges showing that the abuse of lobbying and other influence practices is blocking progress in many public policy areas. Studies increasingly show that lobbying and other influence practices conducted without transparency and integrity, and without the involvement of a broad group of stakeholders, has led to the misallocation of public resources, reduced productivity and perpetuated social inequalities (OECD, 2017[10]). One of the most widely documented cases is that of the tobacco industry which, through deceitful lobbying practices, weakened the scientific consensus against smoking and succeeded in delaying more restrictive regulations by decades (Oreskes and Conway, 2010[11]). Deceitful, misleading and non-transparent lobbying, as well as revolving-door practices that led to deregulation of high-risk activities, were also partly at the origin of the 2008 financial crisis (Igan and Lambert, 2019[12]; Igan and Mishra, 2014[13]).

It has also been shown that lobbying has had a profound impact on the progress (or lack thereof) of climate policies to reduce greenhouse gas emissions. A similar situation has arisen in the health and obesity policy area, as well as food and agricultural policies (Box 1.2).

Box 1.2. Lobbying has a profound impact on the outcome of public policies

Lobbying against regulations designed to combat climate change

An analysis of a major oil and gas company's internal documents and communications between 1977 and 2014 found that, while its own research had established that climate change was caused by human activity, the company engaged in several practices, notably publishing opinion pieces in newspapers, to raise doubt, influence public opinion and reduce regulatory pressures.

Research has shown that lobbying by companies in the fossil fuel value chain, including coal, automotive, heavy industry and utilities, has been a key contributing factor in blocking action by governments globally to implement regulations on climate change, in line with the 2015 Paris Agreement (Influence Map, 2020[14]). In particular, lobbying has hindered the flagship Emissions Trading Scheme of the European Union (EU) since its introduction in 2005 (Influence Map, 2017[15]). Climate rules on vehicles have been undermined by industry lobbying (Influence Map, 2018[16]), and lawsuits from industry groups in 2015-2016 halted the US Clean Power Plan (Influence Map, 2019[17]).

Lobbying to create doubt on obesity and health

A review of strategies to oppose a tax on sugar-sweetened beverages shows that industry actors funded multiple studies refuting the link between the consumption of their products and negative health outcomes (Du et al., 2018[18]).

In another case, publications resulting from industry-sponsored research, conducted with university-based researchers, appeared to skew the evidence towards solutions that favoured the industry's interests. The research diverted public and policy attention towards sedentary behaviour and a lack of physical activity as the main cause of obesity, rather than presenting a more balanced view taking fully into account the consumption of highly processed food or sugar-sweetened beverages (Fabbri, Holland and Bero, 2018[19]). Similarly, a think tank that received undisclosed voluntary donations from organisations linked to the tobacco and food and beverage industries published a report arguing that a lack of physical activity was driving the obesity epidemic, rather than arguing a balanced view including excess calories (Malhotra, Schofield and Lu, 2018[20]).

The Chinese branch of an international science organisation funded by major beverage and food companies, and chaired by a local nutritionist reputed to have powerful connections in the central government, became the leading sponsor in China of obesity research and policy making. From 1999 to 2015, China's obesity science and policy shifted markedly toward physical activity, as the organisation's influence in China increased (Greenhalgh, 2019[21]).

Lobbying for policies benefiting farm interests

A literature review on the political economy of agricultural public policies found that policies affecting the incomes of agricultural producers in both the developing and the developed world show a number of systematic patterns that are difficult to explain as a socially optimal response to market failures. Instead, the outcome of these policies are best understood as the result of pressures exerted by various interest groups, including food processing and farm interests, on agricultural policies (Anderson, Rausser and Swinnen, 2013[22]; OECD, 2021[23]).

Source: Climate change: (Supran and Oreskes, 2017[24]) and (Influence Map, 2017[15]; 2018[16]; 2019[17]; 2020[14]); health and obesity: (Du et al., 2018[18]; Fabbri, Holland and Bero, 2018[19]; Malhotra, Schofield and Lu, 2018[20]); agriculture: (Anderson, Rausser and Swinnen, 2013[22]; OECD, 2021[23]).

