

**TRANSPARENCY, INTEGRITY AND INTEREST GROUPS. TEN LESSONS LEARNT FROM THE APPLICATION OF LAW 19/2014, OF 29 DECEMBER\***

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**Abstract**

Interest groups must conduct their activities before public administrations transparently, guaranteeing the integrity of public servants and the interest groups themselves. They must also ensure equality in their access to public institutions, so this activity can have a positive impact on public decision-making and the drafting of legislation, promoting good governance and good administration overall. This article offers a detailed analysis of the concept of the interest group as it is defined by the regulations in force in Catalonia and the mechanisms derived from them to guarantee the transparency of interest groups' activities and the integrity of their relations with senior officials. The article also evaluates the regulations in force in view of the experience acquired since their entry into force. Last, by way of conclusion, it identifies ten elements that should be taken into account when regulating the activity of interest groups, and at the time these regulations are applied.

Key words: interest groups; register of interest groups; transparency; integrity; good governance; open government; accountability.

**TRANSPARÈNCIA, INTEGRITAT I GRUPS D'INTERÈS. DEU LLIÇONS APRESES DE L'APLICACIÓ DE LA LLEI 19/2014, DEL 29 DE DESEMBRE****Resum**

*Els grups d'interès han de desenvolupar la seva activitat davant les administracions públiques amb transparència i garantint la integritat tant dels servidors públics com dels mateixos grups d'interès, com també la igualtat en el seu accés a les institucions públiques, perquè aquesta activitat pugui tenir un impacte positiu en la presa de decisions públiques i l'elaboració de normes i, en general, promoure el bon govern i la bona administració. Aquest article analitza en detall el concepte de grup d'interès que es deriva de la normativa vigent a Catalunya i exposa els mecanismes que preveu la regulació catalana per garantir la transparència de l'activitat dels grups d'interès i la integritat en les relacions entre els alts càrrecs i els grups d'interès. L'article també fa una valoració de la normativa vigent en vista de l'experiència assolida des de la seva entrada en vigor. Finalment, a mode de conclusió, identifica deu elements que s'haurien de tenir ben presents a l'hora de regular l'activitat dels grups d'interès i en el moment d'aplicar aquesta regulació.*

*Paraules clau: grups d'interès; registre de grups d'interès; transparència; integritat; bon govern; govern obert; rendició de comptes.*

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## 1 Regulation of interest groups in Catalonia

Interest groups are persons or organisations that aim to influence public decision-making, either in the drafting of legislation, or in the design and application of public policies. Despite the traditional negative perception of their activity, the participation of interest groups in the public administration decision-making process has been recognised over time as an important aspect of the democratic process, because they contribute information and resources of great value for public administrations which, in this way, are able to make higher-quality decisions and more effective policies.<sup>1</sup> Therefore, interest groups are another agent in the networks of governance in which there is an interaction among interdependent players, public administrations and private and social organisations, which share the resources they contribute.<sup>2</sup>

In order for the activity of interest groups to have a positive impact on the workings of public institutions, it is necessary for them to develop pursuant to certain parameters that ensure the transparency of the activity that they carry out, the integrity of public servants and interest groups and equality in their access to public institutions.<sup>3</sup> These criteria attempt to respond to the criticism often made of interest groups' activity due to the lack of transparency that frequently surrounds them, and the possibility that they derive toward, or have connections with, corruption scenarios.<sup>4</sup> This also explains why professional lobbyists are among the first parties interested in establishing regulations that give transparency and security to the activity they legitimately perform.<sup>5</sup>

At a comparative level, only a few countries have regulated the activity of interest groups.<sup>6</sup> This notwithstanding, an analysis of the few rules approved until now reveals the existence of various regulatory models applicable to interest groups that range from the North American model, based on adoption of a Regulating Law on lobbies, that is of mandatory compliance<sup>7</sup>, to the model of the European institutions based

1 Access Info Europe; Open Knowledge; Sunlight Foundation; Transparency International. *Estándares internacionales para la regulación del lobby. Hacia una mayor transparencia, integridad y participación*, 2015. p. 4; OECD. *Lobbyists, Government and Public Trust*. Vol. 1. Increasing Transparency through Legislation. Paris, 2009. p.18. In that regard, Ponce points out that 'citizen participation makes for an element of transparency, good governance and good administration, strengthening regulatory quality and the objectivity of interests considered, promoting greater legislative efficacy and less litigiousness', Ponce Solé, Juli. *Negociación de Normas y Lobbies. Por una mejor regulación que favorezca la transparencia, evite la corrupción y reduzca la litigiosidad*. Cizur Menor: Thomson Reuters Aranzadi, 2015.

2 From a general standpoint, see an analysis of governance networks in Cerrillo i Martínez, Agustí. (2012). 'Derecho administrativo y gobernanza democrática de las redes' in: Barreda, Mikel; Cerrillo i Martínez, Agustí (eds.). *Gobernanza, Instituciones y Desarrollo. Homenaje a Joan Prats*. Valencia: Tirant lo Blanch. This approach moves the debate beyond the usual criticism of interest groups, as they 'now appear, not so much as players that dominate representative institutions and the legitimacy of the States, but as policy facilitators', García Guitián, Elena. 'Representación y gobernabilidad: Una reflexión sobre el rol de los ciudadanos organizados en las democracias' in: Molins, Joaquim M.; Muñoz Márquez, Luz; Medina, Iván (eds.). *Los grupos de interés en España. La influencia de los lobbies en la política española*. Madrid: Tecnos, 2016, p.74.

This notwithstanding, it cannot be ignored that, 'the more they succeed in having their voice heard, the less they function as democratic transmission belts', Kohler-Koch, Beate; Buth, Vanessa. 'Civil Society in EU Governance - Lobby Groups like any other?' *TranState Working Papers*. Vol. 108 (2009).

3 These criteria have been identified at the international level as a basis for the regulation of interest groups to prevent undue influences, irregularities and cases of corruption. See, in this regard, Transparency International. *Lobbying in Europe. Hidden Influence, Privileged Access*. 2015, p. 6; Access Info Europe et al. 2015, p. 3; Villoria Mendieta, Manuel; Revuelta, Ana and Jiménez Sánchez, Fernando. 'Transparencia y regulación del lobby en Europa y España', in: Asociación Española de Ciencia Política y de la Administración (Ed.), *XII Congreso de la AECPA ¿Dónde está hoy el poder?* Sant Sebastià, 2015.

4 As stated by Transparency International 'lobbies have acquired very negative connotations in the public mind' and 'in Spain lobbies do not have a good reputation, partly due to their vague connections with political corruption'. In any event, 'there are no known cases of professional lobbyists' involvement in cases of corruption', Transparency International. *Una evaluación del lobby en España: análisis y propuestas*. 2014. p. 10, 83, 125.

5 This is the case, for example, of the Association of Institutional Relations Professionals (APRI), a lobbyist association that has been seeking regulation of their industry since 2007, and that recently developed its own legislative proposal, which can be consulted at: <http://relacionesinstitucionales.es/apri-propuesta-regulacion-lobby>.

6 For a graphic portrayal of lobby regulation in Europe, see: [http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/595830/EPRS\\_ATA\(2016\)595830\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/595830/EPRS_ATA(2016)595830_EN.pdf) [latest query: October, 2017]. Of special interest as regards the different lobby regulatory models are Chari, Raj; Murphy, Gary; and Hogan, John. 'Regulating lobbyists: a comparative analysis of the United States, Canada, Germany and the European Union'. *The Political Quarterly*, Vol. 78 (2007) p. 422-438.

7 Lobbying Disclosure Act of 1995.

on voluntariness and institutional agreement,<sup>8</sup> although, in recent years, interest group activity is also being indirectly regulated (for example, in the criminal code, through various offences related with corruption, or through the regulation of the decision-making process).<sup>9</sup>

In Spain, despite the many historical occasions on which attempts have been made to regulate interest groups' activity,<sup>10</sup> it was not until the last decade that a number of regulations with impact on interest groups was passed.<sup>11</sup> In fact, since 2014 some autonomous communities, local governments and authorities have encouraged measures to regulate interest group activity.<sup>12</sup>

Specifically, Catalan Law 19/2014, of 29 December, on transparency, access to public information and good government (hereinafter Law 19/2014) was the first to be approved and is also the law with the longest history of application.

Over the coming pages, the authors' attention will be focused on this law, an analysis of which allows them to identify the lessons learnt in the application of the interest groups regulation. This is knowledge that can be useful when it comes to designing a good regulating model in this subject matter.

