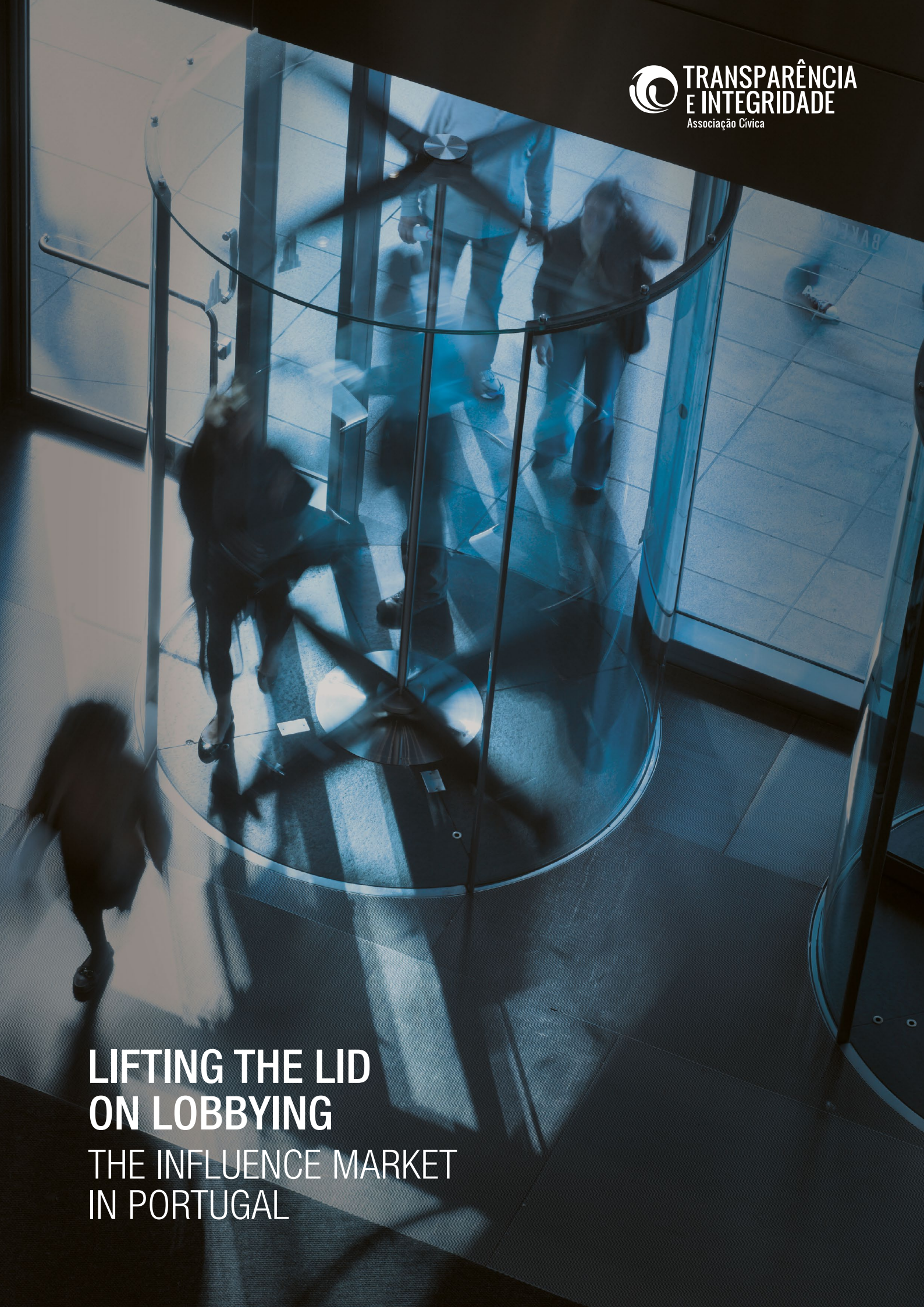

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PREAMBLE

In a democracy, power is dispersed among several groups who organize, mobilize and compete among themselves in order to achieve and maintain it. However, in society, power is not symmetrically distributed. Despite the fact that not all groups have the same degree of influence, it is also true that everyone tries to influence the course of politics in one way or another.

Politics have two faces: an institutional one, composed of laws, elections, principles, procedures, power entities and programs, which places political parties and interest groups in the centre of the representation system; and a more informal face, which materializes through forms of covert influence, corruption, trafficking in influence, patronage and favouritism. Lobbying is between these two worlds.

Lobbying is a way to defend and promote interests, perspectives and points of view regarding certain political problems or solutions, through the mobilization of a set of resources (money, information, technical training, etc.) and pressure strategies, with the aim of influencing legislative, regulatory or decision-making processes, to benefit oneself or others.

In theory, lobbying would play an important role in implementing policies, not only because it allows politicians and senior public officials to become acquainted with problems and solutions in different domains, raising the quality, the responsiveness and the effectiveness of processes, but also because it may prevent a group's interests and ambitions to overlap those of others.[1] In practice, however, lobbying often ends up being connected to opaque practices of influence in politics. Unlike the United States or the European Union institutions, in many countries lobbying is not regulated. Therefore it does not work as an open mechanism that facilitates access to decision makers and the influence of decision-making processes. In some cases, we are simply faced with situations of legislative, regulatory or decision-making capture through the institutionalization of conflict of interest (De Sousa 2002).

Although there is not a single Portuguese political party or interest group with enough power to capture the entire decision process, this does not mean that, in the face of pressure from major economic power groups, there is not a high permeability of political parties that usually take part in the cabinet. It is not hard to identify the groups which have more influence in national politics. It is

1 OECD (2009), Self-Regulation and Regulation of the Lobbying Profession. Global Forum on Public Governance, 4-5 May 2009, OECD Conference Centre, Paris, France

only necessary to follow the trail of private funding of the State's business and activities, as well as the passage of former politicians to important positions in those funding companies.

This family-corporatist model of capitalism is not an invention of the 1974 democracy. In 1958, 34 companies held 43.3% of the national capital. In 1970, the 168 largest companies in the country belonged to 10 families and held half the country's wealth.[2] On the eve of the Carnage Revolution, seven large economic groups controlled around 75% of GDP.[3] Nationalizations were an utopian measure to stop this promiscuity, but ended up having a perverse effect. With the help of reprivatisation and compensations, these groups have resurfaced more empowered and with a renewed business philosophy. Throughout these past 40 years of democracy, major economic groups not only began living at the expense of the State, as they engineered a political-economic system that allowed them to create and capture rents, by manipulating public policy and market regulation in key sectors in order to benefit themselves and transferring the costs and moral hazards of such public business with private interests to taxpayers.

"How does this influence take place?", may readers ask. Through various ways, as it will be shown throughout this report. The lack of regulation makes the assessment of the intensity and scope of lobbying practices in Portugal rather difficult. However, it was possible to make some deductions over the existence of different types of practices through research and interviews: direct lobbying, public hearings and shadow lobby. It was also observed the important role that some MPs may have on legislative outputs, not as elected representatives, but as "lobbyists" who operate within Parliament. It is no accident that the most relevant committees - those related to areas of most profitable State intervention and therefore that mobilize more interests and influences - are colonized by MPs who have links with the major law firms. It is also no coincidence that most public regulatory frameworks, such as codes, regulations and other legislative materials are commissioned to these private entities.

The institutionalization of conflict of interest is not a feature of the Portuguese Parliament. All over Europe, MPs rarely exercise their mandate in exclusivity and, in some cases, carry out parliamentary consultancy as a paid extra-parliamentary activity, without any hindrance or supervision. But the Portuguese case has a worrisome dimension due to two factors: the closeness of actors and the concentration of the influence power.

Politicians and senior public officials move around in the same social environments as entrepreneurs and managers, attend the same social events, restaurants, golf courses, hunts and often live in the same areas. When stakeholders have no relationship with one another, a common friend is often called by one of the parts to organize a meeting or establish contact. Allegations of bribery or corruption are quite rare. Influence takes place under the public eye and with great social acceptance. Widespread in the Portuguese society, the famous "cunha"(pulling strings) also works at the highest level. Benefiting a particular industry or company does not always mean an immediate or

2 Castro, Pedro J. (2009), Salazar e os Milionários. Lisboa: Quetzal Editores

3 Amaral, Luciano (2008) 'Grupos económicos: o capitalismo à portuguesa' in Planeta (ed.) Os anos de Salazar. O que se contava e o que se ocultava durante o Estado Novo, 1969, Evolução na continuidade. Planeta DeAgostini: Lisboa, pp. 80-91

direct return to the public decision maker. Nevertheless, doing a favour is a way of maintaining good business relation.[4]

Another development that has affected the way influence is exercised on politics relates to the evolution of law firms over the past two decades. Law firms have undergone relevant processes of concentration, modernization, specialization and internationalization that sought to follow the various transformations in the Portuguese society:

- European Union membership and the implementation of the acquis communautaire into the Portuguese legal framework, which not only required an enormous involvement of the lawyer community, but also forced law firms to reorganize themselves for the upcoming new governance context;
- The free movement of goods, services, capital and persons across Member States of the European Union, due to the entry into force of the Single Market, and the opening of the Portuguese economy to international markets and investments, which ultimately increased business opportunities and conflicts between companies and between these and the State;
- The transformation of the State from producer and provider of goods and services into market regulator, which led to an increase of the legislative and regulatory activity and therefore greater involvement of law firms in these processes.

Major law firms now operate as a kind of "ultracompetitive consortia, under expert management and among mergers, acquisitions and international partnerships."[5] The risk of capture of the legislative, regulatory processes and decisions by interest groups through politicians is a reality. Under the guise of legal services and working relations, parliamentary consultancies are hired by law firms. Public opinion is unequivocal about this: two thirds of the population believes that governments in Portugal are not protected from excessive pressures from the economic power and have little or no leeway due to the international economic context.[6]

In face of this general feeling of distrust of democracy and perceived capitulation of political institutions to economic power, it becomes urgent to analyze how mechanisms of influence in politics are structured and how influence takes place, in order to provide citizens and decision-makers with sufficient information and contextualization that help them understand how State businesses are conducted and what are the implications of these practices in the quality of democracy.

Luís de Sousa, TIAC's Chairman

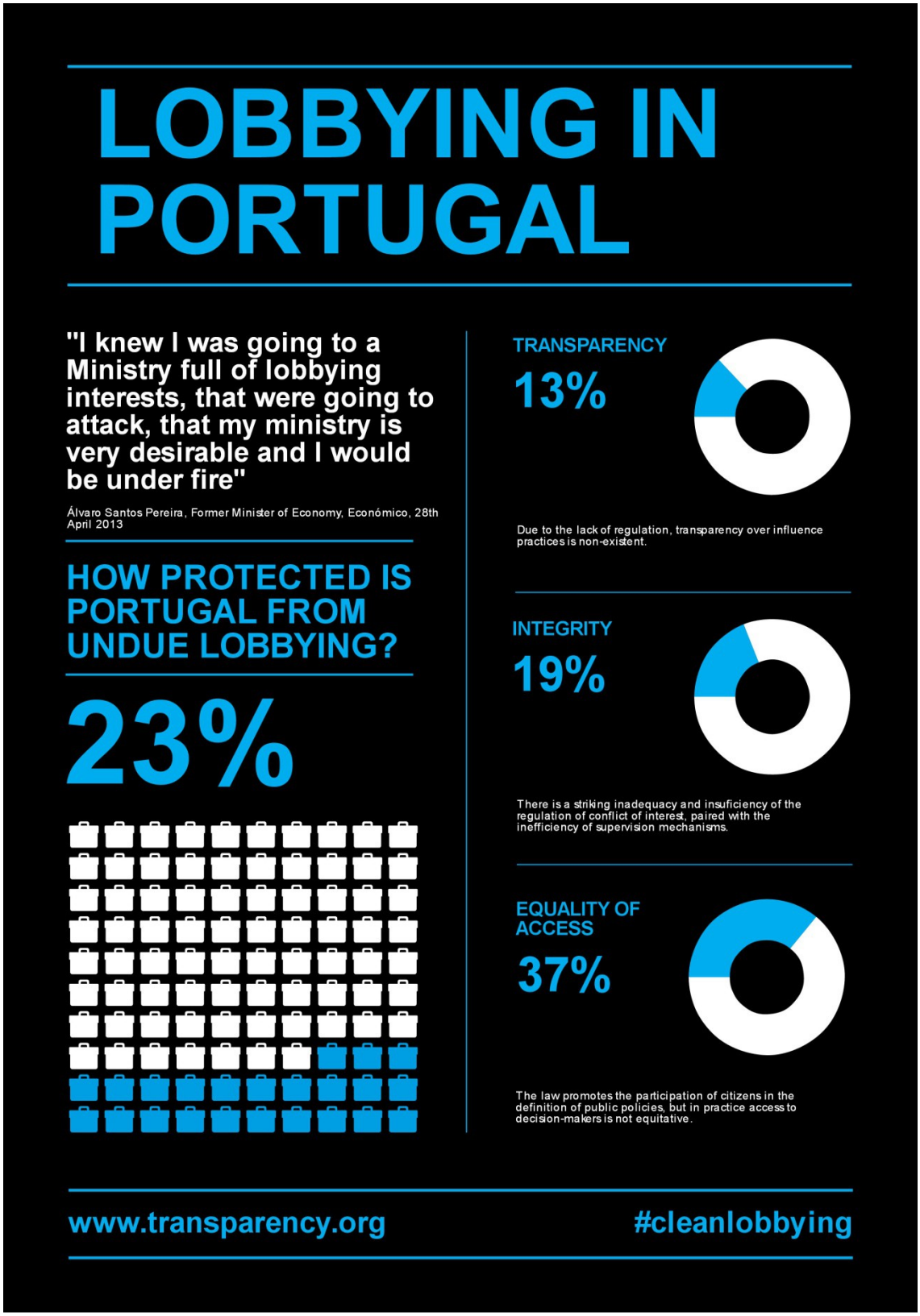
Lisbon, 5th October 2014

4 De Sousa, L. (2008) "I Don't Bribe, I Just Pull Strings': Assessing the Fluidity of Social Representations of Corruption in Portuguese Society', Perspectives on European Politics and Society, 9(1): 8-23

5 Sampaio, G. (2014) Os Facilitadores – Como a política e os negócios se entrecruzam nas sociedades de advogados. Lisboa: A Esfera dos Livros

6 Barómetro da Qualidade da Democracia 2011: http://www.bqd.ics.ul.pt/index.php?lang=pt

EXECUTIVE SUMMARY



Companies and individuals with the means and willingness to influence public decisions in Portugal can do so without any restrictions. Lobbying is not regulated and the issue has not yet made its way onto the public agenda. Construction and public works, the financial sector and the energy industry have been pointed out as the areas of activity where risky lobbying practices are most severe.

The term 'lobbying' holds various connotations depending on the audience, but for the public at large, it remains a mystery and assumes a very negative connotation. The lobbying-related industry in Portugal is still small. Professional lobbyists are rare and the job has been taken up mostly by law firms and communication agencies. Most attempts to influence legislative, regulatory and decision-making processes are done through internalized networks of influence, through informal contacts and paid advocacy with major law firms in the country. Influence peddling, from pulling strings to get a service or benefit to the trafficking of privileged information, is commonplace in Portugal.

Informal contacts, based on family, friends or other social networks, are quite common and believed to be the most effective way of achieving results.

The absence of regulation has pushed lobbying into the shadows. Informal contacts, based on family, friends or other social networks, are quite common and believed to be the most effective way of achieving results. Even if not always illicit, lobbying is thus conducted in an opaque way, creating space and opportunities for illegitimate conduct.

In general, there is a lack of transparency regarding the interests behind political, legislative and administration decisions. There is no legislative footprint that would allow citizens to track which groups and individuals contributed to the shaping of a new law or policy. The laws governing the behaviour of Portugal's decision-makers are not sufficiently developed, with no limit on politicians taking private sector jobs after or even during their time in office. The financial sector is a striking example as of the past 19 finance ministers, 14 work in banking or financial institutions. In addition, big corporations have disproportionate access to ministers and senior cabinet members and there are signs that they have the capacity to influence and benefit from their political decisions. As an example, we present two case studies that prove how close the relationships are between politicians and senior corporate executives of a large banking institution and an electricity company.