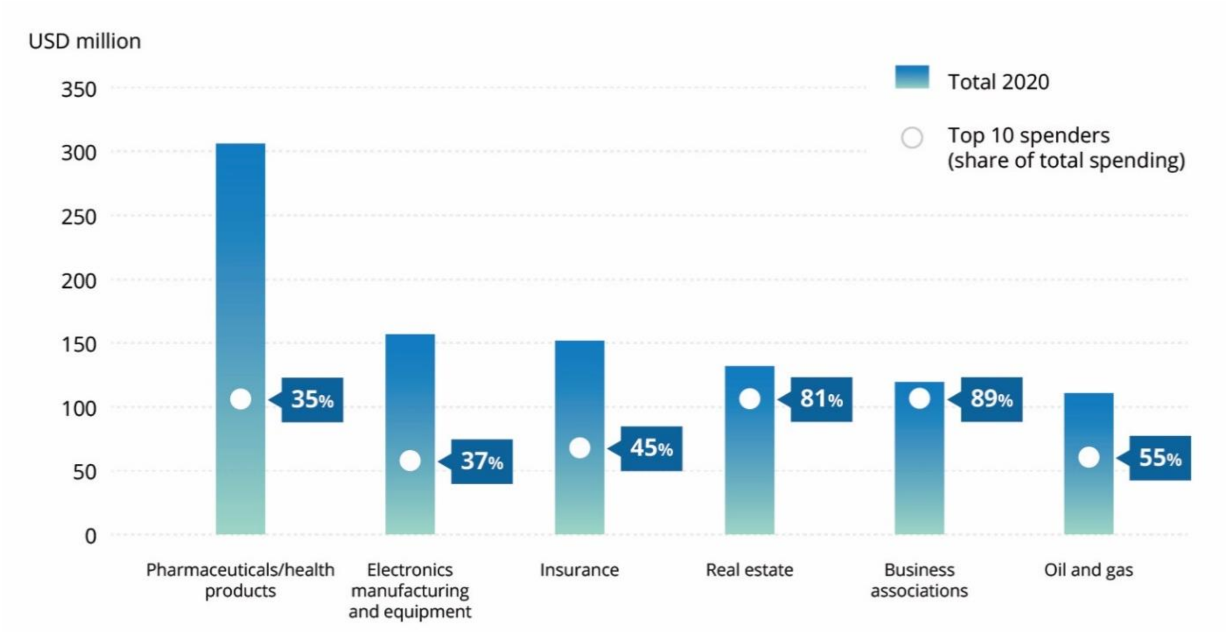
The abuse of lobbying practices also has a widespread impact on an economy as a whole. Influencing the policy-making process by promoting only special interests runs the risk that regulations needed to correct market failures or distortions are abandoned. It may also lead to excessive regulation to protect incumbents, and thus to reduced competition and less economic growth and job creation. Evidence from cross-country and firm-level research suggests that companies from more regulated sectors tend to engage in lobbying more heavily than companies from export-oriented or more competitive markets. This could indicate that incumbent companies in these more regulated markets may lobby government policies to maintain these regulations. This, in turn, distorts markets, and reduces policy initiatives that seek to increase competition, promote inclusiveness and which could therefore reduce the incumbents' excess rents (Dellis and Sondermann, 2017[25]; Laboutková and Staňková, 2016[26]). One analysis of lobbying in Europe, for example, showed that international institutions such as the European Commission (EC) or the European Central Bank had found that product market reforms in countries under economic adjustment programmes were thwarted by resistance from vested interests (Dellis and Sondermann, 2017[25]).