This article is structured in five sections. In the first, the legal concept of interest groups is analysed, and the application problems that have come about since Law 19/2014 came into force are identified. In the second section, the regulation of the mechanisms established to guarantee transparency of interest groups' activity is discussed. The third section describes the framework of integrity for interest groups' activity that until now has mainly been based on the establishment of codes of conduct for senior officials and interest groups. The fourth section outlines the consequences of non-compliance with interest group regulations, and also the mechanisms for monitoring and supervising their activity. Last, the fifth and final section features an examination of the lessons learnt in the first two years of validity of the regulations on interest groups in Catalonia, and proposals for the measures necessary to guarantee transparency and the integrity in their relationships with public administrations.

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8 Agreement between the European Parliament and the European Commission of 16 April 2014 on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation. In any event, it must be remembered that currently the Proposal for an inter-institutional agreement for a mandatory transparency register is being processed [COM (2016) 627 final].

9 We already had the opportunity to identify two interest group regulation models in Cerrillo i Martínez, Agustí. *La regulación de los grupos de presión: el sistema de los Estados Unidos de América y de la Unión Europea*. Institut Internacional de Governabilitat, 2000. For a comparative analysis of the various regulations, see Carloni, Enrico. 'Lobby Regulation to Prevent Corruption' in: Cerrillo i Martínez, Agustí and Ponce Solé, Juli (Eds.). *Preventing corruption and promoting good government and public integrity*. Brussels: Bruylant, 2017, p. 138-142.

10 Álvarez Vélez, María Isabel and de Montalvo Jääskeläinen, Federico. 'Los lobbies en el marco de la Unión Europea: una reflexión a propósito de su regulación en España'. *Teoría y Realidad Constitucional*, vol. 33 (2014) p. 353-376.

For an empirical analysis on interest groups' activity in Spain see Francés, Juan. *¿Qué vienen los lobbies!* Barcelona: Destino, 2013; and Molins, Joaquim M<sup>a</sup>; Muñoz Márquez, Luz and Medina, Iván. *Los grupos de interés en España. La influencia de los lobbies en la política española*. Madrid: Tecnos, 2016.

11 At a comparative level, it is clear that in 2015 up to 20 countries had some regulation on interest groups (Access Info Europe et al., p. 3).

12 Catalonia (Law 19/2014, of 29 of December, on transparency, access to public information and good government), National Markets and Competition Commission (President's resolution on good practices in relations between the National Markets and Competition Commission and external actors, of 26 February, 2016), Castilla-La Mancha (Law 4/2016, of 15 December, on Transparency and Good Government of Castilla-La Mancha), the Community of Valencia, Municipal government of Madrid, or Sant Cugat del Vallès (Regulations for the creation and operation of interest groups in the Sant Cugat del Vallès local council and its public sector, of 18 July 2016, (BOP (*Official Provincial Gazette*), of 5 August, 2016).

At the state level, over recent months there has been a reform of the Regulations of the Spanish Parliament in order to regulate interest groups (*Official Gazette of the Spanish Parliament*, series B, 3 March 2017).

## 2 Interest groups in Catalonia

### 2.1 Definition of interest groups

One of the most complex and controversial aspects of interest group regulation is their very definition.<sup>13</sup> One example of this complexity can be found in Law 19/2014, the reading of which reveals the inclusion of up to three definitions of an interest group. This has occasionally led to interpretative problems that, even today, translate into various social groups not deeming it necessary for them to sign up in the Register of Interest Groups.<sup>14</sup>

First, Law 19/2014 defines interest groups as ‘those private natural or legal entities that have an active participation in public policies or decision-making processes in Catalonia with the aim of influencing the orientation of these policies in defence of their own or a third-party’s interests, or of a general interest’.<sup>15</sup>

Second, Law 19/2014 recognises that the aim of the Register of Interest Groups is ‘the registration and monitoring of the entities and organisations that work independently, and participate in public policy-making and application in the defence of the interests of third parties or organisations’.<sup>16</sup>

Third, Law 19/2014 also stipulates which entities must register in the Register of interest groups:<sup>17</sup>

- persons and organisations that, regardless of their legal form or status, in the interest of other persons or organisations, conduct activities that could influence the making of laws, legally binding rules or general provisions, or in the making and application of public policies.

- platforms, networks or other forms of collective activity that, despite not having legal status, constitute *de facto* a source of organised influence and carry out activities included in the realm in which the Register is applicable

Reading the three definitions, it appears that on one hand, the Law defines what an interest group is and, on the other, the persons and entities that must register in the Register of Interest Groups, which may not eventually be interest groups in the strict sense of the word, pursuant to the definition provided in the Law.<sup>18</sup>

Specifically, in light of the three definitions, three elements that characterise interest groups in Catalonia can be identified:

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13 This complexity is not exclusive to our country. As the OECD has stated, ‘no single legal definition of lobbying is used across member countries. Existing rules related to lobbying reflect particular concerns that they attempt to address in their national contexts’ (OECD, 2009, p. 18).

14 Therefore, a premise generally defined in the studies on interest group regulation is not being fulfilled: the need to include clear definitions that avoid interpretative problems. The OECD has also indicated this at the interpretative level, observing ‘the early history of registration in Australia, Canada and the United States shows that where lobbyists are not clearly identified and demonstrably required to register, they will not do so’. (OECD, 2009, p. 50). In fact, they also state that ‘definitions should not allow space for misreading, misunderstanding or misinterpretation and should be robust and unambiguous to the greatest extent possible’, (OECD, 2009, p. 25), to avoid undesirable consequences (OECD, *Lobbyists, Government and Public Trust*, Volume 2: Promoting Integrity by Self-regulation. Paris: OECD, 2012), and guarantee the effectiveness of interest group regulation (Transparency International. *Lobbying in Europe. Hidden Influence, Privileged Access*. 2015, p. 31).

15 Article 2.g) of Law 19/2014. Regarding the influential activity of such entities, of special interest is Alemanno, Alberto. *Lobbying for Change: Find Your Voice to Create a Better Society*. London: Icon Books, 2017.

16 Article 45.2 of Law 19/2014. It must be borne in mind, however, that this article has been repealed by the repealing provision of Decree Law 1/2017, of 14 February.

17 Article 47 of Law 19/2014.

18 Decree 171/2015, of 28 of July, includes a restricted concept of an interest group, by referring to the ‘natural persons and organisations that work independently and participate in the making and application of public policies of the Government of Catalonia and its public sector in the defence of third parties’ or organisations’ interests’. (article 2.a). This definition coincides with the one found in the preamble of Law 19/2014, section five, that offers yet another definition taken up in the Law, and that does not coincide with the others:

‘The development of political and administrative activity makes evident the existence of persons and organisations that, by legal means, carry out activities that could influence the making and application of public policies to the benefit and interest of other persons’.

## A The legal character of the interest group

The first element refers to the character of the subject that can be considered an interest group.

The matter that initially stands out in the various definitions featured in Law 19/2014 is that, despite the expression used (group), an interest group can be made up of a number of persons, but also a single individual *uti singuli*.

The second issue that stands out has to do with the legal status of the interest group. Although it may at first seem that interest groups must have their own legal status, Law 19/2014 also includes in this category any platforms, networks or other forms of collective activity even if they do not have legal status, as long as they carry out activities of influence that enable them to be identified as an interest group.

The third factor, which has certainly given rise to widespread interpretative confusion, has to do with the private or public nature that a person must have to be considered an interest group. From the first definition (article 2 of Law 19/2014), state legal entities would seem to be excluded from the definition of an interest group, whereas a different conclusion could be drawn from all other definitions (articles 45.2 and 47 of Law 19/2014). In practice, this question has been specifically raised in relation with whether professional associations and, in general, any organisations that make up a corporate administration, must enter the Register of Interest Groups.

The question could be answered in two different ways. The first is that, regardless of its public or private legal character (Article 2 of Law 19/2014), whenever an organisation carries out activities that could influence public decisions or policies (Article 47.1 of Law 19/2014) it must register in the Register of Interest Groups. Furthermore, in the specific case of professional associations, it cannot be ignored that, although 'professional associations have the essential aim of ensuring that the activity of their members meets society's interests and needs with relation to the exercise of the relevant profession, and especially to guarantee compliance with best practices and the ethical obligations of the profession', their purpose is also 'the organisation, representation and advocacy of the profession and the professional interests of association members'.<sup>19</sup> In other words, along with their undeniable character as public corporations, the private associative base that characterises them must also be considered.<sup>20</sup> This appears to be the interpretation established in Decree 171/2015, article 13, which expressly marks out in the classification of interest groups (to be exact, in category II, business community and associative base) legal entity governed by public law, as well as professional and business associations and trade unions. Therefore, in our opinion, when professional associations act in the defence of their members' interests, they should sign up in the register. Many of them have already done so.<sup>21</sup> On the other hand, it should be understood that all other institutions, bodies and organisations that make up the public administration system (territorial administration, institutional organisations, consortia, universities and other public sector bodies), even if they mean to influence other public sector administrations or organisations, should not have to register as interest groups, either due to their lack of private character (except for those that have this character for purely instrumental reasons) or because they are the recipients of the activity of influence themselves. For this reason, all of them, including professional associations, academies and other public corporations, as well as the Parliament and other statutory institutions (Council of Statutory Guarantees, the Catalan Ombudsman, Catalan Public Audit Office, and the Audio-visual Council of Catalonia) must have their own register of interest groups.