Conflicts of interest are inadequately managed in Portugal. A large number of Members of Parliament simultaneously hold public office while continuing with their other professional activities. This leads to the highly inappropriate situation where law firms, consultancies and large economic groups end up being represented in parliament through MPs that also work for them. Former politicians and senior public officials, currently working as employees or consultants/brokers for large Portuguese and foreign companies are also making strong and regular use of their political connections.

Consultancy and law firms that work simultaneously for the cabinet, and private companies that have business relations with the State, represent another source of conflict of interest, leading to potentially illegitimate representation of their private clients and access to privileged information. The state often hires these firms without undergoing transparent public procurement processes - and many hire former and current politicians as barristers or consultants. Members of expert groups

often advise cabinet decisions despite also having an economic interest in their outcome. Finally, former ministers, apparatchiks and senior public officials make use of the networks they have built while in office to access and influence current decision-makers in the name of private or foreign interests.

The overall level of undue lobbying safeguards in Portugal is only 23%. Lack of transparency (13%), insufficient integrity mechanisms (19%), and prevailing conflicts of interest, result in public decisions which reflect narrow private interests, rather than the broader public good that our representatives and officials are meant to uphold.

This report highlights the risks of undue influence if lobbying continues unregulated in Portugal. Implementing the following recommendations would help to take lobbying out of the shadows and beginning the process of rebuilding public trust in politics in the country.

RECOMMENDATIONS

1. Parliament should regulate the lobbying activities though a dedicated law, acknowledging the diversity of influencing actors, including lobbying firms, communication agencies, corporate affairs professionals, business associations, civil society groups, and lawyers, among other.

2. The transparency of public decision-making should be increased through publishing of cabinet and senior public official agendas, in a similar way to the parliamentary committees. A thorough lobby register is desirable, but should not be seen as the sole solution to the risks posed by lobbying activities.

3. Parliament should reinforce the laws on conflict of interest, imposing exclusivity on MPs while in office, applying the law to members of Ministers' cabinets, and extending cooling-off periods. Public authorities, namely the Ethics Committee and the Public Prosecutor should enforce the law.

4. Parliament should reinforce the competences and resources of its Ethics Committee, giving it the power to monitor incompatibilities while in office, revolving doors situations and eventually sanction those who do not comply with cooling-off periods.

5. Government, local executives, regulatory agencies and general public administration should resort to competitive and open public procurement when hiring financial and legal consultancies and controlling for incompatibilities. Members of expert groups should also be independent and scrutinized about real or potential conflicts of interest.

6. Government and parliament should create a legislative footprint that allows tracking the evolution of the legislative process, stakeholders and expert groups' contributions.

7. Lobbyists should create their own codes of conduct and mechanisms of self-regulation drawing on the recognition of their role provided by the lobbying law.

8. Policy-makers should be more inclusive when meeting with and receiving inputs from stakeholders, expanding the participation of civil society.

INTRODUCTION

Portugal is in the midst of the worst economic crisis since the country's transition to democracy in 1974. The response to the crisis has seen large sectors of society face greater economic hardship. Public anger at the government responses has been expressed in massive demonstrations and public surveys. Protests against austerity measures and public sector cuts have been a regular feature of public life since 2011, when the "struggling generation" protests saw hundreds of thousands of people take to the streets, driven largely by anger at perceived failure of the ruling class to provide economic opportunities.

A 2012 Transparency International report Money, Power and Politics (2012) found that in most European countries, the influence of lobbyists is shrouded in secrecy and is a major cause for concern. When undertaken with integrity and transparency, lobbying is a legitimate avenue for interest groups to be involved in the decisions that may affect them. Problems arise when lobbying is non-transparent, unregulated and where privileged access is granted to some while others are excluded from decision-making processes. Corporate lobbying in particular raises concerns because it often involves companies with vast sums at their disposal developing close relationships with lawmakers and thus gaining undue and unfair influence in a country's politics and policies.

When undertaken with integrity and transparency, lobbying is a legitimate avenu
e for interest groups to be involved in the decisions that may affect them.

A recent Eurobarometer report revealed that 81% of Europeans agree that overly close links between business and politics in their country has led to corruption and more than half believe that the only way to succeed in business in their country is through political connections. This corroborates the data from TI's Global Corruption Barometer 2013, which found that in many European countries more than 50% of people believe their country's government is to a large extent or entirely run by a few big interests.

This report begins by mapping the lobbying landscape in Portugal, giving a contextual analysis of the national historical, socio-political and legal situation with regard to lobbying. Chapter III also discusses the intensity and scale of lobbying efforts, the various cultural understandings of the term 'lobbying' and perceptions of lobbying practices in the country. Other relevant issues such as self-regulation of lobbying activities and the role of the media and civil society as watchdogs in monitoring and reporting on lobbying activities are also discussed.

Following on from this, Chapter IV of the report assesses the degree to which national regulation (public law and private self-regulation) adequately provides for transparency of lobbying activities and public decision-making, ethical lobbying and conduct by public officials and equality of access to public decision-making processes, using a series of 65 assessment questions.

I. MAPPING THE LOBBYING LANDSCAPE

Contradictions: An all mighty State submissive to strong interest groups

The financial and sovereign debt crisis in Portugal unveiled a worrying number of contracts between public and private stakeholders that were ruinous to the State and frequently involved the same group of influential people.[7] Public opinion became more aware of the existence of powerful networks and the close relationship between business and public decision-makers. According to data from the Barometer of the Quality of Democracy 2011, dissatisfaction with democracy amounts to 65% of respondents. 48% believe that the regime's performance has been deteriorating in the last five years. The main reasons behind this poor perception of the quality of democracy were the lack of trust in politicians, the lack of effectiveness of governance, corruption and social differences. The desperate need for foreign investment and a fast remedy for public finances, has not fixed the problem. In fact, it has extended the influential networks of the large economic groups abroad and may also have increased rent-seeking behaviours.

In 40 years, Portugal became a consolidated and stable democracy. Nevertheless, it presents many contradictions, typical of countries with intermediate levels of development and in search of modernity. The capitalism that has developed in the last century in Portugal is of a corporatist nature and features clientelism. The State still plays an important role in the Portuguese economy and sometimes in an inconsistent manner. The State, in turn, imposes itself on the one hand, as centralized, cumbersome, invasive and obstructive to the private sector. On the other hand, it acts as submissive to influences from interest groups. The economy has always been structured around a few large business groups loyal to the Government's vision of economic and social development. The Portuguese economy is rather dependent on the State and its interventions and investments. Private enterprise has little autonomy and the most prosperous private businesses usually know how to cultivate relationships with political powers.[8]

> In 1958, 34 companies held 43.3% of the national capital. In 1970, the 168 bigge st companies belonged to only 10 families and controlled more than half of the c ountry's wealth. In 1973, seven major groups controlled about 75% of GDP. This form of market organization has remained almost the same

The State subsidized private companies or owned part of their shares insofar as this enabled the creation and expansion of large economic groups. Instead of promoting competition, the State intervention in the economy tends to favour a strong concentration of wealth. In 1958, 34 companies held 43.3% of the national capital.[9] In 1970, the 168 biggest companies belonged to only 10 families

7 Gomes, M. (2013), PS exige que ministro da Economia explique contrato "ruinoso" com Lusoponte, Publico, 31 May 2013. Available at http://www.publico.pt/economia/jornal/ps-exige-que-ministro-da-economia-explique-contrato-ruinoso-com-lusoponte-26615565 [consulted on 20 Jun 2014]; Sol (2013), Contratos ruinosos fazem cair secretários de Estado, Sol, 22 April 2013. Available at: http://sol.sapo.ao/inicio/Politica/Interior.aspx?content_id=73461 [consulted on 20 Jun 2014]

8 Guerreiro, P.S. & Sobral, F. (2013), A Teia do Poder: Amigos, Inimigos e Aliados, Ed. Zebra Rosa, E. (2013), Os grupos económicos e o desenvolvimento em Portugal no contexto da globalização, Ed. Página a Página, 2ª Ed.,Lisboa, Out. 2013

9 Castro, Pedro J. (2009) Salazar e os Milionários. Lisboa: Quetzal Editores.

and controlled more than half of the country's wealth.[10] In 1973, seven major groups controlled about 75% of GDP.[11] This form of market organization has remained almost the same until the time of writing (2014). This proximity between business and politics plays an important role in the way lobbying is done in the country. Large economic groups have strong influence on politicians, conditioning relevant strategic political decisions and benefiting from them.

The 2013 Eurobarometer survey presented dramatic results, with 85% of respondents feeling an overall dissatisfaction with democracy, the highest result ever in Eurobarometer surveys and substantially above the 52% of the EU average.[12] Another 2013 Eurobarometer survey shows that 68% of companies in Portugal believe that corruption is an obstacle for business activity in the country (the second highest in the EU; EU average: 43%). 87% of those respondents stated that favoritism and corruption have distorted competition among companies (EU average: 73%), while 79% said bribes and contacts are often the easiest way to access some public services (EU average: 69%). 76% stated that the only way to succeed in business is through political connections (the highest in the EU; EU average: 47%).[13]

Despite the absence of regulations on the matter, governments are becoming aware of the important role lobbying plays in international politics and institutions. Executives have hired lobbying firms to represent Portuguese national interests on various occasions, namely for the self-determination of East Timor or for the Universal Exhibition Expo98.[14] According to OpenSecrets.Org, in 1998-9 the Embassy of Portugal in Washington hired a professional lobbyist, having paid each year around USD 60,000.[15] Before and after the country called for international financial assistance, consultancy firms have also been hired by the government to lobby for Portugal to improve its credibility in the international financial markets.[16]

However, the relevance of lobbying activities outside Portugal has not been acknowledged by private stakeholders, possibly due to the lack of a tradition of lobbying in the country. In Washington, only the Portuguese airline company TAP Air Portugal and the electricity producer EDP-Energias de Portugal have been recognized as having lobbied the US government.[17] Interest representation in Brussels is also still underdeveloped. Portuguese interest groups lack a strong ability to influence decisions within the EU.[18]

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10 Idem

11 Amaral, Luciano (2008) 'Grupos económicos: o capitalismo à portuguesa' in Planeta (ed.) Os anos de Salazar. O que se contava e o que se ocultava durante o Estado Novo, 1969, Evolução na continuidade. Planeta DeAgostini: Lisboa, pp. 80-91.

12 European Commission (2013), "Relatório Nacional Portugal", Eurobarómetro Standard 80: OPINIÃO PÚBLICA NA UNIÃO EUROPEIA, Outono 2013.

13 Flash Eurobarómeter 374 of 2013.

14 Speech by MP Mendes Bota, chair of the Commission on Ethics, Citizenship and Media, at the seminary on Lobbying and Institutional Relations - "Lóbi e Relações Internacionais", Instituto Politécnico de Coimbra, Escola Superior de Educação, 2 Dec. 2013

15 OpenSecrets.Org: http://www.opensecrets.org/lobby/clientsum.php?id=F58&year=1998

16 Antunes, R.P. (2010), "Governo contratou KGA por 330 mil euros no dia do PEC II", Diário de Notícias, 08 Out. 2010. Available at http://www.dn.pt/inicio/economia/interior.aspx?content_id=1680677&page=-1 [consulted on 11 May 2014]; Pereira, H. (2011), "Governo contrata lobistas", Sol, 6 Dez 2011. Available at http://sol.sapo.pt/inicio/Politica/Interior.aspx?content_id=35628 [consulted on 11 May 2014];

17 Opensecrets.org: http://www.opensecrets.org

18 Rose, R.&Trechsel, A. (2014), A Participação de Portugal nas Decisões de EU, uma Perspectiva Comparada, 4º Relatório para a Fundação Francisco Manuel dos Santos

Attempts to regulate lobbying: Tinkering around the edges

Regulation of lobbying in Portugal has barely been present on the political and social agenda. In 2007, two communications agencies required permanent accreditation in parliament, a status only granted to journalists, which allows them to circulate in the building and differentiates them from other visitors.[19] The request was denied by the parliament's president on the grounds that journalists had an ethical code and strived for freedom of the press, thus playing a public interest role, while communication agencies did not.[20] Two other political parties also showed reservations about the request.[21] However, a few years later, the Programme of the XVIII Constitutional Government (2009-2013) included a proposal for "the definition of rules of transparency, registry and scope of lobbying activities".[22] The executive did not complete the entire legislature, only lasting 20 months in office and presenting no legislation in that time. Currently, two parliamentary groups are studying the possibility of presenting legislative proposals concerning lobbying.[23]

Broader Legal Environment does not support ethical lobbying

Not only does Portugal not regulate lobbying itself, but the laws and regulations on access to information, political financing and trading in influence all have considerable flaws, contributing to a broader legal environment which does not support ethical lobbying.

Trading in influence was criminalized under the Portuguese law in 1995.[24] Since then, the offense has been amended in 1998 and 2001, enlarging its scope, in terms of practices and subjects.[25] The current version of the law defines trading in influence: "[w]hoever, by himself or through another intermediary, with his consent or ratification, requests or accepts, for himself or for a third party, an advantage, whether of economic nature or not, or its promise, to abuse of his influence, actual or supposed, before any public entity".[26] Offenders may be punished with up to five years of imprisonment.

Portugal has signed and ratified both the UNCAC and the Council of Europe Criminal Law Convention on Corruption. In the 2010 Third Evaluation Round, GRECO concluded that the Portuguese law was not in total conformity with article 12 of the CoE Convention and recommended Portugal to make amendments to the law on trading in influence in order to include

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19 Almeida Leite, F. (2007), Lobbyistas invadem corredores do Parlamento, Diário de Notícias, 22 Mar. 2007. Available at: http://www.dn.pt/Inicio/interior.aspx?content_id=654747 [consulted on 14 Apr. 14]

20 Almeida Leite, F. e Carvalho, J.C. (2007), Jaime Gama vai vetar 'lobby' no Parlamento, Diário de Notícias, 27 Jul. 2007. Available at: http://www.dn.pt/inicio/interior.aspx?content_id=662048 [consulted on 14 Apr. 14]; Lusa (2008), AR: Profissionais agências comunicação não terão credenciação específica equiparada a jornalistas, Expresso, 30 Jan 2008. Available at: http://expresso.sapo.pt/ar-profissionais-agencias-comunicacao-nao-terao-credenciacao-especifica-equiparada-a-jornalistas=f229488#ixzz2ytz4KwvX [consulted on 14 Apr. 14]

21 Lusa e Publico.pt (2007), PS e BE resistem à presença de agências de comunicação na Assembleia, Publico, 14 Fev 2007. Available at: http://www.publico.pt/media/noticia/ps-e-be-resistem-a-presenca-de-agencias-de-comunicacao-na-assembleia-1285719 [consulted on 14 Apr. 14]

22 XVIII Governo Constitucional (2009), Programa do XVIII Governo Constitucional (2009-2013), p. 114

23 Information gathered through interviews.

24 Decree- Law n. 48/95, of 15 March.

25 Law n. 65/98, of 02 September and Law n. 108/2001, of 28 de November

26 Art. 335 of the Criminal Code (English version as present in the Greco Evaluation Reports)

foreign/international officials and to criminalize trading in influence for "licit" acts.[27] According to the Ministry of Justice, in 2012 there were 4 defendants in trading in influence cases but none in 2011 or 2010.[28] In practice, the law has had little applicability.