Lobbyists may also attempt to encourage standardisation and certification bodies to adopt standards that businesses competing with them cannot meet, thereby unlawfully delaying or preventing competitors from entering specific markets. Lobbying has an impact on competition and hence on productivity, innovation and growth. Rules for engaging stakeholders in the design of new regulations and for ensuring transparency of lobbying activities have become key indicators for measuring the quality of regulations in terms of their ability to encourage competition. For example, the OECD Product Market Regulation indicators acknowledge that the lack of rules in these areas may favour lobbying activities by incumbents and firms with greater resources, which can distort the regulatory design process at the expense of new entrants and smaller firms (Vitale et al., 2020[27]).

It should also be noted that lobbying is more significant in some sectors than others. For example, well over one-quarter (28%) of total corporate lobbying spending at the federal level in the United States in 2020 was shared among corporate interests in the pharmaceutical, electronics, insurance, real estate, and oil and gas industries, as well as business associations. Among these industries, the top ten spenders account for up to 90% of the total expenditure on lobbying (Figure 1.1).

Figure 1.1. Lobbying spending is highly concentrated among key sectors

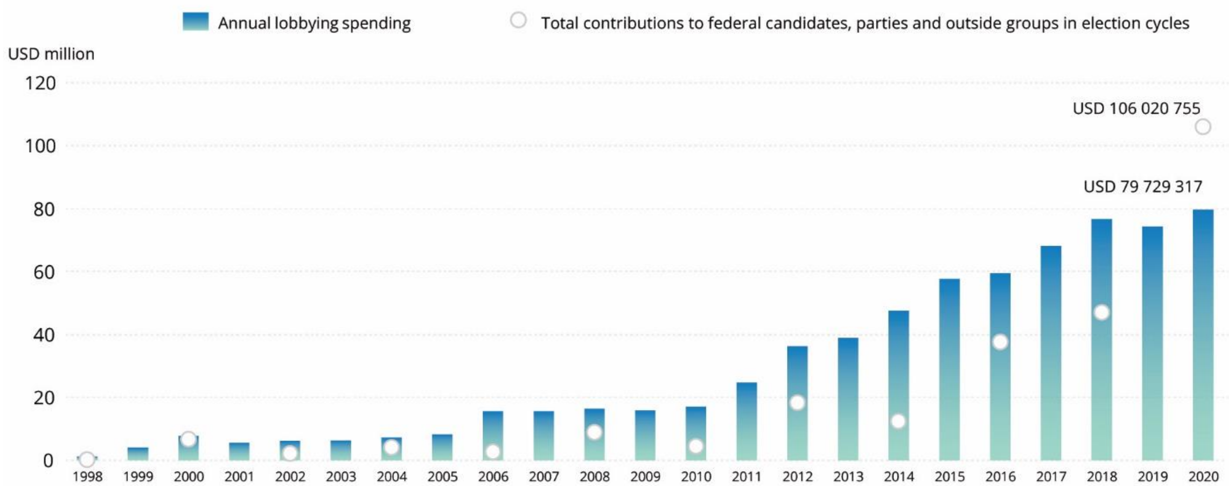
Top six industries in total lobbying spending, and top ten spenders (share of total spending)



Note: Data shows lobbying spending by client/parent companies (i.e. the ultimate beneficiaries of lobbying activities). The pharmaceutical and health products industry includes drug manufacturers, dealers in medical products and nutritional and dietary supplements; the electronics manufacturing and equipment industry develops software and hardware computer technologies; the insurance industry includes health, life, property and car insurance companies; the business associations grouping includes small business, pro-business and international trade associations, as well as chambers of commerce.
Source: Calculations by the Center for Responsive Politics, based on data from the US Senate Office of Public Records.