Beyond the interpretative difficulties referred to, practice in the application of Law 19/2014 has also shown that other groups have deemed it unnecessary to register, given the semi-public duties they perform.

Particularly, some business and trade union organisations have judged that they do not have to register in the Register of Interest Groups because this could eventually constitute a limitation of their constitutionally recognised duties. There is no shortage of arguments to justify such a position. For example, along these lines,

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19 Article 36 of Law 7/2006, of 31 May, on the exercise of regulated professions and professional associations.

20 Articles 35 and 40 of Law 7/2006 of 31 May, on the exercise of regulated professions and professional associations.

21 There are 67 professional associations registered in the Register of Interest Groups of Catalonia, out of a total of 127 associations and association boards registered in the Register of Professional Associations of Catalonia (last query: 25 July, 2017).

Transparency International admits that ‘certain organisations, such as trade unions, employers’ associations, professional associations or chambers of commerce, take on a quasi-public role in the configuration of general interest, along with the institutions of the State’. Their participation is articulated through several bodies of institutional participation and ‘as a consequence, an institutional position is guaranteed for the most representative employers’ associations and trade unions’.<sup>22</sup>

This notwithstanding, it is our belief that aside from the institutional position of employers’ associations and trade unions, and even their constitutional recognition, this is not an obstacle to the fact that, at least when it comes to certain duties, both trade unions, employers’ associations and even political parties should sign onto the Register of Interest Groups.<sup>23</sup> It cannot be ignored that ‘trade unions and business associations contribute to the defence and promotion of the economic and social interests that are inherent to them’.<sup>24</sup> In addition to other activities, this translates into institutional representation before public administrations, collective bargaining in the terms outlined by the Statute of Workers Rights or mediation to determine the working conditions in public administrations through the necessary consultation or negotiation procedures.<sup>25</sup> Nonetheless, beyond these duties, employers’ associations and trade unions may also seek to influence public policies or administrative decisions and, in so doing, transcend their strictly collective duties through channels that may not benefit from the same level of transparency. Therefore, in such cases, it is necessary to guarantee transparency through other mechanisms, such as registration in the Register of Interest Groups.

Notwithstanding these conclusions, it cannot be overlooked that Decree 171/2015, of 28 July, with controversial legal coverage, excludes from the target realm of the Register of Interest Groups those activities performed by corporate administrations in the framework of public duties attributed to them by the legal system, and those performed by trade unions and business associations in the advocacy and promotion of the economic and social interests that are inherent to them.<sup>26</sup>

Therefore, the need to register should not be seen as an obstacle to the free exercise of constitutionally and legally-established rights, but as yet another mechanism to guarantee the transparency of their foreseeable activity, which is also relevant pursuant to the terms established in Article 3.4 of Law 19/2014 when it states that ‘the transparency obligations established by Title II (active publicity) are also applicable to political parties, associations and affiliated foundations, and trade union and business organisations’. To reinforce this argument, it should merely be remembered that the constitutional provision that demands that the operation of these organisations, within the framework of law, be democratic,<sup>27</sup> is a requirement that is directly bound to the mandate for transparency.

### *B Activity conducted by the interest group*

The persons and organisations referred to must conduct certain specific activities to be considered interest groups and, ultimately, to have to register in the Register of Interest Groups.

The three aforementioned definitions, though they recognise in essence that interest groups perform the same activities as inherent to them, do present a number of minor differences.

In the first place, mention is made of active participation in public policies or decision-making processes in Catalonia. Second, allusion is made to participating in making and applying public policies. Last, the

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22 Transparency International (2014).

23 As stated in the Ruling of the Constitutional Court 281/2005, of 7 November, ‘trade unions, like business associations, are organisations of constitutional relevance immediately protected by the Constitution and [...] therefore, fulfilment of the duty attributed to trade unions in a democratic regime must be favoured to the benefit, not just of workers’ interests, but the interest of the public, which demands strong trade union organisations endowed with sufficient actionable resources’.

24 Article 7, Spanish Constitution.

25 Article 6 of Organic Law 11/1985, of 2 August, on trade union freedom.

26 Article 7.3 of Decree 171/2015, of 28 July.

27 Article 7, Spanish Constitution.

definitions refer to influencing in the making of laws, legally-binding rules or general provisions, or in the making and application of public policies.<sup>28</sup>

Although there are some similarities among the three definitions, there are also differences regarding the type of activity. For example, in some cases they refer to participation and in others to influence; as well as their objective, as on occasions allusion is made to public decision-making, and on others to the making and application of public policies; and still in others, the making of legal rules or regulatory projects.<sup>29</sup>

We would also point out that the references in Law 19/2014 to the ‘activities susceptible to being influenced’ and the ‘purpose of directly or indirectly influencing’ would oblige the registration of activities of influence not carried out in the framework of direct contact with public servants (for example, through public declarations, the making of manifestos or presentation of studies with social impact).<sup>30</sup>

### *C Interests advocated for by interest groups*

Once again, in relation to the interests advocated by interest groups, differences can be observed in the various definitions of an interest group established in Law 19/2014.

Although there is coincidence in the three definitions with respect to the possibility of advocating one’s own interests, or those of third parties or organisations, they do not match when it comes to general interests.

Nevertheless, in our opinion, this difference does not make it difficult to grasp the exemplifying nature of the classification, especially as refers to general interests, to the extent that they can be integrated into the internal or third party interests that an interest group means to defend.

## 2.2 Classification of interest groups

Interest groups can be classified into different categories depending on the purpose of their activities and the area in which they work.

For this purpose, Decree 171/2015, following the terms that exist at the European level, classifies interest groups into the following categories, which also include a number of subcategories: I. Consultancy and advising service sector; II. Business community and associative base; III. Non-governmental organisations; IV. Scientific and research sector, and V. Offices, networks and organisations representing churches and religious communities.<sup>31</sup>

At the time of their registration, the body responsible for the Register must classify every interest group into the correct category and subcategory depending on the activity carried out.

This classification could set out a specific category or subcategory for organisations that exclusively or mainly carry out professional lobbying activities (and are therefore more socially identified as lobbyists), a solution that would facilitate their specific follow-up.

## 3 Transparency of interest groups’ activity

The main purpose of regulating interest groups is to guarantee the transparency of their activity. Interest group transparency must allow observers to know the activities they carry out, who they are aimed at, as well as the beneficiaries.<sup>32</sup> To the extent possible, either directly or through the right of access to public

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28 With respect to the participation of interest groups in rule-making, the following work is of special interest: Ponce Solé, Juli (2015).

29 It is interesting to observe how the Regulations of the Parliament of Catalonia broaden the concept with respect to influence to cover ‘the exercise of the other duties of Parliament’ (Article 216.1).

30 Article 47 of Law 19/2014, sections 1.a) and 2, respectively.

31 Article 13 of Decree 171/2015, of 28 July.

32 OECD (2009), p. 27.



information, it is a good thing to know the true effectiveness that influence or mediation activity can have in each case.

Currently, the transparency of interest groups' activity is guaranteed through two mechanisms: the registration of interest groups in a public register and the publication of interest groups' activity, mainly by disseminating the agendas of the senior officials with whom they meet. In the near future it would also be advisable to guarantee it through other means, such as the declarations of activities regularly filed by interest groups, the transparency of contacts they engage in with public servants other than senior officials (temporary staff, civil servants and group contract staff) and a record of the contacts made through channels other than face-to-face meetings.