With regard to access to information, in 2007 Portugal was in the 65th position in the Global Right to Information Rating, which ranks 98 countries on the robustness of their access to information laws.[29] Besides being a constitutionally protected right, access to information has been regulated since 1993, by Law 65/93 of 26 August, which has been amended several times. Access to and the reuse of administrative documents is regulated by Law 46/2007 of 24 August. This legislation respects international standards, especially with regard to openness and administrative justification. However, in practice, there are problems in the implementation and use by citizens. Raw data is not usually published, there are no guarantees that public bodies publish all information (contracts for instance). The Official Gazette is not completely user friendly and some institutions are still very reluctant in responding to information requests.[30]

Concerning political party financing, Portuguese law forbids contributions from companies or any other legal persons since 2000. The law has been amended on several occasions, but continues to raise concerns over accountability and transparency. The definition of fundraising initiatives is not clear and its accounting method allows the laundering of "money bags", the manipulation of established limits and the reduction of cost in party events. In addition, candidates may contribute financially to electoral campaigns with very few controls over the source of funds. Parties' budgets are strongly dependent on state subventions, which amount to between 70% and 90% of their declared income.[31] However, this may not cover all expenses, hence there is a general suspicion, including from the supervisory body that in addition to these funds, the major government parties also receive contributions from the private sector.

Irregularities regarding some funding and donations sources and lack of rigor in the presentation of the degree of liability of bank loans have been identified.[32] The informality surrounding party financing has not been thoroughly investigated, and so it is not clear how much money is being spent during elections outside the legal framework and who is paying the bill. Since the ban on company donations, only one third-party payment from a large construction company to one of the major political parties has been detected and sanctioned. This does not mean that the problem does not exist or that it is a sporadic practice; instead, it only shows that the supervisory body does not have the competence and capacity to address the informality surrounding party and election financing.[33]

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27 Greco Eval III Rep (2010), Evaluation Report on Portugal on Incriminations (ETS 173 and 191, GPC 2) (Theme I), p. 29

28 Data provided by DGPJ upon TIAC's request

29 Global Right to Information Rating (http://www.rti-rating.org/country_data.php#)

30 Moriconi, M.&Bernardo, L. (2012), Dados, Conhecimentos, Acção: Melhorar o Acesso à Informação em Portugal. SNI Policy Paper#1

31 GRECO Eval III (2010) 6E, Theme II, paragraph 83

32 Entidade das Contas e Financiamentos Políticos (2014), Financiamento Partidário de 2009. Available at http://www.tribunalconstitucional.pt/tc/contas_eleicoes-partidos-2009.html#1112 [consulted on 06 June 2014]

33 De Sousa, L. (2014),

CASE STUDY 1

Transparency in Political Party Financing

The ban on corporate donations to political parties and electoral campaigns has been circumvented by some business elites. Following scandals in the financial sector, it was reported that many donated large amounts of funds to candidates during the 2006 Presidential campaign. For instance, 5 members of the Espirito Santo family, who owned one of the largest financial groups in Portugal, donated to one of the candidates the maximum legal amount per person – a total of 2.2M Euros (5% of the entire campaign budget). Three other banking CEOs were also reported as big donators to presidential candidates.

Although not illegal, these individual donations show once more the close link and dependency between politics and business. It also shows there is a lack of useful transparency and that the supervisory mechanism of political financing is bleak in this regard. Political parties and campaigners are obliged to present their accounts to an independent body, but these accounts and their control are not made public in a timely manner. For instance, the 2011 presidential election reports are not yet available to the public. A public and immediate register of donations to political parties and electoral campaigns would improve transparency, accountability and would assist voters in making more informed electoral choices.

Lobbying in Portugal: Pulling strings and lobbying from within

The absence of regulations makes it rather difficult to evaluate the intensity and scope of lobbying efforts in Portugal. From our research and interviews, it was, however, possible to deduce different types of lobbying practices in Portugal: direct lobbying, public hearings and shadow lobbying. It is also worth mentioning the influential role certain MPs may have in law-making − not as public representatives, but as insider lobbyists in parliament. This raises concerns relating to conflicts of interest, revolving doors situations, and possibly trading in influence and insider trading.

Interviews with both business and non-profit sector representatives suggest that decision-makers are willing to meet with stakeholders when a new policy is being formulated – either by consenting to meet them upon request or by inviting them to contribute with technical information and points of view. In these meetings, business associations and civil society representatives provide documents that are usually available on their websites. More recently and in the context of the current economic and financial crisis, professional and particular business groups organize demonstrations in front of

ministries and demand meetings with political officials. They are frequently successful.[34] These types of lobbying are not completely transparent. It is not common to publish agendas or make the legislative work public. Nonetheless decision-makers do appear willing to meet with trade associations and NGOs, even if they are not always willing to do more than simply listen.

> Many interactions with decision-makers are conducted informally, through person al contacts, frequently during business lunches. These informal meetings make it difficult to distinguish between mere personal connections and lobbying activities

On the one hand, grassroots campaigns are not common in Portugal. There are, however, communication strategies followed by certain companies, especially large corporations to bring an issue to the public agenda and influence public opinion. Communication agencies play a central role in these campaigns, contacting the media and spreading "controlled" information among journalists. According to our interviews, business publications are more likely to be the target of these campaigns or of contacts by corporate executives themselves. Companies pay for large and expensive advertisements in the press, which due to the crisis in the sector is largely dependent on this type of funding. Although it is not possible to establish a direct link, there is the risk of dependence of the press towards their publicity clients, which may discourage journalists and editors to disclosure illegitimate lobbying practices.

The frequency, intensity and opacity of shadow, or informal, lobbying raises strong concerns. It is only possible to assess it through interviews and calculate its frequency on the basis of revolving doors and conflicts of interest situations. Interviews with different stakeholders confirmed a common perception: regardless of the legitimacy of the interests, many interactions with decision-makers are conducted informally, through personal contacts, frequently during business lunches. These informal meetings make it difficult to distinguish between mere personal connections and lobbying activities. The medium-size of the country and the small dimension of its elites allow for contacts and favours through networks of various natures such as family and friends connections, old school colleagues and regional or local solidarities. Connections deriving from political parties also play a major role. Politicians and other senior decision-makers circulate in the same social circle as businessmen, attending the same social events, restaurants, golf matches, hunting and even living in the same neighbourhood. When stakeholders do not have a relationship with each other, it is frequent to ask common acquaintances to forge meetings or contacts. The so-called "cunha" (pulling strings), generalized among the Portuguese society, also works at the high decision-making level.[35]

However, the close relationships between the political power, especially political parties, and certain economic sectors/corporate executives sometimes make formal lobbying almost unnecessary. There seems to be what Joseph Stiglitz called "cognitive capture":[36] politicians, particularly those most involved in political party structures, know who they should not upset and what matters they should or should not touch upon. Benefiting a given sector or company does not, most of the time, imply a

34 Silva, A. (2013), "Ministros vão receber manifestantes 'oportunamente'", Expresso, 26 Nov 2014. Available at http://expresso.sapo.pt/ministros-vao-receber-manifestantes-oportunamente=f843060 [consulted on 11 May 2014]

35 De Sousa, L. (2008) "I Don't Bribe, I Just Pull Strings': Assessing the Fluidity of Social Representations of Corruption in Portuguese Society', Perspectives on European Politics and Society, 9:1, 8 - 23

36 Stiglitz, J. (2012), The Price of Inequality: How Today's Divided Society Endangers our Future. NYC: WW Norton&Company, 2012, p.48

direct or immediate reward to the decision-maker. Doing someone a favour is a way of maintaining good relationships. It seems to be important to keep good relationships with certain companies or key individuals. This phenomenon has been confirmed through interviews with political decision-makers.

Professional Lobbyist: still a very rare job

Professional lobbying is not widespread in Portugal. There are two firms of Portuguese origin with offices in Lisbon, but both informed that their business core lies in Brussels, next to EU institutions. An international public affairs consultant was also identified. Only two interviewees mentioned the existence of in-house lobbyists, commonly working in the corporate affairs departments.

Business/sector associations and civil society organizations present themselves as working for the "defence of the rights" or the "promotion of interests" of their members. Trade associations, professional organizations and trade unions are, in fact, considered by decision-makers as the most effective lobbyists.

Recent scandals exposed the power of "discrete organizations" such as the Masonry or the Opus Dei, whose membership also contributes to the creation of influential networks.[37] Politicians, businessmen, senior public officials, namely from the secret services or the Constitutional Court, are known to belong to these organizations, which promote fraternity bonds and favoritism among its peers.[38] In fact, it has been stated that this blend of professional groups, combined with the fraternity and fidelity oaths they are subject to, have given the Masonry the reputation of being influential at the political, economic and cultural level. Some of these favours, such as the use of Portuguese intelligence services for personal and business ends, have led to judicial cases on corruption and breach of state secrecy.[39] Less controversial in the public arena, the Opus Dei, is also known as having a strong influential network, with many of its members holding senior positions in political institutions and in particular the banking sector.[40]

> The perception that parliament is a "representation office" of business interests or that "lobbying is done within parliament by its own MPs" is a common one.

Lobbying from within: MPs as lobbyists

The perception that parliament is a "representation office"[41] of business interests or that "lobbying is done within parliament by its own MPs" is a common one. Exclusivity is not compulsory for MPs,

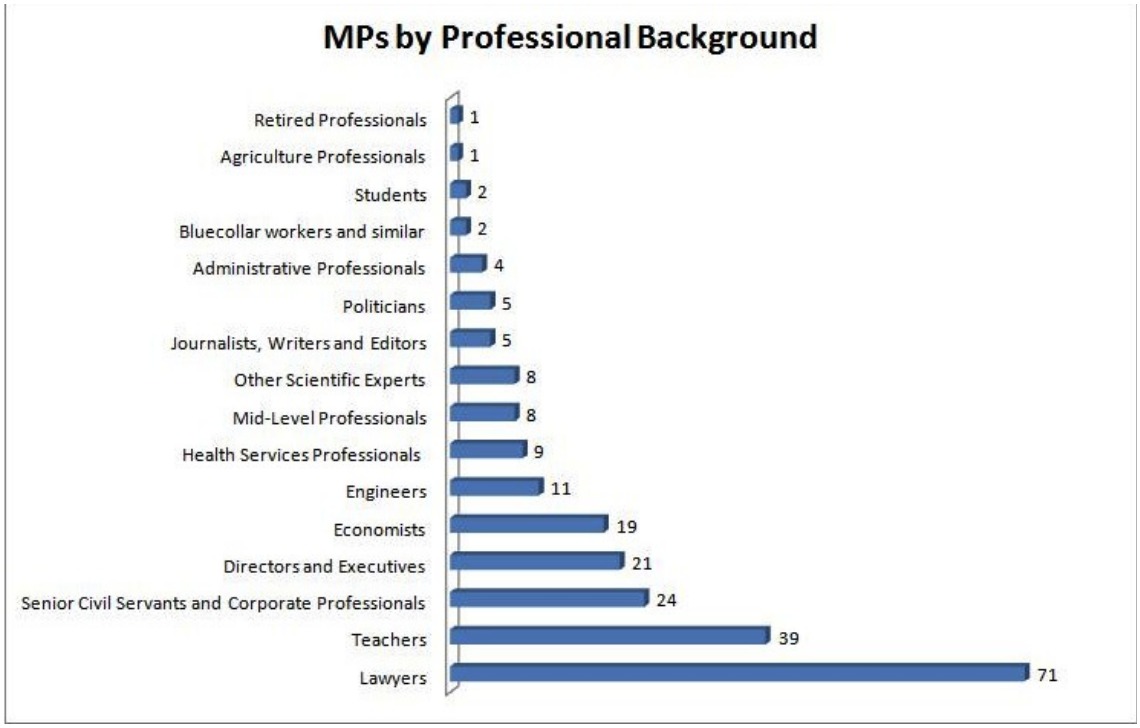
37DN (2011), "Mais de 80 maçons em cargos influentes", Diário de Notícias, 12 Nov 2011. Available at http://www.dn.pt/inicio/portugal/interior.aspx?content_id=2118382 [consulted on 28 Apr 2014]; Expresso (2012), "Ascensão e queda da Loja Mozart", Expresso, 6 Jan 2012. Available at http://expresso.sapo.pt/ascensao-e-queda-da-loja-mozart=f698269 [consulted on 28 Apr 2014]

38 Vilela, A.J. (2013), "Segredos da Maçonaria Portuguesa", Ed. Esfera dos Livros, 1ª ed.

39 Henriques, A. & Bancaleiro, C. (2014), "«Caso das secretas» vai a julgamento com cinco arguidos", Público, 11 Apr 2014. Available at: http://www.publico.pt/sociedade/noticia/tribunal-leva-a-julgamento-cinco-arguidos-no-caso-secretas-1631869 [consulted on 28 Apr 2014]

40 Antunes, R.P.(2013), "Opus Dei nas finanças do Governo e com força na banca", Diário de Notícias, 27 jan 2013. Available at: http://www.dn.pt/especiais/interior.aspx?content_id=3017757&especial=Os%20segredos%20do%20Opus%20Dei%20-%20Grande%20Investiga%E7%E3o&seccao=SOCIEDADE&page=-1 [consulted 9 May 2014]

who, if they are not civil servants, may maintain their professional activities while in office under a weak system of conflict of interest management. Currently, out of 230 MPs, 117 have chosen this "accumulation regime", that allows them to maintain their private professional activities while holding a public office.[42] According to the parliament's statistical reports, there are currently 71 legal professionals sitting as MPs.[43] This number has been constant throughout different legislatures. By far, they are always the most represented group in parliament.[44] Of these legal professionals, most of them are lawyers, which make up to a fifth of MPs in total.[45] Around half of these MP lawyers work simultaneously as barristers with multiple clients.[46] In addition, 49 MPs hold positions in governing bodies of companies and 70 have shares in holdings (SGPS).[47]



Source of data: Assembleia da República

Besides allowing the accumulation of public and private positions, the law does not prevent MPs with interests in a given sector to be a member of the respective parliamentary commission. In fact, there are several cases of MPs in this situation, for instance some with declared interests in the health sector that take part in the parliamentary commission for health.[48] The most controversial and debated situation is MPs that work in law firms as barristers or simply as consultants. Barristers are

41 Morais, P. (2011), "Anatomia da Corrupção em Portugal" in Sousa, L.&Soares, D. (2011), Transparência, Justiça e liberdade, Em memória de Saldanha Sanches, Rui Costa Pinto Edições,

42 Sampaio, G. (2013), Os Privilegiados, Ed. A Esfera dos Livros, 1ª ed, julho 2013, p. 18

43 Divisão de Informação Legislativa e Parlamentar, Assembleia da República (2013), Actividade Legislativa e Parlamentar – XII Legislatura, 2ª Sessão Legislativa.

44 Other statistical reports published by Parliament can be found at http://www.parlamento.pt/ActividadeParlamentar/Paginas/RelatoriosEstatisticas.aspx [consulted on 11 Apr. 14]

45 Pereira, Gina (2011), Um quinto dos deputados são também advogados, Jornal de Notícias, 21 July 2011

46Machado, A&Miranda, E (2012), Metade dos Deputados acumula funções com o privado, Jornal de Negócios, 19 Sept 2012

47 Sampaio (2013), p. 19

48 Idem, pp. 17-77

subject to confidentiality clauses that prevent them from revealing the identity of their clients, rendering the conflict of interest much more difficult to identify. The situation has been publicly addressed on several occasions, particularly regarding the revolving door phenomenon that takes place between government/parliament and law firms. In a newspaper interview, a former politician has stated that barrister MPs may "interfere in the law-making process, according to the interest of their clients" and that one of the reasons individuals chose to run for a place in parliament is to "lobby on the behalf of their professional activities."[49] The same opinion has been shared by the former and current President of the Portuguese Bar Association.[50]

> It is common for a law firm to advise the government in a given case and then serve another client against the state in another.

