vigeo rating

SUSTAINABILITY FOCUS

OCTOBER 2015

TRANSPARENCY AND INTEGRITY OF LOBBYING: AN UPDATE ON THE EMERGING CSR CHALLENGE

KEY TAKEAWAYS

- The majority (75%) of companies display weak performances regarding responsible lobbying.

- The level of maturity regarding transparency in lobbying expenditures appears to be slighting higher in North America, where most companies must abide by regulatory requirements.

- The introduction of the Transparency Register by the European Commission in 2011 has led to the progressive adoption of formal commitments to ensure responsible lobbying among European companies.

- Investors have been one of the strongest voices calling on companies to improve transparency and integrity in lobbying practices.

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INTRODUCTION

Stakeholders have been rallying behind the idea of responsible lobbying in recent years. Light is being shed on numerous gaps in regulation and deficiencies in application. Vigeo's analysis at company-level supports the same pattern: too few companies are actively reporting on transparency and integrity in their lobbying practices. This phenomenon is arguably one of the biggest factors pushing down citizen's perceived trust in government and trust in business throughout the world, which has been stagnating at low levels over the past few years[1].

However, that is not to say that progress has not been made. Several countries have tightened lobbying regulations over the past few years, including Ireland, Canada, the UK, France, and Austria. As the topic becomes more and more engrained into stakeholder dialogue and national policy, Vigeo has seen slight improvements in company performance. The results included in this report capture the regulatory evolution surrounding lobbying, rising stakeholder dialogue, and the subsequent response on behalf of companies.

1 "2015 Edelman Trust Barometer Global Results"- Edelman - 2015

STAKEHOLDER ACTION

Three important trends have been observed among stakeholders: 1) Investors are demanding increased transparency from companies on political activities, 2) Lobbying regulation has been increasing on a global scale, and 3) International organisations have become increasingly active on the topic.

In 2014 and 2015, requests for corporate lobbying disclosure were among the most re-occurring shareholder resolutions submitted at annual meetings in the United States[2]. Most called for lobbying expenditures to be made public, including a clear breakdown of indirect expenditures. Shareholders are interested in the disclosure of lobbying expenses in order to be able to evaluate a company's strategic goals and objectives, and ultimately shareholder value. Furthermore, lobbying regulation has been progressively increasing worldwide. As of year-end 2014, 41% of OECD countries had some type of lobbying regulation in place, with the majority adopting regulation within the past five years. The final notable trend observed by Vigeo is the reactivity of international organisations on the issue. Several reports have been written within the past few years from organisations such as the OECD, Transparency International, and Alter-EU. These groups have been persistently calling and both governments and companies to improve transparency and integrity in lobbying practices.

COMPANY PERFORMANCE

Vigeo analyses two key concepts that support responsible lobbying: 1) transparency of lobbying activities, and 2) integrity of lobbying activities. Vigeo's framework was designed in 2010, with its roots aligned with work done by international organisations active on the topic. In particular, Vigeo's framework draws from the OECD through its 10 Principles for Transparency and Integrity in Lobbying, the International Corporate Governance Network through its Statement and Guidance on Political Lobbying and Donations, and the European Union through its Code of Conduct for Interest Representatives. In addition, Accountability and the United Nations Global Compact published guidelines for organisations in its report "Towards Responsible Lobbying: Leadership and public policy", which have been taken into consideration. Vigeo also worked along side Transparency International France in the development of this framework.

2 Proxy Preview 2014 - As You Sow & Sustainable Investment Institute (SI2)

In Vigeo's rating model, responsible lobbying practices are translated into the following principles of action:

1. Assure that lobbying policies and activities are neither undermining nor in contrast with internationally recognised principles of Corporate Social Responsibilities (public international conventions such as those set by the UN, ILO, OECD) and with those set by the company itself.

2. Assure transparency on:

- The company's activities associated with public authorities: whether in-house or by reaching out to specialists organisations (think-tanks, lobbyists, trade associations);

- The intent of the company's lobbying activity, when making a representation to public officials;

- The company's lobbying expenditures;

- The positions communicated to public authorities, in the period of preparation for a debate and during the time of the debate.

3. Assure personal integrity and professional competence when performing lobbying activities.

4. Assure accuracy of information reliability of data provided to public officials, including the means of obtaining information.