### 3.1 Register of interest groups

Law 19/2014 has been the first to regulate interest groups in Spain. In fact, until 2014, despite past attempts to approve a rule on the relationship between interest groups and public institutions, applicable to lawmakers as well as public administrations, it had not been possible to approve any specific regulations on this matter.<sup>33</sup>

Law 19/2014 is based on the evidence and recognition that there are individuals and organisations that work legally to carry out activities that can be interpreted as influencing in the making and application of public policies in the interest of other persons or organisations. In the line of the analyses carried out in recent years, Law 19/2014 is grounded in the idea that interest groups' activity can contribute information that is relevant for decision-making processes and useful for public administrations.<sup>34</sup>

As a response to this reality, the Law deems necessary the creation of the Register of Interest Groups, 'with the aim of making publicly known those persons who carry out activities of influence or intermediation', and establishes the obligations to which interest groups are subject, noteworthy among which are the acceptance of and compliance with a code of conduct that has to ensure that the activity carried out before authorities, public officials and civil servants always respects the legal framework.<sup>35</sup>

The purpose of the Register of Interest Groups is to register and monitor all individuals who work independently and participate in advocacy of the interests of third parties or organisations in the making and application of public policies through contacts with authorities or participation in official consultation in the framework of regulatory procedures.<sup>36</sup>

That is why the Register of Interest Groups is public and must include information on persons and entities active in influencing and their organisation, as well as the information that these persons provide in relation with the activities they carry out, their area of interest and their financing.

### 3.2 Creation of registers of interest groups

Law 19/2014 stipulated that all organisations and public bodies in Catalonia had to create a register of interest groups.<sup>37</sup> Specifically, this obligation was extended to the Administration of the Government of

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33 For a brief summary on the various past attempts to regulate interest groups see Araguás Galcerà, Irene. 'La regulación de los lobbies: hacia la consecución de la transparencia y el control de las actividades desarrolladas por grupos de interés'. *Revista Vasca de Administración Pública. Herri-Arduralaritzako Euskal Aldizkaria*, vol. 106 (2016), p. 249-253; Rubio Núñez, Rafael. *Los grupos de presión*. Madrid: Centro de Estudios Políticos y Constitucionales, 2003.

34 As Chaqués states, 'we need interest groups to understand to what point existing regulations can respond and adapt to the social, economic and political changes around us; to identify problems derived from the implementation of specific policies; or simply know different citizen visions and preferences on specific problems'. Chaqués Bonafont, Laura. 'El registre de grups d'interès' in: Cerrillo i Martínez, Agustí and Ponce Solé, Juli (eds.) *Transparència, accés a la informació i bon govern a Catalunya. Comentaris de la Llei 19/2014, de 9 de desembre*. Barcelona: Editorial UOC-Escuela d'Administració Pública de Catalunya, 2015, p. 159-160.

35 Preamble of Law 19/2014, section five.

36 Articles 45 and 47 of Law 19/2014.

37 Article 45 of Law 19/2014. This article has been repealed by the repealing provision of Decree law 1/2017, of 14 February, which created and regulated the Catalonia Register of Interest Groups.

Catalonia and the bodies making up the local administration in Catalonia as well as the public bodies and other institutions included in the public administration realm.<sup>38</sup>

This way, the number of bodies and organisations that had to create a register of interest groups was very high and, in any case, would apply to more bodies and organisations than those generally considered to belong to the public administration realm.<sup>39</sup>

This notwithstanding, as already stated, implementation of this wide-ranging provision could have generated serious problems, because it did not take into account the diversity of the subjects to which it was aimed.<sup>40</sup> In fact, we have already pointed out that it may have been more effective to have established a system similar to the one called for in Law 19/2014 for transparency platforms that, based on the creation of a single platform managed by the Administration of the Government of Catalonia, lets each organisation create its own platform which, when necessary, must be interconnected with the first one (Article 6). This solution would not only allow public administrations to save resources, but would also significantly simplify the burden interest groups would have to bear by signing up for a wide range of registers.<sup>41</sup>

On the other hand, with regard to the registers of interest groups, Law 19/2014 only establishes the possibility that, notwithstanding the responsibility of every obliged organisation to enter the data called for in the Register of Interest Groups, the Administration of the Government of Catalonia could carry out centralised management of the Registry. Therefore, Decree 171/2015, of 28 July, on the Register of Interest Groups of the Government of Catalonia and its public sector stipulated that this Register could conduct centralised management of the registers of interest groups created by Law, when this task was expressly assigned through a management commission prepared pursuant to the terms of Articles 10 and 116 of the Law 26/2010, of 3 August, (on the legal system and procedures of the public administrations of Catalonia). But this option was difficult to apply in practical terms due to its requisite that an agreement be signed with each of the interested local organisations and bodies and that collaboration with the autonomous administration be limited solely to the performance of material, technical or service-oriented activities, without being able to extend the activity of the Government of Catalonia's Register of Interest Groups to the responsibility of handing down registration resolutions.<sup>42</sup>

Proof of this regulation's limitation is the fact that, two years after approval of the Law, only the Government of Catalonia and five Catalan local councils had created their own register of interest groups.<sup>43</sup> In fact, the Síndic de Greuges de Catalunya (Catalan Ombudsman), in his first evaluation report on compliance with Law 19/2014, stated that 'a very significant number of local authorities have expressed their intention to comply with this obligation through the option of centralised management of the Government of Catalonia in the terms of Article 45.3 of the Law'. Despite the interest in this measure, the Catalan Ombudsman himself states that 'although it has the positive effect of lightening local governments' workload and facilitating compliance for them and interest groups, when it is activated, care must be taken for it to not hinder the very purpose of the register; the possibility to see and follow up on intermediation and influence processes with relation to each of the administrations and their actions'.<sup>44</sup>

Therefore, facing the practical lack of application of the obligation to create registers of interest groups by the majority of Catalan organisations and public bodies and the limitation of competencies that could

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38 Article 2.f) in relation with Article 3.1 of Law 19/2014.

39 See, for example, the terms of Article 2.3 of Law 39/2015, of 1 October, on the common administrative procedure of public administrations.

40 Font i Llovet, Tomàs. 'Transparència i bon govern en les administracions locals' in: Cerrillo i Martínez, Agustí and Ponce Solé, Juli (Eds.). *Transparència, accés a la informació i bon govern a Catalunya. Comentaris de la Llei 19/2014, de 9 de desembre*. Barcelona: Editorial UOC-Escola d'Administració Pública de Catalunya, 2015, p. 290.

41 Cerrillo i Martínez, Agustí. 'Transparencia y buen gobierno en las administraciones locales de Cataluña: una aproximación local a la Ley 19/2014, de 29 de diciembre' in: Villoria Mendieta, Manuel (ed.), *Buen gobierno, transparencia e integridad institucional en el gobierno local*. Madrid: Tecnos, 2016.

42 Additional provision of Decree 171/2015, of 28 July.

43 Specifically, only the local councils of Blanes, Manlleu, Naut Aran, Sant Cugat and Terrassa created registers of interest groups.

44 Síndic de Greuges. *Informe sobre transparència, accés a la informació pública i bon govern*. 2016.

be assigned to the Administration of the Government of Catalonia to respond to this situation, the Catalan Government decided to promote a regulatory change that would allow it to strengthen cooperation in the creation of registers of interest groups and, ultimately, in the transparency of their relationships with Catalan public administrations.

With this aim in mind, Decree Law 1/2017, of 14 February, created the Register of Interest Groups of Catalonia, which acts as a register of interest groups of the Government of Catalonia, of local governments and all other organisations and public bodies that, pursuant to Law 19/2014, must create a register of interest groups.

With this, ‘there are indications that a high number—over two thousand—of registers of interest groups will exist as each of the administrations and entities of the Catalan public sector must necessarily create one. Additionally, when Law 19/2014, of 29 December, has been in force for over a year and half, there is a great distance between these legal terms and our institutional reality. For this purpose, the Catalan Government decided to create the Register of Interest Groups of the Government of Catalonia and its public sector by means of Decree 171/2015, of 28 July. It came into force in October of the same year, and now features over 1,400 registered interest groups’.<sup>45</sup>

Despite the new approach featured in Decree Law 1/2017, of 14 February, on the creation of the Register of Interest Groups of Catalonia, its implementation is not an obstacle for obliged bodies and organisations to create their own registry. Decree Law 1/2017 establishes that local governments and all other organisations subject to the Law on Transparency, with the sole exception of those making up the public sector of the Government of Catalonia, can create their own registers of interest groups, as already established by Law 19/2014.<sup>46</sup> This notwithstanding, when one of these organisations or bodies creates its own register of interest groups, it must be accessible through the Register of Interest Groups of Catalonia. That is why it will be necessary to guarantee the interconnection and integration of the registers, as well as their reciprocal recognition and respective action, so that a single interest group is not required to complete more than one registration.<sup>47</sup> To guarantee this interconnection, the body responsible for the Register of Interest Groups of Catalonia must adopt the criteria of interoperability necessary to guarantee the transparency of interest groups’ activity, the principle of single registration and the interconnection and integration of registers.<sup>48</sup>

Decree Law 1/2017 does not respond to all of the limitations observed in the regulation of interest groups by Law 19/2014, but as its preamble states ‘the regulation adopted bears in mind that a decree law is an extraordinary resource of the Government and, therefore, it must be used carefully in cases limited to the situations that truly deserve to be considered urgent and appropriate’.