Law firms active in the political sphere

A second cause for concern related to large law firms is the service they provide to ministries and public agencies, which encounter many conflicts of interest. It is common for a law firm to advise the government in a given case and then serve another client against the state in another. The most recent controversy involved a lawyer with political connections (a former minister), who advised both the executive and private tenders during on-going privatization processes. This lawyer, who had been involved in the privatization process of the Post Office services, was eventually hired by Goldman Sachs, which now owns a share of the company.[51] It is interesting to note that decision-makers consider law firms the least transparent lobbyists, because it is hard to know who they represent.[52]

Another concerning situation revolving around conflicts of interest is the commissioning of studies and legal expert opinions by the government before launching new legislation. These reports are often made by consultancy groups and law firms that also represent private clients who can benefit directly from the new regulation to be issued or projects to be launched. Those interests are difficult to identify, as clients are protected by confidentiality rules that prevent law firms from revealing them. In addition, there are also a number of working groups composed of experts chosen by the government to develop studies and recommendations on given public policies that raise conflict of interest issues. There is little transparency regarding both the criteria that presided the composition of these groups and their functioning, as private stakeholders are chosen to coordinate them. For instance, the "working group for infrastructure with high added value" was mentioned in some of our interviews as an example of bad practice.[53] Another example is a commission that studied the

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49 Antunes, R.P. & Simões, S. (2011), "Há 40% em part-time e não estão fora da lei" in Martins, F. (coord.)(2011), O Estado do Parlamento", Diário de Notícias/Ed. Gradiva, 1ª ed., Abril 2011, pp. 31-33

50 Idem, p. 31; Lusa (2008), "Marinho Pinto desafia AR a tornar incompatíveis cargos de advogado e deputado", Público, 11 Mar 2008. Available at: http://www.publico.pt/politica/noticia/marinho-pinto-desafia-ar-a-tornar-incompativeis-cargos-de-advogado-e-deputado-1322242 [consulted on 28th Apr 2014]; Interview with Nuno Godinho Lopes, barrister and representative of the Portuguese Bar Association.

51 Santos&Pereira (2014), "José Luís Arnaut em alto cargo da Goldman Sachs", Expresso, 10 Jan 2014. Available at : http://expresso.sapo.pt/jose-luis-arnaut-em-alto-cargo-da-goldman-sachs=f850038#ixzz31RXc06pB [consulted on 11 May 2014]

52 Burson Masteller Survey

53 http://dre.pt/pdf2sdip/2013/08/166000002/0000400004.pdf

Administrative Code Reform. The commission suggested that Public Prosecutors should not have exclusivity of the State's legal representation, which should be open to law firms. This change in the law may benefit disproportionately large law firms. The commission was partly made of experts linked to those large law firms.[54] In both cases, the executive is planning to go forward with the implementation of the recommendations of the commissions. These situations are concerning as, according to the Burson Masteller survey (2013), Portuguese decision-makers privilege national authorities' documents as sources of information and guidance when taking decisions.

Businessmen that have hired politicians refer to them as "people with influence", that "open all doors" for their business or "guarantee privileged contacts".

Along this line there are also communication agencies, which were cited as active lobbyists in the conducted interviews. In fact, it was these agencies that pushed for the regulation of lobbying in 2007.[55] However, neither of the two largest and most influential companies or the association of the sector accepted our interview requests. Communication agencies present the same challenges to integrity as law firms, i.e., conflict of interest, as they have clients that range from large corporations to political parties, whose electoral campaigns are frequently designed by these agencies.

Apparatchiks and Intermediaries

Finally, the Socialist Party (PS), Social Democratic Party (PSD) and Christian Democracy Party (CDS-PP) are perceived as being the hub of influence networks. Some of its senior members, the so-called "homens do aparelho" (apparatchik men), are known for their influence and networks, both within the party structures and with business.[56] During interviews, decision-makers frequently mentioned retired politicians and senior public officials that act as mediators and manage influences. Despite not mentioning names, they admitted that "everyone knew who they were". In fact, the media has also shown interest in these individuals and has been publishing articles about some of them. Businessmen that have hired politicians refer to them as "people with influence", that "open all doors" for their business or "guarantee privileged contacts".[57] Clients of these individuals are usually medium-sized companies, whose executives do not have easy access to the decision-makers' social circles. Other clients are foreign investors that aim at entering the Portuguese market. Fiscal regimes for large foreign investments are negotiated case by case with the government and having the right mediator may contribute to achieving attractive fiscal benefits. The most recent controversial case is

54 Gabinetes do Ministro de Estado e das Finanças e da Ministra da Justiça, Despacho n.º 9415/2012, Diário da República, 2.ª série — N.º 134 — 12 de julho de 2012; Oliveira, Mariana (2014), Advogados vão passar a poder defender Estado nos processos contra a Administração, Público, 09 June 2014. Available at http://www.publico.pt/sociedade/noticia/advogados-vao-passar-a-poder-defender-estado-nas-accoes-de-indemnizacao-contra-a-administracao-1639197 [consulted on 09 June 2014]

55 See footnote 39

56 Pena, P. (2014), Miguel Relvas e Jorge Coelho: o regresso dos "homens do aparelho", Público, 02 March 2014. Available at : http://www.publico.pt/politica/noticia/miguel-relvas-e-jorge-coelho-o-regresso-dos-homens-do-aparelho-1626708?page=1#/0 [consulted on 09 June 2014]

57 Económico (2014), "Antigo dono da Tecnoforma: "O Pedro abria as portas todas", Económico, 7 Mai 2014. Available at http://economico.sapo.pt/noticias/antigo-dono-da-tecnoforma-o-pedro-abria-as-portas-todas_192683.html [consulted at 8th May 2014]; Carvalho, M. (2014), "A Teia da Urban Value: Política, Negócios e Angola", Visão, nº 1095, 27 Fev, pp. 32-39.

Miguel Relvas, a former senior minister and very close to the current Prime Minister. Following a controversy about his university degree, he was forced to resign but has recently taken a position in the political party structure.[58] In articles about his post-government life, he is described as a "business facilitator", "business consultant" and "professional lobbyist" with confidential clients, whose job is to "evaluate risks and opportunities, [...] intersects interests, lobby".[59] Relvas clarified that he does not work for or with the Portuguese State.[60] His contact list was well-known while he was in office, including his membership in a Masonic lodge.[61] Former Ministers of Foreign Affairs (two of them former diplomats) have also been referred to in the media as being facilitators of business contacts between Portugal and Angolan and Guinean business interests.[62] Interviews also revealed that mediators (not necessarily the ones mentioned above) often demand a fee for their work as contact "facilitators", usually a percentage of the total amount of the investments or the gain of the business. Criminal cases guide us in the same direction, as there are defendants in ongoing cases accused of receiving compensation for managing influences and contacts with senior decision-makers.[63]

The construction and public works industry was pointed out by many respondents as the most powerful and influential sector.[64] It is no coincidence that this is one of the most important sectors in the Portuguese economy and the one favoured by banks for gaining credit.[65] Territorial planning is subject to the discretionary decision-making powers of public authorities, including the government and municipalities. The government has the power to grant the classification of PIN - Projectos de Interesse Nacional (National Interest Projects) to building plans. It can change the status of a given piece of land, allowing construction (of factories, tourism projects or even golf courses) in environmentally protected or agricultural areas. At the local level, municipalities also enjoy discretionary powers to change PDMs (urban planning guides) and grant construction permissions. In addition, government is also responsible for managing EU funds and launching large-scale public works, such as highways, hospitals or airports. These public works are crucial to construction companies, as they involve large sums and long-term rents (particularly Public-Private Partnerships). Influence is exercised in two different moments: (i) during the process of the development of national infrastructure strategies, when the executive decides its investment priorities and project dimensions;[66] (ii) at the launch of public procurement of those projects.

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58 Almeida, S.J. (2014), "Miguel Relvas regressa à direcção de Passos Coelho no PSD", Público, 22th Fev 2014. Available at http://www.publico.pt/politica/noticia/miguel-relvas-regressa-a-direccao-de-passos-coelho-no-psd-1625831 [consulted on 25th April 2014]

59 Silva, A. (2014), "Relvas transit gloria mundi", Expresso, 12th April 2014, p. 20; Sapage, S. (2014), "Porque se ri Relvas?", Visão, 12 Mar 2014. Available at http://visao.sapo.pt/porque-se-ri-relvas=f773029 [consulted on 25th April 2014]

60 Idem

61 Guerreiro&Sobral (2013), pp.281-288

62 Luís Amado: Económico (2014), "Ana Gomes pede intervenção contra entrada da Guiné Equatorial no Banif", Económico, 7 Feb 2014. Available at: http://economico.sapo.pt/noticias/ana-gomes-pede-intervencao-contra-entrada-da-guine-equatorial-no-banif_186745.html [consulted on 10 May 2014]

63 Costa&Maia (2009), Vara garante que de Godinho só recebeu "robalos", Jornal de Notícias, 29 Nov 2009

64 http://www.dn.pt/inicio/portugal/Interior.aspx?content_id=1738551&page=-1

65 Pena, P. (2014), O poder destruidor da finança: imobiliário, offshores e banca-sombra. http://www.publico.pt/portugal/noticia/o-poder-destruidor-da-financa-imobiliario-offshores-e-bancasombra-1631712

66 Please refer to p.

Allegedly “energy lobbies” were behind the resignation of a junior minister in 2012. Henrique Gomes, known as “the man who stood up to the lobbies”, had openly talked against the rent-seeking behaviour of the sector and wanted to impose a new tax on it.

Another sector with significant lobbying capacities seems to be energy companies, both producers and sellers. Allegedly “energy lobbies” were behind the resignation of a junior minister in 2012. Henrique Gomes, known as “the man who stood up to the lobbies”, had openly talked against the rent-seeking behaviour of the sector and wanted to impose a new tax on it.[67] Gomes delivered the Prime Minister a study that recommended the end of high energy rents, which according to him ended up immediately in the hands of the CEO of the largest electricity company.[68]

In the Burson Marsteller survey, respondents identified the financial sector as having the most effective lobbying efforts among economic sectors, quite ahead of the second most effective – energy.[69] Its influence is noticeable, despite being indirect. The financial sector is behind the above-mentioned sectors and also profits from their benefits. For instance, bankers are the financers of construction companies that have their projects approved or that establish PPPs. Following a strategy of diversifying their business interests, many financial institutions are owners or hold important shares in companies operating in the health sector.[70] Therefore, any changes in the policies of the sector, especially regarding private practice, are of their interest.

67 Ribeiro, A. I. (2012), Henrique Gomes, o homem que enfrentou os lobbies, DN, 13 Mars 2012. Available at: http://www.dn.pt/politica/interior.aspx?content_id=2359541[Consulted on 25 July 2014]

68 Publico (2012), Fuga de informação para a EDP, Publico, 28 April 2012. Available at: http://www.publico.pt/economia/jornal/fuga-de-informacao-para-a-edp-24451383 . [Consulted on 25 July 2014]

69 Burson Masteller (2013), p. 69

70 For instance Espirito Santo Financial Group owns Espirito Santo Saúde and Millenium BCP owns Médis Health Insurance

CASE STUDY 2

The Energy lobbies: "A State within the State"

There has been wide debate in Portugal over the excessive rents given by the State to the energy sector. The Memorandum of Understanding that followed the call for international financial assistance in 2011 includes provisions aiming to minimize rent-seeking behaviour. At the end of the assistance program, the Troika is still not satisfied and has warned once more against the excessive rents in the energy sector.

In 2012, Henrique Gomes, junior minister for Energy Affairs, aimed at reforming the energy sector and "imposing public interest over EDP's excessive power". The executive commissioned an international study about the energy sector, which concluded that it was benefiting from 300MEuros in rents. The report recommended cuts and taxes over those excessive rents and Gomes was willing to follow it. After being prevented from making a public statement on the matter, Gomes resigned, claiming "personal reasons". At the time, different press sources reported he lost the war against energy corporations. Later he clarified the reasons for his resignation, admitting he had left because the government was not willing to defend the public interest. He added that "everyone is aware of the close proximity between the government and large corporations" and that corporations in the energy sector are "very well organized and dominate the media, consultants and lawyers". In an audition in parliament, he stated that António Mexia, EDP's CEO, had gained immediate access to the confidential report, after it was handed to the Prime Minister.

The government never denied any of these claims. Almost a year later, the Economy Minister admitted the resignation of his junior minister had prompted "the opening of champagne bottles by certain people". Commenting on the controversy, a former energy minister also declared that the minister was not strong enough to fight the energy lobby, linking it to the to the environment lobby, due to large investments Portugal has done in green energy production in partnership with EDP.

Before becoming EDP's CEO, Mr. Mexia was Public Works, Transportation and Communications Minister in a PSD-CDS government (2004-2005) and CEO at GALP (another major energy corporation). In addition, EDP has connections with 18 other politicians.

Of the past 19 finance ministers, 14 have worked in banks or financial institutions

The banking sector is the one that creates more jobs for members of cabinet: 230 individuals have taken up 382 positions in financial institutions before or after holding a government job. Bankers are the most represented professional group in cabinets, amounting to 54% of government positions since the establishment of democracy.[71] The revolving door between the sector and the regulator is

71 Pena, P. (2014), Jogos de Poder, Ed. Esfera dos Livros, 1ª Edição, Abril 2014, pp.115-116

very similar: since 1986, all heads of the Central Bank have taken jobs in banking.[72] Pressure from the financial sector on the political power is perceived as common and intense, but because it takes place largely in the shadows, it is hard to identify specific episodes.

CASE STUDY 3

Financial Sector : "The bank of all the regimes"

José Maria Ricciardi, President of Espirito Santo Investment Bank, was caught several times calling the Prime Minister on the phone, allegedly trying to pressure him over a privatization process. He complained about the fact that a foreign consultancy firm had been hired. Ricciardi admitted having contacted many cabinet members over the undergoing privatizations, claiming that "there was nothing irregular or illicit" about it. Conversations became public because Ricciardi's mobile was being tapped due to an investigation on money laundering and fiscal fraud – the Monte Branco affair. These phone calls led to another investigation on the banker over suspicions of trading in influence. Nevertheless, BES was later hired to advise the government in two other privatizations, TAP (Portuguese airways) and ANA (airport management). BES had advised the winning candidates in the privatization bids of EDP (energy producer) and REN (energy infrastructure networks) (over which he had discussed with the Prime Minister).

In addition, BES Group Chairman, Ricardo Salgado, "forgot" to declare 8.5M Euros to fiscal authorities, relating to consultancy services provided to a Portuguese builder in Angola. In 2013, Salgado benefited from the fiscal amnesty granted by the government to individuals who had undeclared assets abroad amounting to 26M Euros. The omission and the existence of the assets (omitted from Portuguese authorities during 13 years) were revealed during the investigations of the Monte Branco affair. BES Chairman is known among its peers by the nickname "the owner of this whole thing". The expression "BES is the bank of all the regimes" is widely known, but a reputed business journalist summed up BES power in Portugal another way: "BES is not the regime's bank. BES is the regime".

72 Costa, J. et als (2014), Os Burgueses, Ed. Bertrand; Pena, P. (2014), Jogos de Poder, Ed. Esfera dos Livros, 1ª Edição, Abril 2014, pp.115-116

II. CULTURAL UNDERSTANDING OF LOBBYING[73]

The concept of lobbying has ambiguous interpretation in Portugal. In a recent review of the Portuguese spelling rules, the word lobby became lóbi. Portugal adopted the Brazilian translation although some people still use the original English word. Other expressions, such as advocacy and public affairs, not so commonly used have not been translated or adopted in the new spelling.

Among citizens, journalists and decision-makers, lobbying is generally a negative practice or conduct related to powerful economic groups that have the power to influence political decisions at the expense of the public interest.

Respondents of an online survey conducted by an economic newspaper have identified the Catholic Church as the "most powerful lobby in Portugal" (43% of votes). It was followed by the banking sector, law firms, doctors, workers unions and pharmacies. The results may indicate that respondents have a broad understanding of lobbying.[74]

> At the symbolic level, policy-makers are aware of the importance of transparency in politics, but they seem unable to put it into practice at the strategic level.