The data analysed for this report is based on the performance of 1,518 companies (732 in Europe, 634 in North America, 152 in Asia Pacific), which has been collected between April 2013 and May 2015. It is compared to Vigeo's most recent study on lobbying activities released in 2013, which includes data on 745 companies (424 in Europe and 321 in North America), which was collected between March 2011 and December 2012.

In 2015, across all companies, the global score regarding transparency and integrity in lobbying stood at 23/100, which is considered a weak performance. Similarly, the average scores for all regions are considered weak by Vigeo.

Zone	Performance 2015	Performance 2013
Europe	21/100	19.5/100
North America	27/100	25/100
Asia Pacific	15/100	N.A.
Global	23/100	N.A.

The Top 10

The top 10 performers demonstrate that several companies have responded favourably to stakeholder requests for increasing transparency and integrity in lobbying. In addition, the list has demonstrated considerable improvement over the past review. In 2013, scores of the top 10 companies ranged from 44/100 to 59/100, compared to 54/100 to 67/100 in 2015. This evolution marks clear progress on behalf of the leading companies, regardless of the relatively small improvements seen in the overall average of all companies.

Rank	Company	Sector	Country	Perfor-mance
1	E.ON SE	Electric & Gas Utilities	Germany	73/100
2	Air Products & Chemicals Inc.	Chemicals	United States	67/100
3	Praxair Inc.	Chemicals	United States	62/100
4	Cenovus Energy Inc.	Energy	Canada	61/100
4	European Investment Bank	Development Banks	Luxembourg	61/100
4	Exelon Corp.	Electric & Gas Utilities	United States	61/100
4	Suez Environnement	Waste & Water Utilities	France	61/100
4	Williams Cos.	Oil Equipment & Services	United States	61/100
4	Wisconsin Energy Corp.	Electric & Gas Utilities	United States	61/100
5	BASF	Chemicals	Germany	60/100
5	Kinross Gold Corp.	Mining & Metals	Canada	60/100
6	Qualcomm Inc.	Technology-Hardware	United States	59/100
7	SAB AB	Mining & Metals	Sweden	58/100
7	Xcel Energy Inc.	Electric & Gas Utilities	United States	58/100
8	BNP Paribas	Banks	France	56/100
8	Endesa	Electric & Gas Utilities	Spain	56/100
9	European Bank for Recon-struction and Development	Development Banks	United Kingdom	55/100
9	International Bank for Re-construction and Develop-ment	Development Banks	United States	55/100
10	Danone	Food	France	54/100
10	Deutsche Post	Transport & Logistics	Germany	54/100
10	Société Générale	Banks	France	54/100
10	Verbund AG	Electric & Gas Utilities	Austria	54/100

Involvement of stakeholders:

AXA, BNP Paribas, Credit Agricole, GSK France, L'Oreal, La Poste, Lafarge, Roche France, and Société Générale signed a declaration for transparent and ethical lobbying in conjunction with Transparency International France. The declaration has been signed by a total of 14 French organisations as of May 2015.

Williams Cos. Adopted the Model Code of Conduct for Corporate Political Spending developed by the Center for Political Accountability, a non-profit organisation that promotes responsible lobbying among companies in the US. This code implies that the Board of Directors has the responsibility to monitor and supervise corporate political spending.

Involvement of employees:

Air Products & Chemicals provides training for their staff on compliance with the Federal Lobbying Disclosure Act in the US. In addition, employees who are by nature exposed to conflicts of interest, requests for political contributions, or improper payment solicitations must complete an Integrity and Ethics certification on a biennial basis.

Transparency on lobbying expenses:

E.ON SE reports transparently on its lobbying activities. In the EU Transparency Register, E.ON SE provides its approximate lobbying budget, topics covered, internal lobbyists details, and the amount of funding received through EU institution grants. In addition, on its website, the Company transparently describes its trade union memberships and the lobbying activities carried out by these groups.