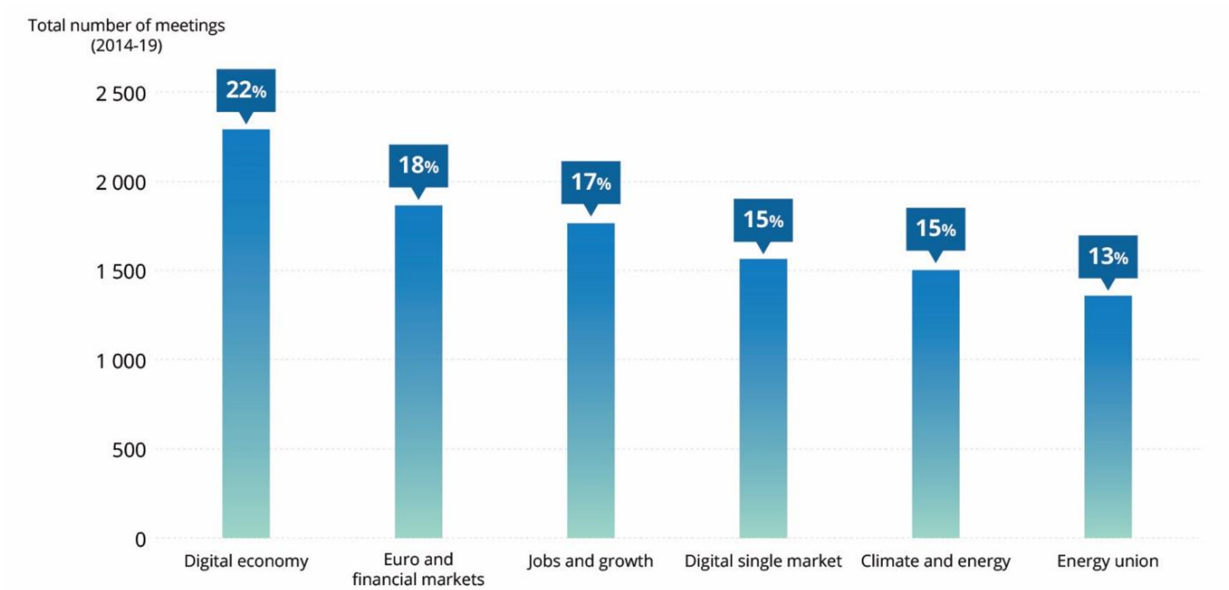
Similarly, evidence from lobbying registers and the publication of public officials' agendas shows that lobbying on digital issues is the policy issue involving the least diversity of stakeholders, concentrated in a handful of companies (Transparency International, 2018[28]). Big-tech companies have significantly increased their lobbying spending in recent years, becoming major lobbying spenders in such key hubs as Washington and Brussels, in order to influence policy debates on for example, taxation, net neutrality, consumer privacy, data protection and competition (Hart, 2011[29]; Minjeong, Joo Chung and Hyun Kim, 2011[30]; Tzur, 2019[31]). In the United States, lobbying spending in the technology sector increased by 412% between 2010 and 2020. The top five spenders represented nearly three-quarters (73%) of total spending in the sector in 2020 (Figure 1.2). In the EU, digital issues were also among the most targeted portfolios of EU Commissioners from 2014 to 2019 (Figure 1.3). While this is a legitimate and expected development, since it will lead to better informed policies in this field, it also involves the risks noted earlier.

Figure 1.2 Lobbying and campaign spending of actors in the US technology sector (1998-2020)



Note: Calculations were made by the Center for Responsive Politics, based on data from the US Senate Office of Public Records (for lobbying) and the Federal Election Commission (for campaign spending). Data comes from the "Internet" category of the database of the Center for Responsive Politics' OpenSecrets.
Source: Center for Responsive Politics, OpenSecrets.org.