### 3.3 Registration in the Register of Interest Groups

Law 19/2014 establishes a system of mandatory registration in the Register of Interest Groups.

In fact, notwithstanding the lack of an explicit obligation to enter the Register,<sup>49</sup> registration of interest groups in the Register is mandatory for all subjects wishing to influence in the making and application of

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45 Preamble of Decree law 1/2017, of 14 February.

46 Second additional provision of Decree law 1/2017, of 14 February.

47 Second additional provision of Decree law 1/2017, of 14 February.

48 Additionally, it is also established that ‘the Register of Interest Groups of Catalonia must provide the support required by the Parliament of Catalonia to guarantee the exchange of information, reciprocal recognition of actions and the interoperability with the Register of Interest Groups of the Parliament’ (First additional provision of Decree law 1/2017, of 14 February). In fact, Law 19/2014 already established that ‘the Parliament of Catalonia, pursuant to the principle of parliamentary autonomy recognised in Article 58.1 of the Statute of Autonomy, must make the modifications to the Regulations of Parliament and its own internal regime and governance regulations that are necessary to comply with the requirements established by this law’ and, in particular, create its own register of interest groups (additional fifth provision). The Registry effectively created by the Parliament has 268 interest groups registered (figures from 25 July, 2017) and was developed pursuant to the Regulations of Parliament (Chapter III of Title VI) and by Agreement of the Presiding Board of Parliament of 24 January, 2017, on the Register of Interest Groups of the Parliament of Catalonia (BOPC no. 349, of 6 March, 2017). Also of special interest is the Code of Conduct for members of Parliament approved by the Parliament in Plenary Session on 28 July, 2016 (BOPC no. 200, of 1 August, 2016), especially Articles 9 and 24.

49 Barlett Castellà, Enric i Vèrnia Trillo, Sílvia. ‘La regulació del Registre de grups d’interès a la Llei 19/2014, de 29 de desembre, de transparència, accés a la informació pública i bon govern’. *Revista Catalana de Dret Públic*, vol. 51, (2015). p. 191-208, p.196.

public policies in the benefit and interest of other persons or organisations.<sup>50</sup> On another note, in our opinion, the interest group activity transparency regime would be distorted and, therefore, the terms of Law 19/2014 would be rendered null and void.<sup>51</sup>

Therefore, the Action Protocol applicable to the relationships of senior officials, staff and management of the Administration of the Government of Catalonia and its public sector with interest groups, features the reminder that registration in the Register of Interest Groups of the Government of Catalonia and its public sector is mandatory.<sup>52</sup>

However, over the first months in which Law 19/2014 was in force, a certain confusion—or ignorance—became evident among interest groups regarding their obligation to register. This led to a low number of entries into the Register of Interest Groups of the Government of Catalonia.<sup>53</sup>

It was not until the ratification of Agreement GOV/82/2016, of 21 June, which approved the Code of Conduct for senior officials and management staff of the Government of Catalonia and the organisations of its public sector, and other measures for transparency, interest groups and public ethics, that interest groups began to sign up in the Register of Interest Groups *en masse*. The agreement establishes that ‘senior officials and management staff may maintain contacts with an interest group when it has accredited its registration in the Register of Interest Groups or subsidiarily, if the interest group can prove it has filed an application for registration’. In fact, senior officials and management staff must ensure that involved interest groups are registered in the Register of Interest Groups before holding meetings or carrying out joint activities with them. If the interest group is not registered or if, on an exceptional basis, it does not formalise its commitment to register within the period of ten days following contact being made, it will be reminded of the obligation to register. The body responsible for the Register of Interest Groups must be notified that this reminder has been given.<sup>54</sup> Once this period has elapsed, the senior officials and management staff cannot make any new contacts with the interest group until it accredits that it has registered or presented the application for registration in the Register of Interest Groups.<sup>55</sup>

Following the approval of Agreement GOV/82/2016, of 21 June, the number of interest groups entered in the Register of Interest Groups of the Government of Catalonia has increased exponentially. It now has nearly 2,500 interest groups (2,218 groups registered and 186 applications in the process of registration).<sup>56</sup>

In addition to the registration of the interest groups themselves, the register must also disclose the activities they carry out with the aim of influencing directly or indirectly in the processes of making or applying policies and decision-making, regardless of the channels or media used.<sup>57</sup>

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50 Chaqués Bonafont, Laura (2015), p. 163. Along the same lines, Decree 171/2015, of 28 July, as it established that the groups set out in the regulations (Article 6) must be included in the Register of Interest Groups.

51 In comparative terms, it can be seen that of the 12 European countries where there is a register of interest groups, in seven cases, registration is mandatory (Ireland, France, Lithuania, Austria, Poland, Slovenia and the United Kingdom). Source: [http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/595830/EPRS\\_ATA\(2016\)595830\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/595830/EPRS_ATA(2016)595830_EN.pdf) (last query: October 2017).

52 Point 2.1 of Addendum 3 of Agreement GOV/82/2016, of 21 June, approving the Code of Conduct for senior officials and management staff of the Administration of the Government of Catalonia and organisations of its public sector, and other measures in transparency subject matter, interest groups and public ethics (DOGC [*Official Journal of the Government of Catalonia*], no. 7148, of 23 June, 2016).

53 Few interest groups signed up on the rest of registers of interest groups created by Catalan local councils. In the case with the most registered groups, the tally did not reach half a dozen.

54 Article 2.4 of Agreement GOV/82/2016.

55 Additionally, the Catalan Ombudsman found that in most cases (20 of 28) the commitment to apply for registration within the ten days following the meeting was not fulfilled. This led the Ombudsman to conclude that admission of these commitments to register, which is especially relevant in the early operational phase of the Register, ‘must be balanced by a rigorous monitoring of compliance with the commitment to apply for registration in the period established, and must be a barrier for new contacts, if it has not been accredited that registration has been applied for, once this period has passed’ (Catalan Ombudsman, 2017, 26 and 42).

56 Figures as of 25 July, 2017.

57 Article 47.2 of Law 19/2014. Decree 171/2015, of 28 July, specifies the activities that can be carried out by interest groups including the meetings, hearings held with public officials, authorities and public employees and the correspondence, reports and other contributions made in relation with the subject matter discussed (article 3.2).

On the other hand, there is no requirement to register activities such as legal or professional advising linked directly to the advocacy for interests affected by administrative procedures, those meant to inform a client on a general legal situation, the activities of arbitration or mediation in the framework of the law, or the advising activities performed with informative purposes for the exercise of rights or initiatives established by the legislative framework.<sup>58</sup>

The Register of Interest Groups of Catalonia is electronic.<sup>59</sup> Thus, the sending and managing of applications, statements, writs and correspondence between the Register and interest groups must be filed by electronic means.<sup>60</sup> In the same vein, in order to guarantee the identity, security and integrity of correspondence, interest groups must use electronic signatures based on a recognised certificate.<sup>61</sup>

Registration in the Register of Interest Groups implies recognition of the following rights:<sup>62</sup>

- a) Right to present themselves before officials, authorities and public employees as an interest group registered in the Register.
- b) Right to form part of distribution lists to receive automatic alerts on formalities, acts and public consultations on subject matters of the declarant's interest as they have been noted in the statements of responsibility or later modifications.
- c) Right to leave record of their contribution to public consultations as interest groups listed in the Register.

On another note, the information of the Register must be updated, especially in terms of the information on the activity the interest groups carry out.<sup>63</sup> This update must be carried out with the periodicity necessary to guarantee the quality of the information contained in the Register of Interest Groups and, ultimately, the transparency of their activity before public administrations.<sup>64</sup>

Last, registration in the Register can be cancelled for any of the following reasons: express resignation of the declarant due to cessation of activities as an interest group; death or disability developed by an individual person; dissolution of the status of the legal entities; dissolution of the forms of collective organised activity; non-compliance of the requisites by which the status of interest group is acquired; administrative sanction of cancellation, once the decision reached by administrative methods is enforceable, and sentencing, by enforceable judicial ruling, of the person or persons who direct the activity or act in the name or legal or voluntary representation of the interest group as criminally liable for one or several crimes committed whilst performing the activities carried out as an interest group.<sup>65</sup>

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58 Article 48 of Law 19/2014.

59 As the OECD has stated, 'electronic filing has revolutionised lobby regulation, making it possible to collect and disseminate large quantities of information' OECD. (2009), p. 39.