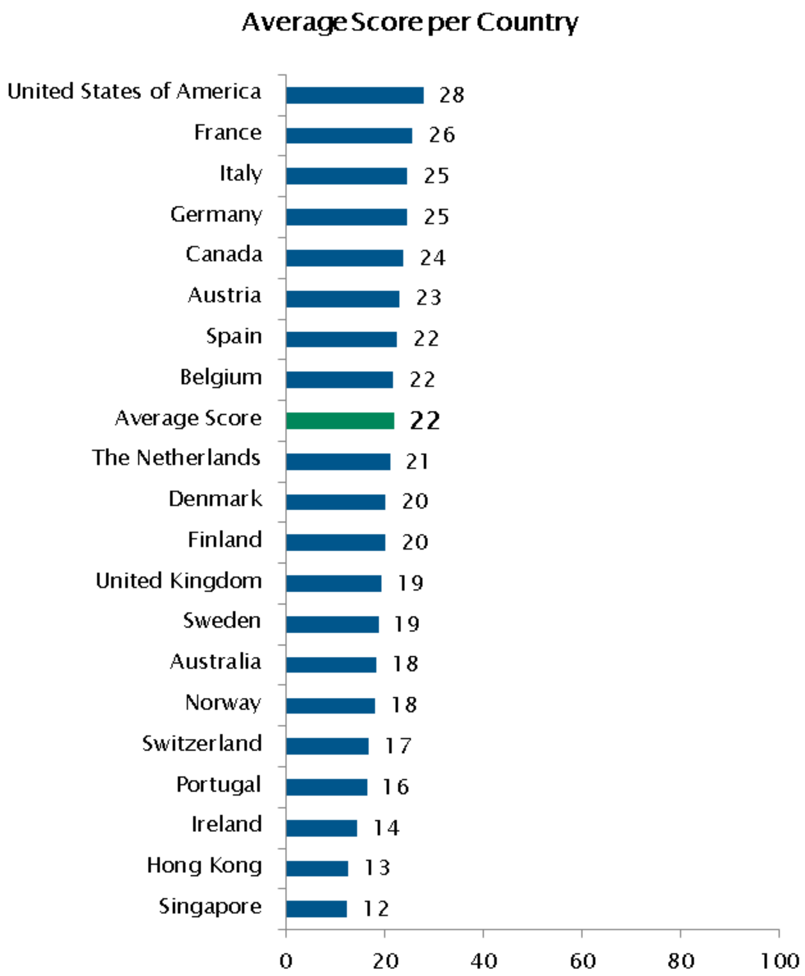
Wisconsin Energy reports its lobbying activities annually in its Corporate Responsibility Report. The Company includes direct expenses at both state and federal level, as well as the portion of its trade union membership dues used for political purposes. The report also contains an in-depth description of subjects lobbied in addition to the Company's positions.

Lobbying Performance at Country Level

The scores broken down per country are rather homogeneous, with all countries receiving a weak score. Lobbying regulation among most countries is still forming, and a global consensus on how to approach the topic has not been adopted. Several studies have compared and contrasted self-regulation versus government-regulation approaches, though there is no clear trend explaining the effectiveness of either[3]. Vigeo's results support the same conclusion, with no countries standing out as a leader.

The relative best performance is seen in the **United States** (28/100), due to the comparatively more complex legal atmosphere. The US was the first country to regulate lobbying, and continues to have in place among the most comprehensive legislation regarding transparency.

3 Lobbyists, Governments and Public Trust, Volume II - OECD - 2012



The Lobbying Disclosure Act of 1995 was updated in 2007 via the Honest Leadership and Open Government Act, which includes numerous requirements for the registration of lobbyists and lobbying expenditures. Notably, all lobbying expenses over USD 5,000 must be transparently reported via the Lobbying Disclosure Act Database, which is updated quarterly. The database is publically accessible[4].