According to Burson Marsteller's 2013 survey on lobbying that included Portugal for the first time, Portuguese policy-makers emphasize positive aspects of lobbying, namely the "participation of social and economic actors and citizens in the political process." Despite the absence of direct information about informal lobbying, respondents answered questions about meetings with lobbyists, which indicates that they are aware of who the lobbyists are and of their practices. At the symbolic level, policy-makers are aware of the importance of transparency in politics, but they seem unable to put it into practice at the strategic level. For them the key factor when deciding to meet a lobbyist is to know who this person is, what he represents and what he is after. Once they have clarified these parameters, there are few controls overseeing the exchange of information and influence that takes place between policy-makers and interest groups.

In parliamentary debates, lobby or related terms are usually used with a negative connotation by left wing parties, when referring to the interests of what they perceive as powerful economic groups.

In the media, the connotation of lobbying varies rather significantly. At times, the word is linked to powerful and opaque economic interests or illegitimate pressures. It is also common to be associated with rent-seeking behaviour of major economic groups in a protected sector. On other occasions, it is used as a sophisticated word to refer to public relations campaigns, including local authorities' campaigns or patient associations. As explained by a journalist, lobby or lóbi are chosen by the press

73 Regarding the methodology of this study, it is necessary to notice that respondents were MPs, members of the executive and senior public officials, but also members of the European Parliament. MEPs work in a context of regulated lobbying, which means that their attitude towards lobbyists may be different of the rest of decision-makers, but those differences are not possible to highlight from the survey results.

74 Económico (2012), "Igreja vence votação do lobby mais poderoso de Portugal", Diário Económico, 6th Aug 2012. Available at: http://economico.sapo.pt/noticias/nprint/149779 [consulted on 7 May 2014]

because they are small words, whose concept is elastic (there seems to be conceptual overstretching for practical reasons), widely understood by the general public and can be used in headlines.

The private sector has different understandings of lobbying. Large corporations are aware of the usefulness of lobbying outside Portugal and "play by the rules" in Washington and Brussels, where lobbying is regulated and openly conducted. EDP and TAP Air Portugal have hired lobbying services in Washington on several occasions.[75] EDP is also registered in the EU Transparency Register.[76] Portuguese business associations are more likely to hire lobbying firms in Brussels, but the number of firms doing this is not extensive.[77]

These results, paired with interviews with lobbyists, suggest that Portuguese companies, particularly medium-sized and not very internationalized, are not open to professional lobbying. They keep trying to influence through the traditional informal networks explained previously. The same conclusions were reached in a study over the influence of Portuguese stakeholders in the EU institutions.[78]

75 OpenSecret: http://www.opensecrets.org/usearch/?q=portugal&cx=010677907462955562473%3Anlldkv0jvam&cof=FORID%3A11

76 http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=56592866496-47

77 http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=38225546532-14 ; http://ec.europa.eu/transparencyregister/public/consultation/search.do#searchResult ; http://ec.europa.eu/transparencyregister/public/consultation/search.do#searchResult

78 Rose, R.&Trechsel, A. (2014), A Participação de Portugal nas Decisões de EU, uma Perspectiva Comparada, 4º Relatório para a Fundação Francisco Manuel dos Santos

III. WATCHDOGS: THE ROLE OF MEDIA AND CIVIL SOCIETY IN MONITORING LOBBYING

In theory the Ethics Committee should play a role as parliamentary watchdog. However, it does not play a satisfactory role neither as a watchdog nor as an enforcement body. There is no effective and regular control of interest declarations, which are frequently incomplete and unclear. Seemingly dubious situations have not been subject to any clarification requests. Lack of means and resources has been the main justification for this absence of action, according to the President of the Ethics Committee[79].

The media landscape in Portugal is relatively diversified, without a clear domination by a single interest group or political power. In 2014, the country ranks 30th position (out of 179; a fall of 2 positions from the previous year) in the Press Freedom Index.[80] Freedom House also considers Portugal a free country for the press, but warns that the economic crisis has impacted the sector and that the lack of job security makes journalists "more vulnerable to self-censorship and pressure regarding content".[81] However, there has been a tendency for concentration of ownership, which has raised concerns in parliament and in the Journalists Union. All the major organs of information are held by the five economic groups: Impresa, Media Capital, Controlinveste and Cofina e Sonae.[82] Results of a 2007 survey about media in Portugal indicated that governments and economic power influence the media, especially TV stations.[83] There is investigative journalism on corruption and related issues, such as trading in influence. However, the lack of financial resources makes it hard for the media to sustain this type of journalism and it is becoming less frequent.

Civil society organizations do not show a deep interest in political issues, which is a reflection of the Portuguese population in general. Therefore, their role as watchdogs is limited. Organizations also suffer from lack of funding and resources.[84]

Nevertheless, in the past two to three years, many academic and journalist studies have published articles and books about influence networks and relations between business and politics, which shows the relevance of the issue has grown in the public agenda. Relationships between politicians or senior public officials and Angolan business have been specially scrutinized.[85] A group of

79 Speech by the President of the Ethics Committee, Mendes Bota, at the XV Encontro Público da PASC - Plataforma Ativa da Sociedade Civil, 29 Nov. 2013, available at https://www.youtube.com/watch?v=BTAvJNh2jrA

80 Reporters without borders (2014), World Press Freedom Index 2014. Available at: http://rsf.org/index2014/en-index2014.php

81 Freedom House (2013), Portugal Freedom of Press, available at http://www.freedomhouse.org/report/freedom-press/2013/portugal#.U0QQE6Lva-Y [consulted at 8 April 2014]

82 National Integrity System, Media Pillar, p. 3

83 Triães, J. (2011), "Acesso à Informação, Media e Corrupção em Portugal" in Sousa, L.&Soares, D. (2011), Transparência, Justiça e liberdade, Em memória de Saldanha Sanches, Rui Costa Pinto Edições,

84 National Integrity System, Civil Society Pillar, p. 1 and 7

85 Costa, J. et al (2014), Os Donos Angolanos de Portugal, Bertrand Editora, Lisbon, 1st Edition; Filipe, C. (2013), O Poder Angolano em Portugal, Ed. Planeta, 1st Edition; Carvalho, M. (2014), "A Teia da Urban Value: Política, Negócios e Angola", Visão, nº 1095, 27 Fev, pp. 32-39.

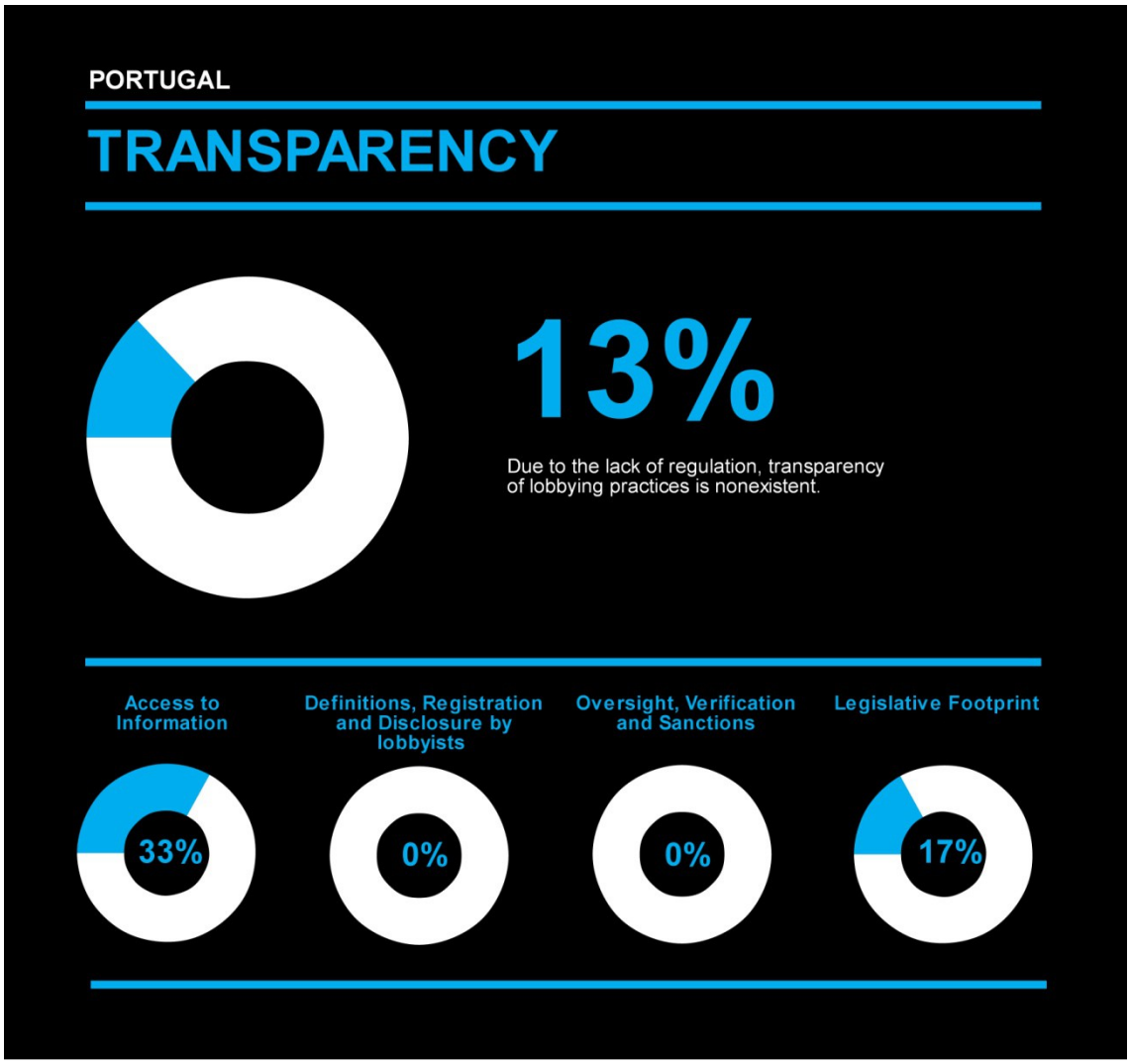
economists and political scientists, mostly connected to left wing parties, have been publishing a collection of books that study the most powerful individuals and families in Portugal, the relationship with wealthy Angolans and the business connections of cabinet members. This research led to the creation of two databases that provide information about cabinet members and members of parliament that took or currently occupy positions in corporations and law firms.[86]

86 The research of Francisco Louçã, João Teixeira Lopes and Jorge Costa can be consulted at http://www.osburgueses.net/ and Um ecossistema político-empresarial: http://pmcruz.com/eco/

IV. REGULATION OF LOBBYING: TRANSPARENCY, INTEGRITY AND EQUALITY OF ACCESS

In this section, we provide a more detailed assessment of the regulation of lobbying and related activities in Portugal, with a focus on transparency, integrity measures and equality of access to decision-makers. The overall assessment score of just 23% reveals very weak safeguards against undue lobbying in the country.

Towards Transparency



When looking at transparency around lobbying practices, our research sought to answer the following overarching question: to what extent does the public have sufficient knowledge of (a) who is lobbying public representatives; (b) on what issues they are being lobbied; (c) when and how they are being lobbied; (d) how much is being spent in the process; and (e) what is the result of these lobbying efforts? We also sought to investigate whether the onus for transparency is placed on both

lobbyists and public officials/representatives. Our findings offer a rather bleak picture with regard to transparency of lobbying in Portugal. The country scores just 13% when it comes to measures to ensure openness around lobbying and public decision-making.

Public information about lobbying activities is patently insufficient. Most lobbying attempts are conducted in an opaque or even secret manner. The absence of regulations on lobbying also makes it difficult to access information about it and impossible to reach information on how much is spent on its activities. In addition, there is no transparency onus placed on lobbyists. Most information is conveyed by the media or the parliament, if meetings take place in the context of commissions. Transparency regarding the government's decision-making also needs strong improvement. Portugal ranked 81st (among 148 countries) in the "transparency in government policymaking" index component in the Global Competiveness Report by the World Economic Forum.[87]

Public information about lobbying activities is patently insufficient. Most lobbying attempts are conducted in an opaque or even secret manner.

Parliament regulations define the terms of transparency and publicity of its work and activities, as well as the system of accreditation of journalists at the premises. By law, plenary sessions and committee meetings must be public. In the latter case, when the character of classified information, commissions may meet behind closed doors. Hearings and auditions in parliamentary commissions are published online. When interest representatives and other individuals are heard in a parliamentary committee, presentations or documents distributed, video or audio recordings of the meeting and details of the MPs who participated are made public. [88] The same applies for citizens petitions.[89] Individual MPs are not obliged by their Statute to make their meetings public and none of them publishes anything. The President of the Republic publishes his public meetings on the website of the Presidency of the Republic.[90] Members of the national and local executives do not make their agenda publicly available.

Despite constitutional requirements and an established practice, there are no specific rules on public consultation. In practice, each ministry has its own policy. According to an OECD assessment, in Portugal, public consultations tend to take place rather late during the legislative process and with tight deadlines, thus not always allowing stakeholders to make a proper contribution to the decision-making process.[91] This limitation of input from outside is even more frequent among regulatory agencies.[92] The results of the Burson Marsteller survey show that background documents used for the elaboration of laws or policy proposals do not come from stakeholders, but from within the Ministry or the public administration, which makes the study of lobbying at the administrative level crucial. The current government closed individual ministerial websites and concentrated all the

87 World Economic Forum (2014), 2014 Global Competiveness Report. Available at: http://reports.weforum.org/global-competitiveness-report-2014-2015/rankings/#indicatorId=EOSQ049 [consulted on 14 Sep 2014]
88 See, for example, a audition of the Health Commission: http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheAudiencia.aspx?BID=97683
89 See, for example, a petition of the Public Works Commission: http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalhePeticao.aspx?BID=12515
90 http://www.presidencia.pt/?idc=11&fano=2014
91 OEDC (2010), Better Regulation in Europe Portugal
92 Idem

information in a single governmental website. Although this decision was justified in terms of rationalization of costs (avoid high maintenance costs), efficiency (avoid the duplication of information), and transparency (to make governmental information more accessible and intelligible to citizens), in practice, this has allowed the Prime Minister's cabinet to have tighter control on what type of information is channelled through these media outlets. For example, it is no longer possible to consult political and other documents created by former members of the current executive.

Despite the political discourse favouring transparency, there is no form of legislative footprint implemented in Portugal and it is difficult to track decision-making processes.