Figure 1.3. Most targeted portfolios in EC meetings with lobbyists (2014-19)



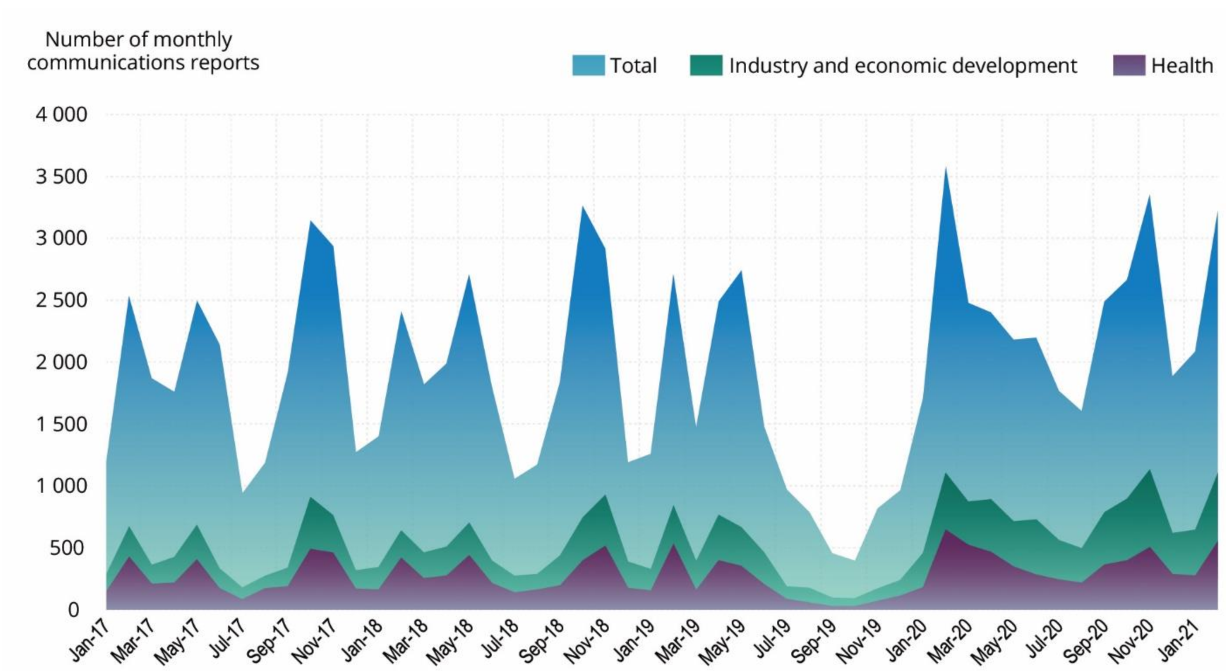
Note: Data represents the top six portfolios of European Commissioners by the number of lobby contacts they have had.
Source: Transparency International, Integrity Watch, https://www.integritywatch.eu/.

Despite the general understanding of the overall risks that lobbying poses to the economy and to policy areas of every kind, these risks appear to be underestimated. They are rarely considered in the context of reforms in different policy areas. Similarly, only a minority of countries globally have taken action to address such risks in their governance arrangements. Given the deep and widespread impact of lobbying, delivering on the United Nations' Sustainable Development Goals (SDGs) by 2030 will require governance frameworks that ensure that lobbying activities are made more transparent, with increased access for stakeholders to influence the design and implementation of public policies. This will also be vital for ensuring an evidence-informed approach that maintains trust in policy-making processes, for the design, implementation and evaluation of public intervention and policies (OECD, 2020[32]).

COVID-19 highlighted governance frameworks' susceptibility to undue influence

Information from lobbying registers and media reports shows that influence and lobbying activities related to COVID-19 increased considerably in the early months of the crisis (Olson et al., 2020[33]). For example, lobbying activities in Canada showed a marked increase at the outset of the crisis in February and March 2020 compared to the same period in 2019. Communications reports, which lobbyists are required to disclose on a monthly basis to provide information on their activities, totalled 3 534 in February 2020, the highest number recorded in 2020 (an increase of 30% compared to February 2019). March 2020 also saw a significant increase compared to March 2019 (an increase of 75%), and with an increase of 227% of registered activities related to health issues compared to March 2019 (Figure 1.4).