60 Article 9.1 of Decree 171/2015, of 28 July.

61 Articles 9.2 and 9.4 of Decree 171/2015, of 28 July.

62 Article 11 of Decree 171/2015, of 28 July.

The Regulations of the Parliament of Catalonia recognise other effects of registration in the Register of Interest Groups, such as organising or co-sponsoring acts in the facilities of Parliament, with the prior authorisation of the Presiding Board, or appearing before a commission, pursuant to the terms of these regulations (article 219.1). These effects are detailed in the Organising Rules of the Register of Interest Groups, that also establish the requirement to leave express record of the contributions made with regard to parliamentary formalities and obtain a stamp or seal of transparency quality issued by the Parliament.

63 Article 49.1.b) of Law 19/2014, of 29 December.

64 To this end, Decree 171/2015, of 28 July, stipulates that 'declarants must update the information contained in the Register whenever any modification comes about. In any case, the modifications of the general and basic information must be communicated in the Register so that it may be updated within one month of the modification, and the specific information, within the calendar year in which the modification has taken place' (Article 15.4). According to the Regulations of the Parliament of Catalonia, this periodicity cannot exceed one month. (Article 218.2).

65 Article 12 of Decree 171/2015, of 28 July.

### 3.4 Dissemination of interest groups' activity

As already stated, the main purpose of regulating interest groups is to guarantee the transparency of their activity, and their relationship with public officials and employees. It is about keeping a record of their 'footprint', of the existence and true weight of their influence in regulatory activity or the design and execution of public policies. Last, it must be guaranteed that citizens have enough information on the activities performed by interest groups and their impact on public decision-making.<sup>66</sup>

In the first place, there must be a guarantee of access to the content of the Register of Interest Groups, which must facilitate knowledge of the interest groups that are registered and the activities they carry out. Therefore, Law 19/2014 recognises the public character of the Register of Interest Groups as well as the fact that its data must be available through the transparency regime established by the law itself.<sup>67</sup> To guarantee the maximum transparency of the Register, plans call for the Catalan Ministry of Justice to guarantee expedient, streamlined access to the content of the Register of Interest Groups.<sup>68</sup> Specifically, it must be guaranteed that the information relative to interest groups is disseminated in reusable formats through the Transparency Platform and also that the administrations and institutions that make up the Register are able to disseminate the information that affects them specifically through their own platforms.<sup>69</sup>

Second, it is necessary to guarantee dissemination of the public agendas of senior officials to know the interest groups they have met with, and the purpose of those meetings. Therefore, it has been established that the Ministry of Transparency and Foreign and Institutional Relations and Affairs must establish the mechanisms that allow the publication of senior officials' official diaries as they pertain to interest groups.<sup>70</sup> In general terms, there must be an effort for information on interest groups that is already on record or in the power of public institutions to be updated, on an *ex-officio* basis or at the behest of the interested party, in the Register of Interest Groups of Catalonia.<sup>71</sup>

Third, knowledge of interest groups' activity with regard to law-making must be facilitated. In recent years, there has been a growing body of evidence on the importance of being able to access the regulatory footprint so as to fully know which interest groups have taken part in the law-making process.<sup>72</sup>

Last, transparency must be given to the entire system. Specifically, plans call for the body responsible for the Register of Interest Groups having the obligation to prepare a half-yearly report on the activity and the operation of the Register and an annual report on the activity and operation of the Register carried out during the fiscal year, and the result of the monitoring and supervision activities of the interest groups in the Register that the competent Catalan government minister will write for the Catalan Government.<sup>73</sup>

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66 Transparency International. (2015), p. 56.

67 Article 46.1 of Law 19/2014.

68 Agreement GOV/82/2016.

69 Third additional provision of Decree law 1/2017.

70 Agreement GOV/82/2016. This obligation has initially been met with the publication of the contacts between senior officials of the Government of Catalonia and interest groups, grouped by ministries, on the website that features the Code of Conduct. Additionally, the Catalan Ombudsman has rightfully stated that 'The purpose of record-keeping in an individual's diary, and making the Register public is to bring transparency to the relationships between interest groups and decision-making bodies, and this purpose cannot be understood as fulfilled if the specific reason for the meeting or the subject matter discussed is not specifically indicated'. This applies to when the subject matter of meetings is described in terms that are 'too brief or vague with expressions such as "meeting", "work meeting" or "project follow-up", which are frequent and make it difficult to know the content of the meeting'. (Catalan Ombudsman, 2017, 26 and 42).

71 Third additional provision of Decree law 1/2017. With respect to publishing the diaries of senior officials, mention must be made of the difficulties this has represented from a personal data protection perspective. In this area, see Interpretative criteria of the Council of Transparency and Good Governance and the Spanish Data Protection Agency 2/2016, of 5 July, on the information relative to public officials' diaries.

72 This is also proposed by Transparency International (2014), p. 18, and Transparency International (2015), p. 29.

73 Articles 23 and 24 of Decree 171/2015, of 28 July.

#### 4 Integrity in the relationships between senior officials and interest groups

Rules on interest groups must not only guarantee the transparency of their activity and of the relationships that they maintain with public administrations. They must also guarantee that these contacts cast no doubt on, or damage public integrity. As has been said, ‘it takes two to lobby’. For this reason, it is necessary to guarantee the integrity not only of public officials and employees but also the interest groups themselves.<sup>74</sup>

That is why it is necessary to guarantee that interest groups’ activity and their contacts with public officials and employees are conducted under certain guidelines, guaranteeing at all times objectivity and the impartiality of their activities and avoiding conflicts of interest.<sup>75</sup>

To guarantee public integrity in the activity of interest groups, it is necessary for interest groups and public officials and employees to guide their undertakings in accordance with these principles. In any case, ‘the creation of the Register can neither block nor restrict the exercise of the rights that are legally attributable to the authorities or public officials, or those inherent to the parliamentary mandate or elected officials’.<sup>76</sup>

Therefore, with regard to public officials,<sup>77</sup> it must be borne in mind that Law 19/2014 establishes that they must act according to a number of ethical principles and rules of conduct, especially noteworthy of which, for our purposes (in relation with the subject at hand), is the transparency of official activities, the acts and decisions related with the management of public affairs assigned to them and of their official diary. The second important principle is impartiality in decision-making, guaranteeing the conditions necessary for independent action that is not conditioned by conflicts of interest. Thirdly, equal treatment of all persons and the usage of the information to which they have access by virtue of their post in the benefit of the public interest, without obtaining any advantage for themselves or others. It also prohibits them from receiving valuable gifts, favours or services that could be offered to them because of their post, or that could compromise the performance of their duties.<sup>78</sup>

These principles have been specified, expanded and developed by the Code of Conduct for senior officials and management staff of the Administration of the Government of Catalonia and bodies of its public sector, and the action protocol applicable to relations of senior officials and management staff of the Administration of the Government of Catalonia and its public sector with interest groups, which establish the following guidelines.

In the Code of Conduct of senior officials, it is established that they must ensure the compliance with the regulations on interest groups and notify the competent bodies of any irregularities or infringements they become aware of in this realm. They must keep their relationships with interest groups within the criteria and action protocols corporately adopted and, especially, ensure compliance with the obligations for registration in the Register of Interest Groups. Further, they must add to their official diaries the contacts established with these groups and facilitate their compliance with the obligations and exercise of the rights they are entitled to.

The Action Protocol applicable to relationships between senior officials and management staff of the Administration of the Government of Catalonia and its public sector and interest groups, in addition to the

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74 OECD (2009), p. 10.

75 There have been numerous cases that show the fine line that separates lobbying and influence-peddling. Pursuant to Article 429 of the Criminal Code, a crime is committed in the event that, ‘a private citizen influences a public civil servant or authority, availing themselves of any situation derived from the personal relationship with that or any other public civil servant or authority to secure a resolution that could directly or indirectly generate an economic benefit for them or a third party’. See a discussion on this subject in Romero de Tejada, José María. ‘El delito del tráfico de influencias en el ámbito de la Administración local’. *Cuadernos de derecho local*, vol. 24 (2011).

76 Article 46.3 of Law 19/2014, of 29 December.

77 For more information of the scope of the term *senior official*, see Article 2 of Law 13/2005, of 27 December, on the regime of incompatibilities for senior officials working for the Government of Catalonia, pursuant to the terms of Article 4 of Law 19/2014, of 29 December.