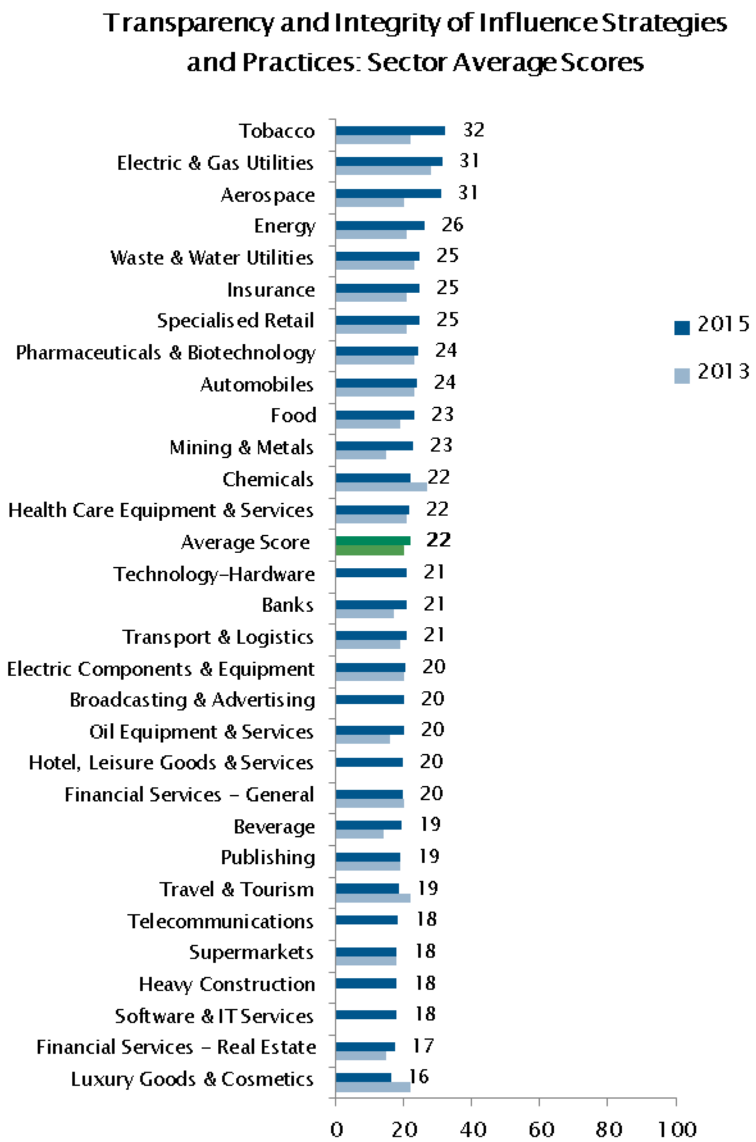
European countries fall slightly behind the United States, which may be partially explained by the voluntary nature of the European Commission's Transparency Register for lobbyists, which also contains publically accessible data on corporate lobbying expenditures.

The European Commission has taken a self-regulation approach to lobbying, as opposed to government-enforced regulation in the United States. Some companies have developed robust systems to approach ethical and transparent lobbying under the self-regulation system, but the approach appears to generate less homogeneous performances than government-enforced regulation. A few European countries have also implemented government-enforced regulation at country level, such as Austria and the Netherlands[5].

Countries from Asia Pacific display no clear legislation on the topic of lobbying, with the exception of Australia. **Australia** lies slightly lower than average performance with a score of 18/100. The country developed a legal framework covering the issue of lobbying n May 2008, with the Australian Government issuing a Lobbying Code of Conduct and mandatory register. However, the Code applies only to "third-party" lobbyists, or those who lobby professionally on behalf of others. It does not cover those directly representing a firm or NGOs and charities. In addition, the register does not require the transparent reporting of expenditures[6].

4 United States Senate website - accessed August 2014 - www.senate.gov/legislative/Lobbying/Lobby_Disclosure_Act
5 Lobbyists, Governments and Public Trust, Volume II - OECD - 2012
6 "Lobbyists, Governments, and Public Trust, Volume I" - OECD - 2009