Despite the political discourse favouring transparency, there is no form of legislative footprint implemented in Portugal and it is difficult to track decision-making processes. A legislative footprint is a document that details the time, person and subject of a legislator's contact with a stakeholder. Published as an annex to legislative reports, it could potentially provide insight into who gave input into draft legislation. In its website, the Government promotes a "Responsible and Transparent State", according to which ministries must reveal the participation of third parties in the legislative process.[93] In practice, government reports or legal diplomas may have an introductory explanation of the context and the aims of the document, but they do not necessarily mention the influence or participation of stakeholders. Even when questioned by the media, ministries do not reveal this information or the motivations behind new legislation.[94]

93 Portugal. Gov: http://www.portugal.gov.pt/pt/os-temas/20140527-estado-responsavel-transparente/20140527-estado-responsavel-transparente.aspx

94 Silva, A.&Crisóstomo, P. (2014), "Governo baixou o IVA da fruta desidratada, cogumelos e especiarias", Público, 5 July 2014. Available at: http://www.publico.pt/economia/noticia/governo-baixou-o-iva-da-fruta-desidratada-1661619 [consulted at 6 July 2014]

CASE STUDY 4

Good Practices: Transparency in Parliamentary Commissions

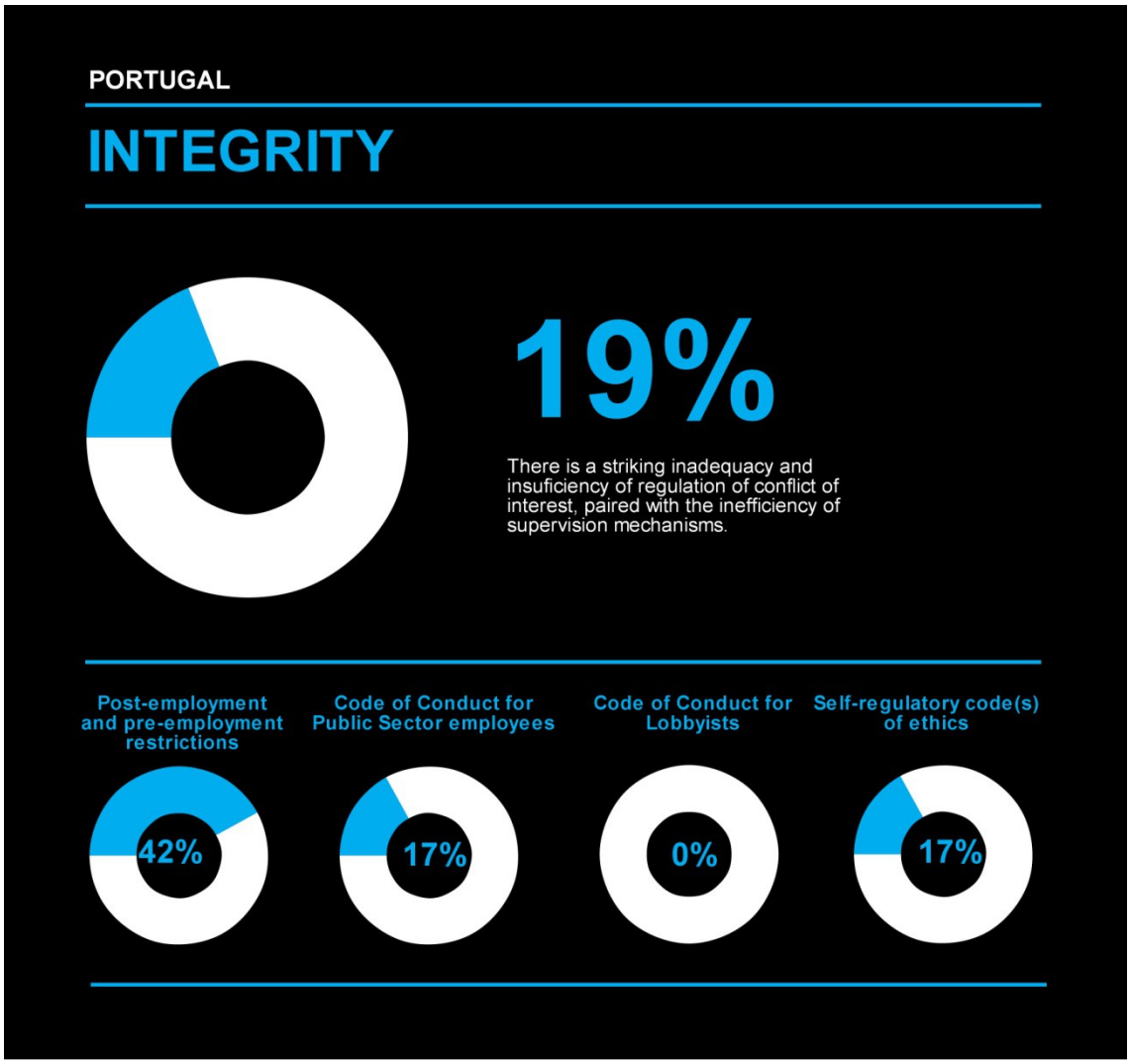
According to parliament's regulation, parliamentary commissions meet with stakeholders, groups of citizens and civil society organizations, either by inviting them (audição) or by request of those groups (audiência). When not concerning classified issues, commission's meetings are public (often are aired on the parliamentary TV Channel) and may be recorded. Journalists have reserved seats in the room. Minutes are made public online.

In practice, rules are respected and information is made public. For every audition, each commission publishes the participants of both sides and relevant documents, namely audition request and information provided by stakeholders, whether business representatives, civil society groups and professional lobbyists.

There is, however, a downside: parliament's website is not very user friendly and at times it is hard to find information.

Similar practices by single MPs and members of cabinet would increase transparency, public information and a better control of lobbying activities and public decision-making.

Fostering Integrity



Our assessment of the broader integrity framework for both lobbyists and public representatives and decision-makers shows major legal deficits and implementation gaps, resulting in a score of only 19%. Integrity mechanisms are scarce and inefficient for public officials and those professional groups that may be considered lobbyists. Lobbying firms are not recognized by law, thus there are no employment restrictions applicable. Integrity onus is placed mostly on public officials.

The most glaring gap in the Portuguese context is that conflicts of interest regulation is wholly insufficient. There are no provisions limiting the membership of MPs in parliamentary commissions related to subjects that they have interests. The inexistence of exclusivity for MPs allows for many potential and real conflicts of interest in parliament and the representation of various economic interests by the MPs within parliament.

Cooling off periods are applicable only to ministers, junior ministers and board members of independent regulatory agencies. Cabinet advisers, members of parliament or civil servants are not

subject to any restrictions. Revolving door situations are barely restricted by law. There are no pre-employment restrictions in the appointment of cabinet members. As a former cabinet member said about his return to a company operating in the sector he regulated: “There may be ethical problems, but not legal”.[95] The Incompatibility Regime to which cabinet members are subject imposes three-years post-employment cooling off periods, but its application is restricted to private companies that have been privatized or have received fiscal benefits while the official was in office. This restriction is not applicable when the official is returning to its pre-government job.[96]

The recent privatization wave provides a good example of concrete results of conflict of interest and revolving doors.
The same financial and legal consultancies worked on different sides, depending on the company being privatized.

The law is silent about corporations that have bid for contracts in public procurement, public companies or with state shares.[97] In practice, it is common for ministers to find corporate positions after their public jobs, due to their networks and “lobbying capabilities”.[98] The recent privatization wave provides a good example of concrete results of conflict of interest and revolving doors. The same financial and legal consultancies worked on different sides, depending on the company being privatized. The processes of REN (energy infrastructure networks) and EDP (energy producer) raised suspicions of insider trading and are currently under investigation.[99]

Cabinet members are not subject to any code of conduct or hospitality restrictions. For civil servants, on the other hand, there are a number of documents regulating their conduct. The Carta Ética da Administração Pública (an Ethical Charter for the Public Administration) sets out ten general principles that aim at dealing with conflict of interest, hospitality and confidentiality, among others. However, the crucial point is that it is non-binding. Both the Constitution and the law regulating the public service imposed exclusivity on civil servants. Nevertheless, it allows for so many exceptions that in practice employees may work in the public and private sectors simultaneously, as long as they have their superior’s permission.

There are no rules regulating gifts and hospitality applicable for public officials. Interviews revealed that companies offer gifts to MPs, namely trips abroad. Regarding the National Health Service, it was common for pharmaceutical companies to offer doctors expensive gifts and sponsor their participation in conferences abroad. Repeated scandals and corruption cases linking doctors and health related companies led to a change in the law.[100] In order to enhance transparency, the pharmaceuticals regulatory agency Infarmed created a platform to publicise companies’ donations to

95 Dinheiro Vivo (2012), Henrique Gomes sobre regresso à REN: "Pode haver problemas éticos, mas não legais", Dinheiro Vivo, 27 April 2012. Available at: http://www.dinheirovivo.pt/Empresas/Artigo/CIECO043751.html [consulted at 16th April 2014]

96 Regime Jurídico de Incompatibilidades e Impedimentos dos Titulares de Cargos Políticos e Altos Cargos Públicos

97 Idem, art. 5º

98 National Integrity System Portugal, Executive Pillar, pp. 8-9

99 Azevedo&Cabrita (2012), As suspeitas do MP na privatização da EDP e REN, Semanário Sol, 28 Out 2012. Available at: http://sol.sapo.pt/inicio/Sociedade/Interior.aspx?content_id=61866 [consulted at 16th April 2014]

100 DN (2014), “80 médicos constituídos arguidos por corrupção”, Diário de Notícias, 11 July 2014. Available at: http://www.dn.pt/inicio/portugal/interior.aspx?content_id=4021730 [consulted on 21st July 2014]

health organizations and professionals. Results showed a discrepancy of 20MEuros between what companies donated (28,6M Euros) and what doctors reported as having received (8,4MEuros). The law stated that donations over 25 Euros must be registered, but in practice professionals are not reporting them.[101]

Following two scandals, issues relating to integrity of the intelligence services made it onto the public agenda. In one case, a former agent left the service to join a media company but kept using his connections to gather information used for the benefit of his employer. It also became known that he was a freemason and had close relationships with senior politicians. A second case relates to two former intelligence officers that left the services to join a Portuguese lobbying firm operating mostly in Brussels.[102] There was no follow-up of this case in the media or the intelligence services. Both cases prompted a debate about the pertinence of compulsory interest declarations and cooling-off period in the intelligence services. All parties in parliament presented proposals for a change of the laws on state secret, in order to accommodate conflict of interest situations. Proposals are now being negotiated.[103] The intelligence services director has shown his disapproval to an interest registry because it may become "invasive".[104]

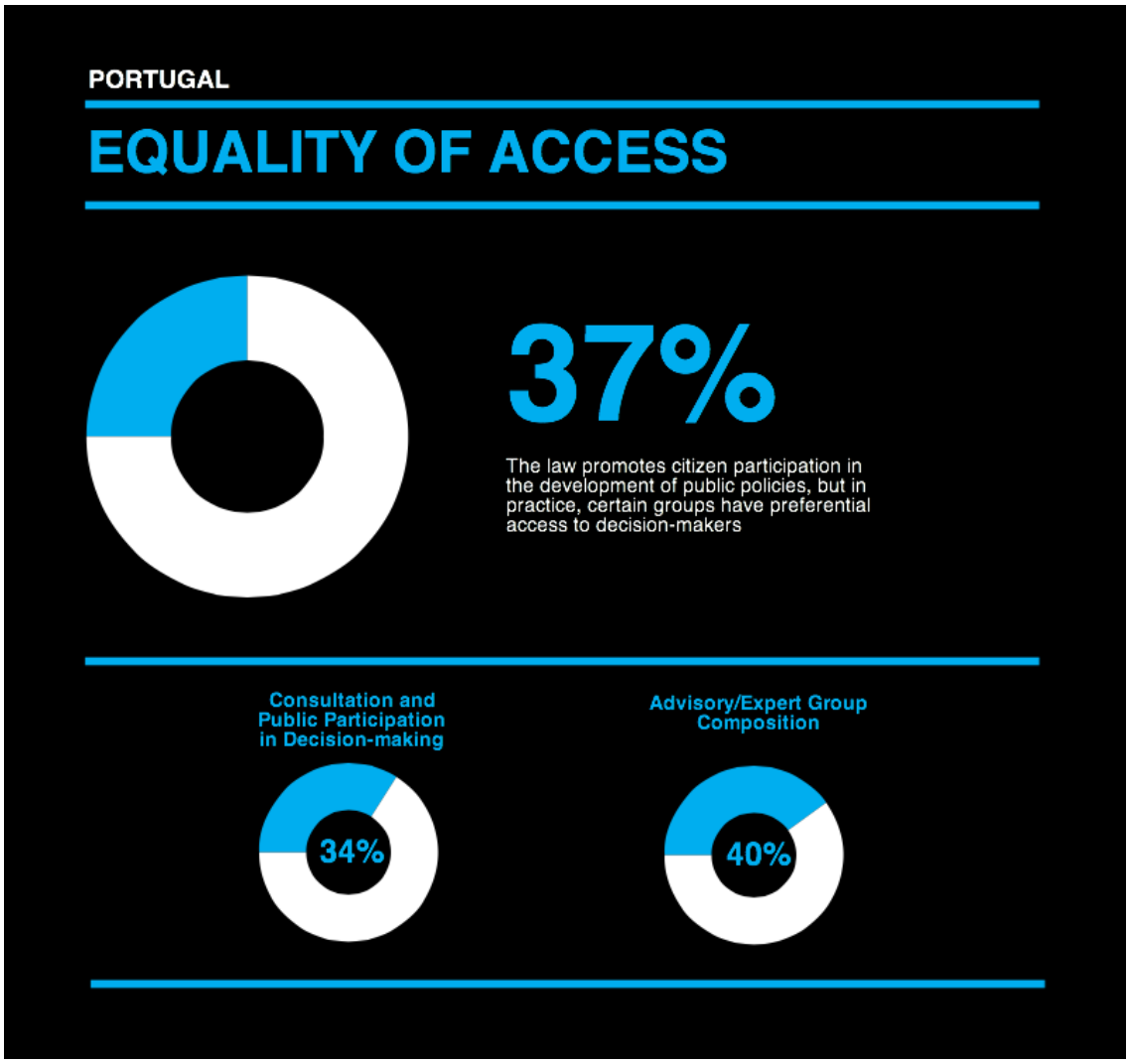
101 IOL (2014), "Farmacêuticas doaram mais de 28 milhões, mas médicos só declararam 8 milhões", IOL, 11 July 2014. Available at: http://www.iol.pt/push/iol-push---sociedade/medicamento-medicamentos-farmaceuticas-medicos-apoios-tvi24/1559567-6182.html [consulted on 21st July 2014]

102 DN (2014), "Empresa de lóbi político contrata antigos espiões", Diário de Notícias, 15 Mar 2014

103 Público (2014), "Parlamento aprova na generalidade projectos sobre segredo de Estado e reforma das secretas", Público, 17 Abr 2014. Available at: http://www.publico.pt/politica/noticia/parlamento-aprova-na-generalidade-projectos-sobre-segredo-de-estado-e-reforma-das-secretas-1632628 [consulted at 9 May 2014]

104 Henriques, JP (2014), "Teresa Leal Coelho pressiona maioria por causa de secretas", Diário de Notícias, 06 Apr 2014

Equality of Access: Levelling the playing field



When regulating lobbying, transparency and integrity measures are crucial but they must be accompanied by rules that allow for equality of access to decision-makers which is essential to fairness and pluralism in the political system. Our research asked whether there are enough spaces in the system to allow for diverse participation and contribution of ideas and evidence by a broad range of interests that lead to policies, laws, and decisions which best serve society and broad democratic interests. The findings are mixed in this regard. While comparatively speaking, Portugal scores better on equality of access (37%) than the dimensions of transparency and integrity, it is still a long way from having sufficient measures in place that would level the playing field when it comes to political influence.

Citizens have several formal rights related to participation in decision-making, which are constitutionally and legal protected in the country. Besides the general right of participation in public and political life (art. 48), the Portuguese Constitution (CRP) widely states stakeholders' consultation and participation in public decision-making. Citizens have the right of petition for the "defence of their rights [...] and the right of being informed of the respective results" (art. 52). Workers have the right to create unions for the "defence of their rights and interests" (art. 55) and these trade unions have the

right to participate in the production of labor laws, to hold a position over economic and social plans and monitor their execution (art. 56, nº2). Consumer's associations have the right to be heard on issues relating to consumers (art. 60). Regarding housing and urban planning, CRP states that stakeholders are entitled to participate in the production of territorial planning instruments (art. 65, nº5). Several civil society associations may participate in the definition of education policies (art. 77). Finally, the participation of representatives of workers and of economic activities is one of the principles of economic and social organization, established by the Portuguese Constitution.

However, the Parliament Statute does not have rules relating specifically to the circulation of lobbyists and their access to parliament. Rules solely distinguish between accredited journalists and visitors.[105] Parliamentary commissions are responsible for analysing public petitions, may require any citizen to attend a commission's meeting and ask for his testimony, request and hire specialists and go on information missions.[106] All documents analysed by commissions, except confidential ones, must be published on the Parliament's website and given access to journalists, including the minutes of the meetings.[107] In addition, parliamentary commissions may suggest the AR President to open legislative initiatives for public discussion.[108] This provision does not, nevertheless, replace the commissions' powers to go through with their own initiatives to promote the participation of stakeholders, namely by hearings and internet publishing.[109]

Despite all the legal provisions, in practice there is not equal access to decision-makers. As explained throughout the report, there are private sector stakeholders with a disproportionate privileged access to power, either because they share the same social and professional networks or because they get frequently involved in services to the state. Interviews suggested that even foreign corporations planning investments in Portugal look for key facilitators that help them maintain good relations with decision-makers and negotiate better investment conditions, namely fiscal benefits. In addition, interviews suggested that business and trade associations have better chances of being received by government decision-makers than NGOs or small companies.