78 Article 55.1 of Law 19/2014, of 29 December.

Historically, the reception of gifts has been a controversial issue. Currently, the Code of Conduct for senior officials establishes that they can only receive ‘complimentary tokens of courtesy and commemorative, official or formal objects’, but not any other gift or donation (5.17).

obligations previously listed, establishes that the senior officials and management staff must be familiar with the interest group regulatory framework. This includes: holding contacts with an interest group only when their registration in the Register of Interest Groups has been proven; checking to ensure that the involved interest groups are registered in the Register of Interest Groups; including in their official diaries the contacts that they engage in (audiences, meetings and events); guaranteeing the conservation of documents provided by interest groups with relation to the processing of projects or regulatory draft bills; ensuring compliance with the regulations on interest groups and the Code of Conduct; informing in the Register of Interest Groups on any irregularity that they detect in their relationships with interest groups; and abstaining from engaging in contacts—or suspending any they are engaging in—with interest groups whenever said groups incur in a clear breach of the regulations or the Code of Conduct.

With regard to public employees, beyond the principles and rules of conduct laid out in general terms in the Basic Statute of Public Employees (objectivity, integrity, neutrality, impartiality, transparency and exemplary character), it must be borne in mind that the Administration of the Government of Catalonia is preparing a Code of Conduct for public servants that, as regards relationships with interest groups, establishes that the public servants of Catalonia in their relationships with interest groups must take into account the values of objectivity, good relations and transparency which, among other behaviours, translate into:

- applying the rules that guarantee impartiality in the exercise of their duties and, in particular, the provisions on conflicts of interest;
- facilitating interest groups' exercise of their rights and their cooperation in the definition and application of public policies;
- maintaining fluid, constructive dialogue with them;
- promoting and facilitating compliance with the obligations and codes of conduct applicable to interest groups, especially as regards their obligation to enter the register;
- leaving record of the contacts engaged in with interest groups, keeping the documents that they may have provided, especially in the case of regulatory proposals;
- observing the codes of conduct and action protocols applicable to the relationships between public servants and interest groups;
- notifying the competent bodies of any irregularities or infringements they are aware of in this realm.

Last, the persons and organisations listed in the Register of Interest Groups also have the obligation to expressly accept and comply with a Code of Conduct.<sup>79</sup> Law 19/2014 does not define the content of the Code of Conduct, beyond establishing that it must include, in addition to the identification of the declarant and the organisation they represent and the interests they pursue, the commitment to not attempt to obtain information or influence decision-making in a dishonest manner. Further, they must provide updated, forthright information when they sign up in the Register. They must not incite public officials or employees to break the law or rules established in the Code of Conduct, and have to agree to comply with the measures adopted in the case of non-compliance with the established obligations.<sup>80</sup> This notwithstanding, the minimum content of the Code of Conduct can be inferred from reading the obligations of the declarants, among which are the following: accepting that the information provided be made public; guaranteeing that the information provided is complete, correct and reliable; complying with the Code of Conduct; and accepting the application of the monitoring and control system.<sup>81</sup>

Pursuant to these terms, Decree 171/2015 established the content of the Code of Conduct for interest groups in an especially meticulous way, with the inclusion of 15 ethical or conduct rules. Even as it did so, it

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79 Article 17 of Decree 171/2015, of 28 July. As the OECD has stated, 'Currently, debate centres on whether codes should be voluntary or imposed by law; experience suggests that legislative regulation is preferable'. (OECD, 2009, p. 40).

80 Article 51 of Law 19/2014, of 29 December.

81 Article 50 of Law 19/2014, of 29 December.



emphasised that those rules were the ‘minimum ethical standard’, to which declarants could add more rigorous behavioural rules.<sup>82</sup> Among the rules included in this common Code of Conduct, we can emphasise those having to do with ‘acting with integrity and honesty in the conduct of their activity, and in their relations with authorities, elected officials and all other public employees, and not carrying out any activity that could be qualified as corrupt, dishonest or illegal’; ‘Not putting authorities, elected officials and the rest of public employees in any situation that could generate a conflict of interest’; and ‘not influencing or trying to influence in decision-making in a dishonest way, or obtaining or trying to obtain information by dishonest means through inappropriate behaviour’.<sup>83</sup>

Beyond these more general measures, it cannot be overlooked that interest groups and senior officials can find themselves facing conflicts of interest. Often, interest groups seek to not only influence, but also obtain internal information or take advantage of personal knowledge possessed by officials who have to make the decisions. These conflicts are frequently generated by the ‘revolving door’ phenomenon. In other words, the incorporation of public officials into interest groups when they are no longer in office, or the assumption of public responsibilities by persons who have previously been linked to interest groups.<sup>84</sup>

Finally, it is clear that interest groups’ activity can lead to cases of corruption. To prevent this, it is necessary to regulate interest groups’ activity, in general,<sup>85</sup> and also take specific measures for the prevention of corruption associated with interest groups, in line with what the legislation in force already contains, with measures to fight influence-peddling,<sup>86</sup> as influence activity can often approach the limits of this offence.<sup>87</sup>

## 5 Consequences of non-compliance with interest groups’ obligations

### 5.1 Control and monitoring mechanisms

Control and monitoring of the interest groups in the Register is performed through the following mechanisms:<sup>88</sup>

First, the quality control inspections, periodically performed *ex-officio* on a random, specific basis by the body responsible for the Register regarding the veracity of the information provided in the statements of responsibility. If the body responsible for the Register detects any error or omission, it must send a notification to the declarant, providing them with a period of ten working days to rectify it. In this time period the declarant may also file the allegations it deems opportune. If the notification is ignored, an investigation will be begun and, if necessary, a temporary suspension of the registration agreed.<sup>89</sup>

Second, the alerts procedure, which consists of the notification by electronic means that any individual may make to the body responsible for the Register regarding the errors or omissions found in an interest group’s

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82 On another note, the Rules of Organisation of the Register for interest groups approved by the Parliament of Catalonia define the Code of Conduct for interest groups that must adjust their relations with the Parliament, members of parliament, staff of parliamentary groups and civil servants (Annex II).

83 The content of the Code of Conduct is featured in Article 18 of Decree 171/2015, of 28 July.

84 As shown by LaPira and Thomas in the North American case, this is a frequent phenomenon. LaPira, Timothy M. and Thomas, Herschel F. ‘Revolving door lobbyists and interest representation’. *Interest Groups & Advocacy*, vol. 3 (2014). In fact, in 2009, in the United States more than one third of the activity of interest groups was carried out by former members or employees of the US Congress or former senior officials. Draca, Mirko. ‘Institutional Corruption? The revolving door in American and British politics’: Social Market Foundation-Comparative Advantage in the Global Economy, (2014). p. 10. Eggers, A. C. ‘The Partisan Revolving Door’. Harvard: Harvard University, 2010. For this reason, measures must be taken to prevent conflicts of interest Cerrillo i Martínez, Agustí. ‘Beyond Revolving Doors: The Prevention of Conflicts of Interests through Regulation’. *Public Integrity*, Vol. 19 (2017).

85 Carloni, Enrico (2017).

86 Articles 428, 429 and 430 of the Criminal Code.

87 OECD. (2009), p.18.

88 Article 52 of Law 19/2014, of 29 December.

89 Article 20 of Decree 171/2015, of 28 July.

registration. Upon receiving the alert, the responsible body must check the information and, if necessary, begin an inspection procedure.<sup>90</sup>

Third, the reports that can be electronically filed by any individual to report any indication of breach of the obligations established by Law 19/2014 or by the Code of Conduct. Once the complaint has been received, the responsible body must begin an investigation procedure and, if necessary, take the relevant cautionary measures and notify the body competent to begin punishment proceedings.<sup>91</sup>

## 5.2 Punishment regime

An interest group's non-compliance with the obligations established by Law 19/2014 or the Code of Conduct applicable to them is considered a very serious breach. Non-compliance with the principles established in the Code of Conduct is considered a serious breach.<sup>92</sup>

Committing a very serious breach, in addition to the levying of a fine ranging from 6,001 to 12,000 euros, can bring about the permanent removal of the registration in the Register of Interest Groups.<sup>93</sup> Committing a serious breach, in addition to a fine ranging from 600 to 6,000 euros, can bring about the suspension for a period not to exceed one year of the registration in the Register of Interest Groups.<sup>94</sup>

Beyond the punishment regime established in Law 19/2014, any inaccuracy, falsehood or omission in the information provided by the interest group can give rise to the temporary suspension of their registration in the Register, the permanent cancellation of the registration, and denial of access by the involved persons and, if necessary, the organisations to which they belong, to the offices and services of the public institutions and bodies, as well as publication of the relevant punishment in the Register of Interest Groups of the Government of Catalonia and its public sector.<sup>95</sup>

With regard to senior officials, according to Law 19/2014 it is a serious breach if they fail to comply with the principles of good conduct established by the laws and codes of conduct, as long as they do not constitute a very serious breach. Therefore, the classification of such violations covers the failure to guarantee transparency of their official diary, as concerns keeping record of the contacts engaged in with interest groups, as well as non-compliance with the rules taken up in the Code of Conduct for senior officials of the Government of Catalonia, the action protocol applicable to their relationships with interest groups or other codes of conduct applicable to the members of other institutions. The penalties that can be applied to senior officials for committing serious infringements include suspension from office for three to six months, fines ranging from 600 to 6,000 euros, the loss or reduction of up to half the compensatory pension they may be entitled to and ineligibility to occupy high-level posts for a period not to exceed one year.<sup>96</sup>

## 6 Ten lessons on how interest groups are to be regulated, learnt from the application of Law 19/2014, of 29 December

The examination of the Catalan regulations on interest groups and an analysis of the experience accumulated in their application enables us to identify various elements that, in our view, must be very much taken into account when regulating interest groups' activity and when applying these regulations.<sup>97</sup>

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90 Article 21 of Decree 171/2015, of 28 July.