Lobbying Performance at Sector Level

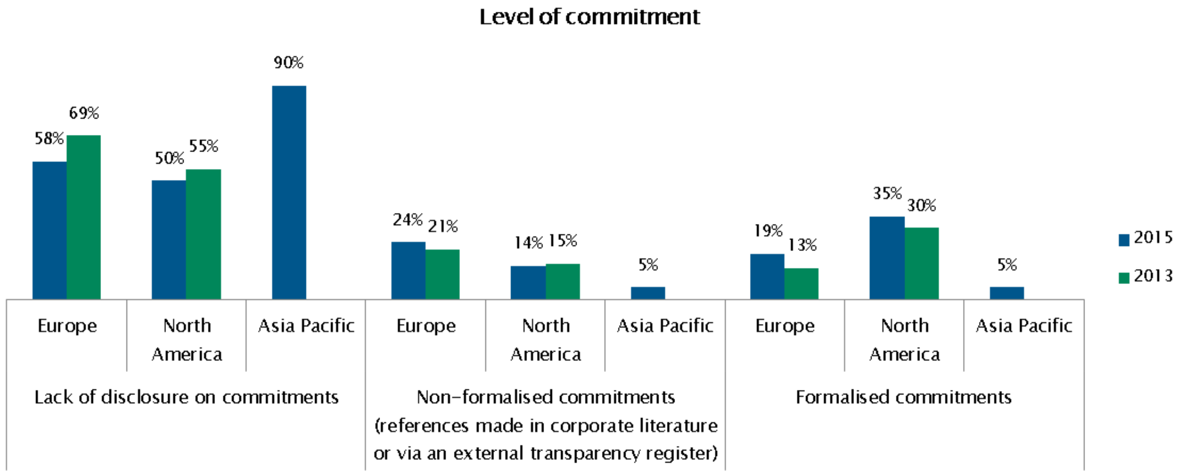


The top-performing sectors are the **Tobacco sector** (32/100), the **Aerospace sector** (31/100), and the **Electric & Gas Utilities sector** (31/100), all of which remain relatively limited. Significant room for progress remains before the sectors will be considered to have a complete approach.

Overall, the top performing sectors have not changed considerably over Vigeo's 2013 study. Sectors which saw the most significant progress, **Aerospace** (+11 points) and **Tobacco** (+10 points), were previously positioned as leaders on the topic.

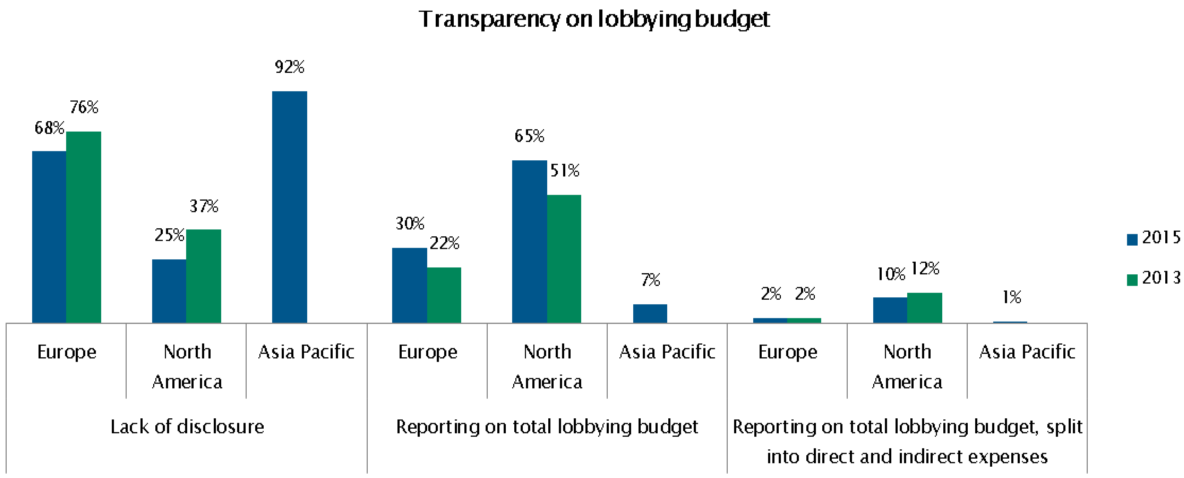
The increasing performance can be attributed partially to the stakeholder attention given to the sectors: the Aerospace sector has been scrutinized over financial relief plans and environmental concerns, and the Tobacco sector has been continually criticized for its lobbying on healthcare and marketing regulation. This attention and pressure from stakeholders has pushed companies to increasingly become more transparent in their lobbying efforts. However, consistent from the previous review, little information is provided on how these companies ensure integrity in lobbying strategies.

Commitments to ensure transparent and responsible lobbying



The evolution of companies introducing formalised commitments (corporate policies) to ensure transparency and responsible lobbying is positive. An increase of 6% of European companies released a new, formalised commitment between 2013 and 2015, followed by an increase of 5% of North American companies. The increase observed among European countries can be partly attributed to the introduction of the EU Transparency Register in 2011, which has been progressively implemented into company policies. Companies based in Asia Pacific disclose very little information on the topic. No data was available in 2013 to make a comparison.