105 Regimento da Assembleia da República, art. 2 and 6. Refer to page 3.
106 Regimento da Assembleia da República, Art. 35, e); Art. 102, nº 2, Art. 103
107 Idem, Art. 103, nº 2 and 3; Art. 107
108 Idem, Art. 140, nº 1
109 Idem, Art. 140, nº 2

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ANNEX I - METHODOLOGY NOTE

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. The report aims to:

- Assess existing lobbying regulations, policies and practices in Portugal
- Compile evidence about corruption risks and incidences related to lack of lobbying control
- Highlight promising practice around lobbying found in Portugal
- Provide recommendations and solutions for decision-makers and interest representatives in the public and private sector

Definitions

The definition of lobbying for this project is "Any direct or indirect communication with public officials, political decision-makers or representatives for the purposes of influencing public decision-making carried out by or on behalf of any organized group."

'Lobbyists' can include not only professional lobbyists, but private sector representatives (in-house lobbyists), public affairs consultancies, representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organizations and academics.

We believe that regulation should capture all who lobby professionally and our definition purposefully excludes individual citizens lobbying on their own behalf as this is considered part of a normal healthy democratic process and not something which should be unduly regulated. A number of case studies are included, which highlight incidences of undue lobbying in the financial and energy sectors, clearly showing there are risks for society at large when lobbying is allowed to take place in the shadows or without any regulation. More positively, we also include some promising practices identified in our research, namely the publishing of information about meetings of parliamentary committees.

Assessing lobbying rules and practice – our approach

Transparency is crucial if there is any chance of public trust in politics being restored. When looking at transparency around lobbying practices, our research sought to answer the following overarching question: to what extent does the public have sufficient knowledge of (a) who is lobbying public representatives (b) on what issues they are being lobbied (c) when and how they are being lobbied (d) how much is being spent in the process (e) what is the result of these lobbying efforts? We also sought to investigate whether the onus for transparency is placed on both the lobbyist and the public official/representative.

We believe that transparency of lobbying must be embedded within a broader public sector integrity framework which mitigates the risks of conflicts of interest when important decisions are being taken. To understand how well-insulated countries are against undue lobbying, our research sought an answer to the following overarching questions about ethical lobbying: Is there a robust ethical framework for lobbyists (and companies) and lobbying targets in the country and to what extent is it working? Is the onus for integrity placed on both lobbyists and public officials/representatives?

Finally, when regulating lobbying, transparency and integrity measures are crucial but they must be accompanied by rules that allow for equality of access to decision makers, which is essential to fairness and pluralism in the political system. Our research asked whether there are enough spaces in the system to allow for diverse participation and contribution of ideas and evidence by a broad range of interests that lead to policies, laws, and decisions which best serve society and broad democratic interests.

Data Collection and Validation

The research was carried out by Susana Coroado, TIAC researcher, during the period from March to July 2014. When conducting the research, the researcher drew on numerous secondary sources such as media, international organizations reports and academic databases.

This secondary data was complemented by primary data obtained from 16 in-depth interviews with policymakers (and former policymakers), lobbyists, journalists and private sector representatives. Interviews were particularly useful for finding out additional information not on the public record, and for gathering evidence on the implementation of regulations and more generally, what is happening in practice. A list of interviewees is included in Annex III of this report.

The research was primarily qualitative however a quantitative element was also included in order to evaluate the robustness and efficacy of national regulations and self-regulation mechanisms around lobbying and to allow for some comparison across countries. To this end, a set of 50 indicators were scored by the researcher, based on the qualitative information gathered through the research.

A 3-point scale was used to score the indicators, with a minimum score of 0 and a maximum score of 2. An overall score (in % form) was then calculated for each of the core dimensions: Transparency, Integrity and Equality of Access. The completed questionnaire and scores are included as an annex to this report (see Annex II).

This report provides a detailed look at the lobbying landscape in Portugal and highlights key gaps in the approach to regulating lobbying. These deficiencies are leaving society exposed to the risks of unclear and unfair decisions being taken by public officials and representatives in the name of the people. Our aim is to bring attention to the issue and promote positive change. To this end, the report puts forward a set of key recommendations and solutions suggesting how the weaknesses identified should be tackled.

ANNEX II - QUESTIONNAIRE

Definitions

1. To what extent does the law clearly and unambiguously define 'lobbyists' to capture all who lobby professionally including professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics?

0 – No definition/Wholly inadequate definition covering a small proportion of lobbyists
Lobbying is not regulated by law and, therefore, there is no definition of "lobbyist"
1 – Partially but inadequately/too narrowly/too broadly defined
2 – The law clearly and unambiguously defines lobbyists to include professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics.

Check all categories covered by law:

Professional lobbyist
Private Sector Representatives
Public affairs consultancies
Representative from NGO
Representative from a for-profit corporation
Representative from industry/professional association
Trade unions
Think tanks
Law firms
Faith-based organisations
Academics
Other, please specify _____

2. To what extent does the law/regulation define 'lobbying targets' in a sufficiently broad manner to include members of national and subnational legislative and executive branches (including advisors) and high level officials in national and subnational public administration, regulatory bodies and private bodies performing public functions?

0 – Lobbying targets are not defined in law/ Wholly inadequate definition covering a small proportion of lobbying targets
Lobbying is not regulated by law, so there are no defined "lobbying targets"
1 – Lobbying targets are inadequately defined in law (including some but not all of the above-mentioned targets)
2 – Lobbying targets are broadly and adequately defined in law to include members of national and subnational legislative and executive branches (including advisors) and high level officials in national and subnational public administration, regulatory bodies and private bodies performing public functions

Check all categories covered by law:

National Legislators
Subnational Legislators
National Executive
Subnational Executives
Executive Advisors
High-level public officials
Regulatory bodies
Private bodies performing public functions
Other, please specify _____

3. To what extent is the term 'lobbying'/'lobbying activities' clearly and unambiguously defined in law/regulation to include any contact (written or oral communication, including electronic communication) with lobbying targets (see above) for the purpose of influencing the formulation,

modification, adoption, or administration of legislation, rules, spending decisions, or any other government program, policy, or position?

0 – No definition/Wholly inadequate definition covering a small proportion of lobbying activity
Lobbying is not regulated by law
1 – Partially but inadequately/too narrowly defined
2 – Definition is clear and unambiguous and is comparable to the following international standard: any contact (written or oral communication, including electronic communication) with lobbying targets for the purpose of influencing the formulation, modification, adoption, or administration of legislation, rules, spending decisions, or any other government program, policy, or position.

Transparency

Access to Information

4. To what extent is there a comprehensive access to information law that guarantees the public's right to information and access to government data?

0 - No law exists
1- Law exists but with inadequacies
There is a Commission (CADA) that regulates the access to information. Citizens can appeal to it, in case of refusal or absence of response to their demands. Despite favouring citizens requests often, CADA's decisions are not binding.
2 – Comprehensive law in place

5. In practice, to what extent do citizens have reasonable access to information on public sector activities and government data?

0 - In practice, citizens face major problems in accessing information and/or frequent violations of the law
1- In practice, access is not always straightforward/citizens often face obstacles to access
The current government centralized different ministries websites in one government website, which made information research harder to find. It is possible that relevant information has been lost in the process. It is common for public bodies to refuse providing information, clamming that it is not publicly relevant or is classified.
2 – In practice, it is easy for citizens to access to information on public sector activities and government data

6. Do access to information laws apply to lobbying data?

0 - No law exists/Law does not apply to lobbying data
Lobbying is not regulated by law, so there are no specific rules concerning lobbying data. The only applicable law would be the Access to Administrative Documents Law (LADA).
1- Some but not all lobbying data accessible under access to information laws
2 – Access to information laws cover lobbying data

Registration and Disclosure by Lobbyists

7. Is there a lobbyist register in the country?

0 - No register exists
Lobbying is not regulated by law. No legal or voluntary register exists.
1- Voluntary register exists/A register for a particular institution exists but does not apply to all lobbying activity
2 – A mandatory register exists

8. Where a register exists, to what extent does it capture all who lobby professionally including professional lobbyists, public affairs consultancies, and representatives from NGOs,

corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics in the country?

0 – Wholly inadequate scope covering only a small proportion of lobbyists
1 – Register captures may of the categories of lobbyists mentioned above but there are still some gaps
2 – The register clearly captures professional lobbyists, public affairs consultancies, and representatives from NGOs, corporations, industry/professional associations, trade unions, think tanks, law firms, faith-based organisations and academics.

Check all categories covered by register:

Professional lobbyist
Private Sector Representatives
Public affairs consultancies
Representative from NGO
Representative from a for-profit corporation
Representative from industry/professional association
Trade unions
Think tanks
Law firms
Faith-based organisations
Academics
Other, please specify _____

9. To what extent are lobbyists required to register in a timely (within 10 days of beginning of lobbying activity) manner?

0 - No compulsory registration
1 - Lobbyists required to register, but with significant time lag (more than 10 days)
2 – Lobbyists required to register within 10 days of beginning lobbying activity

10. To what extent are lobbyists required to report regularly on their lobbying activities and expenditures in a timely manner (max real-time - min quarterly)?

0 – No requirement to report/Reporting less often than annually
No requirements to report.
1 – Reporting requirement less often than quarterly but more often than annually
2 - Realtime - Quarterly reporting required

11. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant personal and employment information: name of the organization (if applicable); address and contact information; names of all active lobbyists working on behalf of the organization (if applicable)?

0 - No information required to be publicly disclosed by lobbyists
1 - Only basic information required to be publicly disclosed
2 - Sufficient information required to be publicly disclosed

Check all categories covered by law:

Name (of individual or organisation)
Address and contact details
Names of all active lobbyists working on behalf of organisation
Other

12. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant information on lobbying objectives and clients: name of the persons or organizations paying for the lobbying activities; names of the lobbyists' clients; specific subject matter lobbied?

0 - No information required to be publicly disclosed by lobbyists
Lobbying is not regulated by law, therefore no obligation exists. Law firms and individual barristers are not required to disclosure information about their clients. The lobbyists interviewed also referred to confidentiality clauses relating to their clients.

1 - Only basic information required to be publicly disclosed
2 - Sufficient information required to be publicly disclosed

Check all categories covered by law:

Name of the persons or organizations paying for the lobbying activities
Names of the lobbyists' clients
Specific subject matter lobbied
Specific legislative proposals, bills, regulations, policies, programmes, grants, contributions or contracts sought

13. To what extent are lobbyists and organizations that lobby required to publicly disclose relevant information on who they are lobbying and what they are advocating: name and title of the public representative or public body with whom the lobbyist engaged and the date and type of such engagement as well as any information and/or supporting documentation communicated to policymakers?

0 – No requirement to report
(seen above)
1 – Only basic information required to be publicly disclosed
2 - Sufficient information required to be publicly disclosed

Check all categories covered by law:

The name of the public representative or public body with whom the lobbyist engaged
Date of engagement
Type of engagement (personal visit, accepted invitation to event, official hearing)
Supporting documentation communicated to policymakers

14. To what extent are lobbyists and organizations that lobby required to publicly disclose lobbying expenditures, including spending on efforts to support lobbying, loans, sponsorships, retainers, or the purchase of tickets for fundraising events?

0 - No information on expenditures required to be publicly disclosed by lobbyists
1 - Only basic information on expenditures required to be publicly disclosed
2 - Sufficient information on expenditures required to be publicly disclosed

15. To what extent are lobbyists and organizations that lobby required to publicly disclose political donations to parties and candidates?

0 - No requirement for public disclosure of political donations
Political donations from other than clearly identifiable individuals are forbidden by law.
1 - Insufficient requirements for public disclosure of political donations
2 - Sufficient information on political donations required to be publicly disclosed

16. To what extent are lobbyists required to publicly disclose 'in kind' contributions: In-kind contributions may include advertising, use of facilities, design and printing, donation of equipment, or the provision of board membership, employment or consultancy work for elected politicians or candidates for office?

0 - No information on 'in-kind' contributions required to be publicly disclosed by lobbyists (see above)
1 - Insufficient information on 'in-kind' contributions required to be publicly disclosed by lobbyists
2 - Sufficient information on 'in-kind' contributions required to be publicly disclosed

17. Is information disclosed by lobbyists publicly available online in a searchable machine-readable open-data format?

0 - Information not available online
1 - Information available online but not in a searchable machine-readable open-data format (eg. Hand-written and scanned documents used)

2 - Information publicly available online in a searchable machine-readable open-data format

18. To what extent do the lobbyists register and provide sufficient/timely information in line with legislative obligations?

0 - Little or no compliance with legal obligations
1 - Some lobbyists comply but there are many cases of non-compliance
2 - Broad compliance with legal obligations

Oversight, Verification and Sanctions

19. To what extent is there an independent, mandated and well-resourced oversight entity charged with managing registration of lobbyists, offering guidance to individuals and organisations, monitoring returns, and investigating apparent breaches or anomalies (this includes powers to investigate complaints made but also to instigate investigations even where no complaint has been lodged)?

0 - No oversight entity exists
1 - Oversight agency exists but it is under-resourced and/or insufficiently mandated to provide meaningful oversight
2 - A fully mandated and resourced oversight entity is in place

20. To what extent is there a pro-active verification mechanism to audit disclosures and reports and detect anomalies?

0 - No verification mechanism exists
1 - Verification exists but is inadequate
2 - Adequate verification mechanism exists

21. In practice, to what extent are anomalies detected and followed up on by the oversight body?

0 - Little or no detection of anomalies
1 - In general, the oversight body is somewhat active in following up on anomalies detected
2 - In general, the oversight body is active in following up on anomalies detected

22. In practice, to what extent are anomalies detected and reported by others (e.g. investigative journalists) followed up on by the oversight body?

0 -Little or no detection of anomalies
1 - In general, the oversight body is somewhat active in following up on anomalies detected and reported by others
2 - In general, the oversight body is active in following up on anomalies detected and reported by others

23. To what extent does the law provide for penalties for knowingly filing a false lobbying registration return or failure to file a return?

0 - No penalties exists
1 - Penalties exist but they are inadequate
2 - Adequate penalties exist in law

24. To what extent are penalties for knowingly filing a false return or failure to file a lobbying registration return implemented in practice?

0 - Never
1 - Sometimes
2 - Always

25. To what extent are oversight bodies required to publicly disclose the names of all individuals or organizations found to have violated lobbying rules or regulations?

0 - No requirement to publicly disclose names of those who violate rules

1 - Disclosure of names of those who violate rules is at the discretion of the oversight body
2 - Mandatory disclosure of names of those who violate rules and details of the violation

26. To what extent are the names of all individuals or organizations found to have violated lobbying rules or regulations published in practice?

0 - Never
1 - Sometimes
2 - Always

Legislative Footprint

27. To what extent does the law require the publication of a 'Legislative Footprint' (document that details the time, event, person, and subject of legislators' and senior public officials' contact with a stakeholder) as an annex to all legislative records?

0 - No legislative footprint foreseen in law
1 - Piecemeal requirements to indicate who has sought to influence legislative or policy making processes in place
2 - The law requires publication of a legislative footprint as an annex to all legislative records

28. In practice, do legislators/public officials publish a legislative footprint including details of the time, person, and subject of contacts with stakeholders?

0 - No information on contacts publicly disclosed by legislators/public officials
1 - Some but insufficient information on contacts publicly disclosed by legislators/public officials
2 - Sufficient details of legislators' contact with stakeholders published

29. To what extent are senior public officials required to pro-actively publish documentation related to meetings: calendars, agendas, documentation received from lobbyists etc?

0 - No requirement to make documentation related to meetings public
1 - Piecemeal requirements to make documentation related to meetings public
2 - The law requires publication of comprehensive documentation related to meetings: calendars, agendas, documentation received from lobbyists

30. To what extent are public representatives (national and subnational legislators) required to pro-actively publish documentation related to meetings: calendars, agendas, documentation received from lobbyists etc?