Figure 1.4. Monthly communications reports from lobbyists in Canada rose markedly in the early months of the COVID-19 crisis



Note: Data refers to the number of communication reports that lobbyists are required to file on a monthly basis. The monthly communications reports include the objectives of the lobbying activities, as well as the public officials and policies targeted.
Source: Data retrieved from the Canadian Registry of Lobbyists (https://lobbycanada.gc.ca/en/) and (Office of the Commissioner of Lobbying of Canada, 2020[34]).

This is understandable. The participation of businesses and other stakeholders most affected by the crisis in developing policies on emergency measures, economic relief packages and reopening plans is to be expected and gives policy makers valuable information. However, during the COVID-19 crisis, not all interested stakeholders and affected organisations had the opportunity to influence government action. With limited consultations and nearly all face-to-face meetings postponed for several months, the early phase of the pandemic created an advantageous environment for stakeholders who could rely on experienced and connected lobbyists with ready access to key decision makers, and who were able to pursue these long-established relationships in phone calls, webinars, e-mails and instant messages (Gonzalez, 2020[35]). Early evidence suggests that stimulus packages, in some settings, may have created advantages for businesses with existing relationships with lenders and the resources to navigate institutional and administrative complexities (Warmbrodt, 2020[36]; Tankersley, Cochrane and Flitter, 2020[37]). Other activities focused on advancing positions that some interest groups had been pushing before the crisis, indicating that previous progress in certain areas could be reversed during the recovery (Vogel, 2020[38]).

In turn, stakeholders with fewer financial resources may not have been able to balance the input of those who were better financed or politically connected. Unbalanced influence may lead to the risk of inefficient programmes, or unbalanced stimulus packages that undermine effective economic recovery in the longer term. Experience from recovery processes after crises suggests that lobbying by powerful interests with closer connections to policy makers and regulators can lead to important biases in policy responses and hamper effective public policy making. Examples from previous crises that were followed by economic stimulus packages show that businesses engaged heavily in lobbying were not only more likely to receive support in times of economic distress, but received a greater amount of support in shorter timeframes than those that were not politically involved (Blau, Brough and Thomas, 2013[39]). In some countries, political connections tended to influence the allocation of financial assistance, and after a bailout, politically connected companies underperformed relative to non-connected ones (Faccio, Masulis and McConnell, 2007[40]; Igan and Lambert, 2019[12]). Biased stimulus packages and policy decisions have been shown to have a negative impact on the resilience of societies and economies after a crisis (Hansen, 2012[41]).

Moreover, in dealing with the complexities of the pandemic, many governments have established *ad hoc* institutional arrangements to provide scientific advice and technical expertise to guide their immediate responses and recovery plans (OECD, 2020[42]). In urgent crises, appointed experts and advisors may exert significant influence over policy-making processes (OECD, 2015[43]). Their expertise can lend legitimacy and credibility to advisory processes, but they also pose integrity risks. These may include potential conflicts of interest, pressure from private interests on experts or advisors involved in these *ad hoc* institutional arrangements, and direct participation of private sector representatives in these groups, as well as the under- or over-representation of certain interests. Such risks can be exacerbated by reduced transparency, since governments do not always disclose publicly how decisions were made.

The COVID-19 crisis created tension between the need for rapid decision making to deliver urgent solutions, and the need for an inclusive approach to policy decisions. The crisis has revealed weaknesses in governance frameworks to lobbying interests, including inequity of influence and undue influence. As shown in the following sections, early observations confirm that countries with a regulatory framework to enhance the transparency of lobbying activities, and policy making generally, ensured a greater degree of accountability in policy decisions during the crisis.

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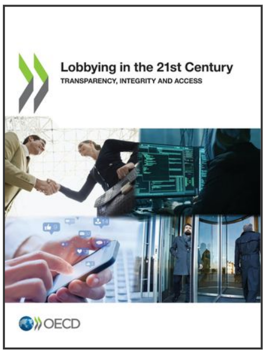

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