Transparency on lobbying expenditures



The evolution of companies reporting transparently on lobbying expenses is also positive. The number of North American companies reporting transparently on total lobbying budgets increased by 14%, followed by and increase of 8% in European companies. The gap in reporting between North American companies (75% reporting transparently on lobbying expenditures) and European companies (53% of companies reporting transparently on lobbying expenditures) can be partly attributed to legislation. In the U.S., all companies must publically disclose lobbying expenditures over USD 5,000. Penalties may be given in the case of non-compliance[7]. In Europe, companies disclose lobbying expenditures on a voluntary basis. Companies which do disclose expenditures are provided with long-term passes to certain European Commission buildings for their lobbyists[8].

RISKS AND OPPORTUNITIES FOR COMPANIES TIED TO LOBBYING

Dishonest and opaque lobbying activities can have several negative consequences on companies. First, from an operational perspective, companies spending considerable amounts of money to lobby against progressive regulation may miss opportunities to innovate. In many cases, regulation to increase environmental controls or protect social standards lead companies to develop better products and services with fewer negative externalities, which can be better for both business and society. Moreover, several studies have concluded that there is no observable financial advantage for companies that heavily engage in lobbying (often in non-transparent manners), meaning that large lobbying expenditures could be better utilised elsewhere[9].

Furthermore, shareholders have been demanding increased transparency on lobbying activities and budgets. This information can contribute to forming an investor's overall opinion on the company. For example, if a comprehensive, transparent, and ethical lobbying plan is presented, shareholders may, in return, reward companies through increased access to capital.

Non-transparent and contradictory lobbying practices also pose significant reputational risks. Rising transparency requirements allow stakeholders to identify contradictions in positions expressed in corporate literature versus lobbying activities, or companies lobbying in an unethical manner. For example, the New York Times published a front-page article over a pharmaceutical company's non-transparent lobbying strategy, significantly damaging their brand image.

In addition, some legal risks do exist, but such cases remain very rare. Regulations governing lobbying practices vary from region to region, and only very few provide for comprehensive enforcement. Sanctions exist in the U.S., where companies can face relatively important financial penalties if they are found guilty falsely reporting required lobbying information (contributions, expenses). However, incorrect reporting has only been identified in a small number of cases. In Europe, financial sanctions can only be given at country level, which also appears to be rare. While regulation continues to develop, the clear police of ethical and transparent lobbying will remain stakeholders, particularly those loudly scrutinizing companies for deceptive and unfair practices.

7 United States Senate website – accessed August 2015 – www.senate.gov/legislative/Lobbying/Lobby_Disclosure_Act
8 EU Transparency Register website – accessed August 2015 – http://ec.europa.eu/transparencyregister/
9 "The Relationship Between Political Connections and the Financial Performance of Industries and Firms" – Sobel & Graefe-Anderson, George Mason University – July 2014

EXAMPLES OF CONTROVERSIES

In September 2015, group of international institutional investors called on several energy and mining firms, including **BP**, **EDF**, **Statoil**, **Total**, **Glencore**, **Rio Tinto**, **BHP Biliton**, **Johnson Matthey** and **Proctor and Gamble**, to end lobbying activities against climate legislation. The investors represented a total of GBP 45 million in assets under management. A joint letter was sent to the companies on behalf of investors, which expressed concern that each company's declared climate policies are undermined by memberships in lobby groups and trade associations which lobby heavily against climate regulation. The investors specifically targeted policy-making efforts surrounding climate topics in the EU[10].

Amgen has faced criticism from stakeholders over its lobbying efforts during the late 2012 –early 2013 'Fiscal cliff' talks in the USA. The Company's lobbyists are reported to have lobbied members of the United States Senate to insert a provision into a bill that did not de facto concern Pharmaceutical Companies or Health Care. Indeed, the 'Fiscal Cliff' bill was considered as a legislative process fundamental to defining the economic health of the United States and Amgen faced criticism for taking advantage of the opportunity for its own profit. Many members of Congress did not know that this provision was in the bill until just hours before it was approved. The provision that Amgen successfully lobbied to have inserted protects one of its drugs (Sensipar) for another 2 years free of government controls. Although other companies will benefit financially from the inserted delay, Amgen, which has 74 lobbyists in Washington, was reportedly the only Company to lobby aggressively for the provision. This is projected to cost the US Medicare Program up to USD 500m over that period of time[11].