0 - No requirement to make documentation related to meetings public
1 - Piecemeal requirements to make documentation related to meetings public
2 - The law requires publication of comprehensive documentation related to meetings: calendars, agendas, documentation received from lobbyists

Integrity

Post-employment and Pre-employment Restrictions

31. To what extent does the law provide proportionate moratoria or 'cooling off periods' before former members of parliament, senior public servants, ministers and advisers can work as lobbyists?

0 - No cooling off period in place
1 - Less than 2 year cooling off period in place
2 - Cooling off period of at least 2 years in place : only apply to ministers and not specifically for lobbyists. It has many exceptions.

32. To what extent do 'cooling off periods' for those who wish to work as lobbyists apply to former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers?

0 - No cooling off period in place
1 - Cooling off period is in place but does not apply to all categories above. The new framework law on regulatory agencies has tighten cooling off periods for members of the board, after demands on the Memorandum of Understanding between the Portuguese government and the Troika.
2 - Cooling off period applies to all categories above

Tick categories covered:

Former members of parliament (national)
Former members of parliament (sub-national)
Former members of national Executive
Former members of subnational Executives
Advisors
Senior Public Servants
Senior staff of regulatory bodies
Other

33. In practice to what extent do former members of parliament, senior public servants, members of the executive and advisers move easily and directly into the lobbying sector?

0 - There have been a significant number of cases of former members of parliament, senior public servants, ministers, ministerial advisers moving directly into the lobbying sector
1 - There have been a number of cases of former members of parliament, senior public servants, ministers, ministerial advisers to moving directly into the lobbying sector. As stated in the narrative, there has been cases of former intelligence services that have moved to the lobbying sector.
2 - Former members of parliament, senior public servants, ministers, ministerial advisers rarely move directly into the lobbying sector, usually respecting a cooling off period

34. To what extent does the law require former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers to receive permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer?

0 - No permission required
Despite the existence of some post-employment restrictions, decision-makers are not obliged by law to ask for any permission.
1 - Insufficient Restrictions (Insufficient coverage)
2 - Permission required and applies to all above-mentioned categories

35. In practice, to what extent do former members of parliament (national and subnational levels), senior public servants (including in regulatory bodies), members of executive (national and subnational levels) and advisers seek permission from a designated ethics office/agency before taking up an appointment in the private sector where they could lobby their previous employer?

0 - Never
1 - Sometimes
2 - Always

36. To what extent is there an independent, mandated and well-resourced oversight entity charged with managing post and pre-employment restrictions, offering guidance to individuals and organisations, and investigating apparent breaches or anomalies?

0 - No oversight entity exists
1 - Oversight agency exists but it is under-resourced and/or insufficiently mandated to provide meaningful oversight. The parliamentary ethics commission is the sole entity that has the mandate to oversight incompatibilities. However, not only is not fully independent, as it is formed by MP, it does not have the necessary means to act. Its mandate is also very limited.
2 - A fully mandated and well-resourced oversight entity is in place

Codes of Ethics for public sector employees

37. To what extent is ethical/responsible lobbying addressed in public sector codes of conduct (e.g. do they specify standards on how public officials should conduct their communication with interest groups, specify a duty of documentation of contacts, duty to report unregistered or unlawful lobbying to superiors?)

0 - No code of conduct exists for public officials and/or codes of conduct do not reflect ethical lobbying guidelines
Codes of Conduct for public officials exist, but they are restricted to vague and general principles. There are no lobbying guidelines.
1 - Codes of conduct address ethical lobbying in a piecemeal or insufficient manner
2 - Codes of conduct comprehensively address ethical lobbying

38. To what extent do public sector codes of conduct specify standards on how public officials should deal with conflicts of interest issues?

0 - No code of conduct exists for public officials and/or codes of conduct do not adequately reflect conflict of interest issues
1 - Codes of conduct address conflict of interest issues in a piecemeal or insufficient manner. Senior public officials are covered by the same incompatibility legal regime as politicians. There is no legal regime applicable to all other civil servants.
2 - Codes of conduct comprehensively address conflict of interest issues

39. To what extent do public sector codes of conduct specify standards on how public officials should deal with gifts and hospitality issues?

0 - No code of conduct exists for public officials and/or codes of conduct do not adequately reflect gifts and hospitality issues
1 - Codes of conduct address reflect gifts and hospitality issues in a piecemeal or insufficient manner. The issue is only regulated by an Ethics Charter, which forbids public officials from receiving or asking for any offers/gifts.
2 - Codes of conduct comprehensively address reflect gifts and hospitality issues

40. To what extent do public sector codes of conduct deal comprehensively with interest and asset declaration issues?

0 - No code of conduct exists for public officials and/or codes of conduct do not adequately reflect asset declaration issues. Regarding senior officials, in practice there is no control over assets declarations or conflict of interest. There is solely a control over the deliverance of declarations and their accordance to formal rules.
1 - Codes of conduct address asset declaration issues in a piecemeal or insufficient manner
2 - Codes of conduct comprehensively address asset declaration issues

41. To what extent is there a complaint mechanism allowing any public official or citizen to report violations of the public sector code of conduct?

0 - No complaints mechanism exists. Public Officials or citizens in general may inform senior officials or police authorities. There is not a specific complaints mechanism.
1 - Complaints mechanism exists but is limited in scope
2 - Robust complaints mechanism exists

42. To what extent are there training and awareness-raising programmes for public officials on integrity issues, including lobbying rules and guidelines?

0 - No training/awareness-raising programmes exist on integrity issues
1 - Piecemeal and irregular approach to training/awareness-raising on integrity issues
2 - Comprehensive and regular training/awareness-raising on integrity issues

Codes of Ethics for Lobbyists

43. To what extent is there a statutory code of conduct for lobbyists including clear sanctions for failure to adhere to lobbying regulations?

0 - No code of conduct exists
1 - Code of conduct exists but it is inadequate
2 - Statutory code of conduct including sanctions exists

44. In practice, to what extent are sanctions applied for failure to adhere to lobbying regulations?

0 - Sanctions rarely/never applied
1 - Sanctions applied, but inconsistently
2 - Sanctions consistently applied

45. To what extent does the law and/or the lobbyists' code of conduct require disclosure regarding and provide restrictions on lobbyists being hired to fill a regulatory, financial decision-making or advisory post in government?

0 - No disclosure requirements or restrictions in place
1 - Insufficient Restrictions and disclosure requirements (e.g. lobbyist must deregister but no further restrictions)
2 - Sufficient disclosure requirements and restrictions in place (e.g. potential veto of appointment and/or restriction in types of decisions the employee would be involved in making)

46. To what extent does the law and/or codes of conduct prohibit simultaneous employment as a lobbyist and a public official?

0 - No mention of prohibition of simultaneous employment as a lobbyist and a public official
1 - Law/Code of conduct discourages but does not explicitly prohibit simultaneous employment as a lobbyist and a public official
2 - Law/Code of conduct explicitly prohibits simultaneous employment as a lobbyist and a public official

47. To what extent is there a complaint mechanism allowing any policy-maker or citizen to report violations of the lobbying regulations?

0 - No complaints mechanism exists
1 - Complaints mechanism exists but is limited in scope
2 - Comprehensive complaints mechanism exists

Self-regulatory Codes of Ethics for Lobbyists

48. To what extent are there self-regulatory code(s) of ethics managed by professional association(s) for lobbyists or by companies themselves?

0 - No code of ethics exists
1 - Code of ethics exists but it is inadequate. The identified lobbyists informed they follow the European code of conduct.
2 - Code of ethics including sanctions exists

49. To what extent do existing self-regulatory codes of ethics for lobbyists include specific behavioural principles that steer lobbyists away from unethical situations?

0 - Codes do not provide any behavioural principles that steer lobbyists away from unethical situations
1 - Codes mention behavioural principles but are vague and/or incomplete
2 - Codes of ethics for lobbyists include specific behavioural principles that steer lobbyists away from unethical situations

Check all categories covered by codes:

Requiring honesty and accuracy of information provided to public officials
Requiring early disclosure to public officials of the identity of client and interests being represented
Refraining from using information obtained in violation of the law
Refraining from encouraging public officials to violate the law
Banning gifts above a de minimis value, fees, employment or any other compensation from a lobbyist to a public official.
Requiring speedy disclosure of any conflict of interest and management of such conflicts of interest or recusal
Making ethics training a condition of membership in the association.
Establishing a reasonably independent mechanism for monitoring and enforcing compliance to the ethics code.
Others, please specify _____

50. To what extent do existing self-regulatory codes require lobbyists to publicly disclose the identity of who they are representing and what they are lobbying for?

0 - No information required to be publicly disclosed by lobbyists
1 - Only basic information required to be publicly disclosed and/or the information is not public
2 - Sufficient information required to be publicly disclosed (name of the persons or organizations paying for the lobbying activities; names of the lobbyists' clients; specific subject matter lobbied)

51. To what extent do existing self-regulatory codes prohibit simultaneous employment as a lobbyist and a public official?

0 - No mention of prohibition of simultaneous employment as a lobbyist and a public official
1 - Code of conduct discourages but does not explicitly prohibit simultaneous employment as a lobbyist and a public official
2 - Code of conduct explicitly prohibits simultaneous employment as a lobbyist and a public official

52. To what extent is there a complaint mechanism allowing any member or non-member of the association to report violations of the lobbying code of ethics?

0 - No complaints mechanism exists
1 - Complaints mechanism exists but is limited in scope
2 - Robust complaints mechanism exists

53. To what extent are there reasonably independent mechanisms for the monitoring and enforcement of compliance with the ethics code(s)?

0 - No monitoring and enforcement mechanisms exists
1 – The monitoring mechanism exists but is not independent, or is limited in scope
2 – A robust and reasonably independent monitoring and enforcement mechanism exists

Equality of Access - The Level Playing Field

Consultation and Public Participation in Decision-making

54. To what extent is the Parliament required by law to allow citizens and the public (corporations and civic organizations) to provide equal input to members regarding items under consideration, with sufficient notice and time incorporated in the legislative process to receive this input?

0 - The legal framework does not consider the provision of input to the legislative process.
1 - The legal framework allows for citizens and the public (corporations, civic organizations) to provide input to parliament, but it does not make any provisions regarding equal access, sufficient

notice and time to receive this input. The law demands equal access, but it does not oblige civil society to be heard during the legislative process.
2 - Parliament is required by law to allow the citizens and the public (corporations and civic organizations) to provide equal input to members regarding items under consideration, with sufficient notice and time incorporated in the legislative process to receive this input.

55. To what extent does the legal framework lay out in a law or a group of laws the varied means for public participation in the formulation, implementation, and evaluation of policies, including timeframes and specific mechanisms to disseminate public meeting information, attendance and participation rules, instruments and tools to submit comments and opinion on specific policies?

0 - There are no procedures and rules for participation in policy discussions and decision making processes, or they are ad hoc to each policy and decision making process.
1 - There are some provisions for making public the means of participation in policy, but they are not specific, or they are relegated to policy directives. Law allows and even stimulates civic participation through various means, but it does not regulated in a very specific way.
2 - Yes, there is a specific regulatory framework that clearly lays out in a law or a group of laws the varied means for public participation in the formulation, implementation, and evaluation of policies, including timeframes and specific mechanisms to disseminate public meeting information, attendance and participation rules, instruments and tools to submit comments and opinion on specific policies.

56. To what extent does the legal framework explicitly require public authorities to ensure equal participation by all affected groups and stakeholders in decision-making processes?

0- There are no provisions regarding the consultation of groups and stakeholders affected by policy.
1- Some provisions regarding the equal participation of affected groups exist, but they are not specific, or they are relegated to policy directives. See 54
2- The legal framework explicitly requires public authorities to ensure equal participation by all affected groups and stakeholders in decision-making processes.

57. In practice, which of the following forms of public participation are routinely used?

Informal consultation with selected groups
Broad circulation of proposals for comment
Public notice and calling for comment
Public meeting
Posting proposals online
Advisory/Expert Groups
Preparatory Public Commission/committee
Others, please specify_____

58. In practice, to what extent are consultations open to participation from any member of the public?

0 - Consultations are rarely/never open to any member of the public
1 - Consultations are sometimes but not always open to any member of the public. Parliamentary commissions seem very open to participation, but not to such the executive.
2 - Consultations are generally open to any member of the public

59. In practice, to what extent are the views of participants in the consultation process made public?

0 - The views of participants in the consultation process are rarely/never made public. In parliamentary commissions, auditions are made public and some documents are publish online. However, the law does not make participants views public.
1 - The views of participants in the consultation process are sometimes but not always made public
2 - The views of participants in the consultation process are always made public

60. To what extent does the legal framework explicitly require public authorities to provide a detailed justification on why and how various submissions have or have not been taken into account in policy and decision-making processes after consultation?

0 - There are no provisions requiring public authorities to explain whether and how they have considered participation, or there is no participation provided for.
1 - There are some provisions requiring public authorities to explain whether and how they have considered submissions, but they are not specific, or they are relegated to policy directives.
2 - The law explicitly requires public authorities to provide a detailed justification on why and how submissions have or have not been taken into account in policy and decision-making processes after consultation.

Advisory/Expert Group Composition

61. To what extent is there a legal obligation to have a balanced composition (between private sector and civil society representatives) of advisory/expert groups?

0 - No requirement to have balanced composition
2 - The law requires meaningful balanced composition between private sector and civil society representatives

62. In practice, to what extent is there a balanced composition (between private sector and civil society representatives) of advisory/expert groups?

0 - Advisory groups are generally biased towards particular interests
1 - Advisory groups are sometimes balanced, sometimes not. As mentioned in the narrative, sometimes advisory groups are composed of many interested parts.
2 - There is a meaningful balance between private sector and civil society representatives on advisory groups

63. To what extent are lobbyists prohibited from sitting on advisory/expert groups in a personal capacity?

0 - Lobbyists can freely sit on advisory groups in a personal capacity
Lobbyists are not legally recognised professionals. There are also no rules on conflict of interest applicable to advisory groups.
2 - Lobbyists are prohibited from sitting on advisory/expert groups in a personal capacity

64. To what extent are corporate executives prohibited from sitting on advisory groups in a personal capacity?

0 - Corporate executives can freely sit on advisory groups in a personal capacity
There are no rules on this issue. In practice, there are examples of various corporate executives sitting on advisory groups and barristers of law firms that serve both private and public clients and that, simultaneously, sit on the executive and advisory boards of public and private companies.
2 - Corporate executives are prohibited from sitting on advisory/expert groups in a personal capacity

65. With regard to advisory/expert groups, to what extent is membership information, agendas, minutes and participants' submissions required to be made public?

0 - Information not publicly available
1 - Information available, but only on request
2 - Information publicly available online or in print form

ANNEX III - INTERVIEWS

Alberto Martins, Member of Parliament and Chief of Parliamentary Group, PS

Ana Gomes, Member of the European Parliament, PS

Henrique Burnay, Lobbyist and Partner at EUpportunity (by email)

Henrique Neto, businessman and member of PS

João Cravinho, former Minister of Public Works and Infrastructure, PS

Joaquim Martins Lampreia, Lobbyist and Partner at Omniconsul

Jorge Silveira Nunes, Senior Consultant at Political Intelligence (by email)

José António Cerejo, Journalist

José Magalhães, Member of Parliament, PS

José Mendes Bota, Member of Parliament and President of the Ethics Parliamentary Committee, PSD

Maria Antónia de Almeida Santos, Member of Parliament and President of the Health Parliamentary Committee

Nuno Godinho Lopes, Barrister and Vice-President of the Portuguese Bar Association

Pedro Cruz, Executive Director of Plataforma ONGD Portugal

Pedro M. Rodrigues, Secretary-General of Lisbon Chamber of Commerce

Pedro Mota Soares, Member of Parliament and Chief of Parliamentary Group, BE

Rui Paulo Figueiredo, Member of Parliament, PS

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