In 2011, Greenpeace launched a campaign against **Volkswagen** over their heavy lobbying in the European Union against new laws intending to cut CO2 emissions, despite the Company's green marketing strategy. Greenpeace reported that the Company was against raising the targets for CO2 emission cuts to 30% from 20% by 2020 (over 1990 levels), and opposed national fuel efficiency targets[12]. In 2013, Greenpeace announced that the Company changed their lobbying practices, and now pledges to meet and support the 30% targets[13]. However, in light of the recent discovery of Volkswagen's fraudulent practices in reporting its vehicle emission standards, Vigeo's opinion has again weakened on its approach to business integrity issues, including responsible lobbying.

10 "GBP 45bn investors urge FTSE 100 firms to stop lobbying against climate policy" – Edie – 02/09/2015
11 "Fiscal Footnote: Big Senate Gift to Drugmaker" – New York Times – 19/01/2013
"Amgen gets a gift from Congress" – New York Times – 22/01/2013
12 "Join the rebellion and turn VW away from the dark side" – Greenpeace – 01/07/2011
13 "Greenpeace takes on Europe's biggest carmaker… and wins!" – Greenpeace – 06/03/2013

CONCLUSION

Lobbying remains a widely debated topic, with increasing action being taken at both company and government level. As a result, lobbying activities are slowly becoming more transparent, but the path to full disclosure and the abolition of undue influence is long. Many governments, organisations, and associations have worked diligently to expose information and call for change, but no satisfactory solution has yet been implemented. Stakeholders have recognised that unbiased decision making and renewed trust in government is still distant, but actions to upend the system are still pushing forward.

CONTACTS

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DISCLAIMER

ANNEX: SYNOPSIS OF RECENT REGULATION

Lobbying regulation has been increasing worldwide. As of year-end 2014, 41% of OECD countries had some type of lobbying regulation in place, with the majority adopting regulation within the past five years. However, such regulation has proven to be partial in many cases, either by failing to cover certain activities or allowing for loopholes. Moreover, the OECD observed that newly adopted regulation tends to be less restrictive than regulation that has been in place for several years. To demonstrate this point, the OECD noted that in 2014, only 20% of countries with lobbying regulation in place made publically available information on lobbying expenses, and only 10% made available contributions to political campaigns[14]. Therefore, despite the increasing number of new regulations passed, significant ground remains to be covered before stakeholders reach a satisfactory level of transparency and integrity in lobbying.

March 2015: **Ireland** passed a new Regulation of Lobbying Act, which requires lobbyists to transparently report which public officials they have contacted, topics of lobbying, and their intended outcome. Along with a transparency register, the Act contains a Code of Conduct for lobbyists, and introduces a "cooling off" period during which lobbying cannot be carried out by former public officials.

January 2015: A new version of the **EU Transparency Register** was launched, which includes increased transparency on lobbyist names, membership in EU committees, forums, or similar structures, and the list of legislative files being followed by the registrant. Increased incentives for registering were adopted, but the register remains voluntary.

October 2014: **Canada**'s Lobbying Commissioner published proposed updates to the Code of Conduct for Lobbyists. The proposed changes aim to clarify the role and expectations of lobbyists, so that those who are not in compliance can be more easily identified. While no fines or penalties are attached to non-compliance, lobbyists names will be included in an annual report Parliament, jeopardizing their reputation.

January 2014: The **UK** enacted its Transparency of Lobbying, Non-Party Campaigning, and Trade Union Administration Act. The Act established a register of consultant lobbyists, with the aim of clarifying whose interests are being represented within the national government. The register requires lobbyists to quarterly disclose the organisations that they are representing and whether or not they subscribe to a publically available code of conduct (and where it can be found).

January 2014: **Chile** incorporated a voluntary register of lobbying activities. The register is different than most because public officials must disclose lobbying information, as opposed to lobbyists themselves.

June 2013: **France**'s National Assembly adopted a Code of Conduct for affiliated interest representatives. The Code installs a voluntary register of interest representatives, which is encouraged through access to specific rooms by those who register. The register asks lobbyists to list clients, fees, and topics of discussion. The new register is public information, and complements a similar, voluntary system that has been installed in the Senate since 2009 .

January 2013: **Austria** passed the Transparency Act of 2013 for Lobbying and Interest Representation, which provides basic rules of conduct for lobbyists, installs a register for lobbyists and interest representatives, and allows for sanctions in the event of non-compliance. Lobbyists must register before they begin interaction with regulators, and transparently report topics intended for discussion.

14 "Lobbyists, Governments, and Public Trust, Volume 3"- OECD - November 2014