91 Article 22 of Decree 171/2015, of 28 July.

92 Article 78.3g) of Law 19/2014, of 29 December.

93 Article 84.1.a) of Law 19/2014, of 29 December.

94 Article 84.1.b) of Law 19/2014, of 29 December.

95 Article 16.5 of Decree 171/2015, of 28 July.

96 Articles 78.3.g) and 81.1.b).

97 Along these lines, also of interest are the 10 sub-dimensions of a comprehensive regulatory system for lobbies identified by Villoria Mendieta, Manuel; Revuelta, Ana and Jiménez Sánchez, Fernando (2015), p. 8.

In the first place, it must be borne in mind that regulation of interest groups is part of a more complex system meant to regulate transparency and public integrity.<sup>98</sup> In fact, the regulation of interest groups constitutes a specific projection of transparency, but also of ‘good governance’ and ‘open government’, as Law 19/2014 defines these concepts.<sup>99</sup> Consequently, the rules that directly regulate it, as well as the principles and rules inherent to the transparency, good governance and open government, in addition to the provisions set out in other assimilable legal areas, such as criminal law measures, also adopted to guarantee public integrity, are applicable in this subject matter.

Second, both the international recommendations and the Catalan experience demonstrate the need to have a concept of interest group that is sufficiently robust, clear and accurate. This is a requirement that, without prejudice to the clarifications that could be introduced by regulatory means, would require modification of Law 19/2014 in this point. Along the same lines, it is advisable to restrict or delimit with the maximum possible precision the subjective or objective exceptions to registration, as it has been seen that they can lead to loopholes or opacity for a great many organisations that effectively carry out influencing activity. Likewise, it is clear that extending senior officials’ obligation to disclose their official diaries of all contacts they engage in, not only of those they have with interest groups (article 55.1.c) Law 19/2014 and Article 9.2 of the Code of Conduct for members of Parliament), would lessen the pressures that arise when this idea is put forth.

Third, the application of interest group regulation is complex and will take time to bear its fruits. The lack of prior regulation of interest groups makes it all the more evident that the effectiveness of such laws is linked to a cultural change among the interest groups themselves, as well as the senior officials and public employees with whom they interact.<sup>100</sup>

Fourth, it seems appropriate for this cultural change to also be projected over the social perception of properly registered interest groups. More specifically, it should be understood that registered interest groups do not make up a ‘black list’ of lobbies with unspeakable agendas, but rather a ‘white list’ of organisations that contribute to improving the governance of society and the transparent activity of our public institutions, which must necessarily redound to the prestige and upstanding social reputation of interest groups.<sup>101</sup> Subjection of their activity to a strict Code of Conduct and the principle of transparency strengthen the trust and security of all involved parties (public servants, the interest groups themselves and society in general). The development of the rights and advantages that have been recognised concerning interest groups, as the privileged collaborators of public administrations, must also form a pathway to encourage registration and improve their prestige. Citizens have an important role to play in monitoring interest groups’ activity. For this to be possible, it is necessary for the information on registers of interest groups to be distributed in open, reusable formats.

Fifth, in line with the terms of Law 19/2014, and to guarantee its effectiveness, there must be a progressive extension of supervision and transparency of interest groups’ activity to those public servants who do not have the status of senior officials, as well as to influence activities that are carried out by means other than face-to-face contact.

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98 In this vein, Carloni states, ‘the subject of lobbies, and their regulation, is collocated at the intersection of a number of issues, which validates the complexity and difficulty in dealing with the theme’ (Carloni, Enrico, 2017, p. 133).

99 Article 2, letters *d*) and *e*) of Law 19/2014, of 29 December. The Catalan Ombudsman has made similar statements: ‘regulating the publicity of interest groups and their activities cannot be understood as something unique or isolated. Rather, it responds to the same general principle of transparency and accountability to citizens to which Law 19/2014 seeks to subject the activity of all public authorities and their relationships with private individuals’. (Catalan Ombudsman, 2017, p. 27).

100 Based on their analysis of the laws on interest groups in force in four Latin American countries (Argentina, Brazil, Chile and Peru), Dos Santos and Teixeira da Costa also identify these lessons on the rules governing interest groups. Furthermore, they warned that interest group regulations cannot provide responses to all the needs their activity generates and that, by the nature of their activity, there will always be cases of corruption and irregularities linked to interest groups’ activity. Dos Santos, Luiz Alberto and Teixeira da Costa, Paulo Mauricio. ‘The contribution of lobby regulation initiatives in addressing political corruption in Latin America’. *Journal of Public Affairs*, (2012). The Catalan Ombudsman also expressly admitted ‘the difficulties inherent to implementing the regulation of influence activity that has no precedent in our country’, (Catalan Ombudsman, 2017, p. 27).

101 In the opinion of the Catalan Ombudsman, it must be noted that ‘registration has a positive effect, from the perspective of the social perception of the organisation being registered, as it covers the need to add transparency to their relationship with the Administration. And in opposing terms, it should be remembered that a negative perception could be generated among society if an organisation claimed that their relational activity with the Administration must not be publicised’, (Catalan Ombudsman, 2017, p. 27).

Sixth, equality among interest groups in their access to public administrations must be guaranteed.<sup>102</sup> There are interest groups that can have more influence capacity in public decision-making or law-making. It must be made clear that interest groups are often not the persons or the groups that actually exercise their influence.<sup>103</sup> That is why it is necessary for public administrations to rebalance this situation, to prevent the exercise of ‘*du pouvoir au profit de certains*’,<sup>104</sup> and the dominance of decision-making processes by certain interest groups.<sup>105</sup> Following this logic, it would also seem appropriate to introduce differentiated rules (with greater or lesser burdens) depending on the diversity (and their greater or lesser influence capacity, or the frequency with which they carry out their activities) presented by interest groups.

Seventh, integrity must be guaranteed within the ‘revolving-door’ phenomenon. It is common for senior officials to go to work for interest groups once they leave their public responsibilities. It also frequently occurs that someone who has been exercising their influence before public administrations then goes on to occupy a post of responsibility in the public administration.<sup>106</sup> This professional option that senior officials have upon leaving their public responsibilities cannot be allowed to jeopardise public integrity. That is why, beyond the measures already in place (cooling-off periods, registration in the registers of activity for senior officials or punishment regime for non-compliance with the obligations established), it is necessary to promote new measures to guarantee that no conflicts of interest or cases of corruption arise (for example, improving transparency to know which public officials work for interest groups after leaving office, and the activity they carry out; establishing specific prohibitions of using information discovered while holding office, and as long as the general public does not have access to it; defining principles of conduct with respect to the relationship with persons with whom an official has worked in the Public Administration or the use of the contacts made while holding office; training and advising senior officials and interest groups on conflicts of interest; and reinforcing the supervision of senior officials’ activity once they have left office).<sup>107</sup>

Eighth, it cannot be overlooked that, to an increasing degree, the activity of interest groups transcends the boundaries of public administrations’ realms of action.<sup>108</sup> This reality suggests the need to establish mechanisms of cooperation and interconnection or register information exchange among the various administrations, and between them and other public institutions—such as parliaments—at equally diverse territorial levels.

Ninth, there must be a broad dissemination of the need to comply with the obligations set out in regulations, among interest groups as well as between senior officials and public employees. This is why it is so important to promote actions of an awareness-raising, informative, training and advising nature.

Tenth, and last, proper application of the regulations must be guaranteed. Therefore, it is necessary to reinforce the function of supervision over these groups’ activities and to guarantee that the competent body to do so, be it the same body responsible of the Register of Interest Groups, or an ad-hoc body, has the autonomy and the necessary resources to ensure that the actions of interest groups are within the parameters

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102 As Ponce states, ‘it is essential that the Administration guarantee that all relevant interests are present, and no one has been left out. *This administrative task of guaranteeing participative equality is essential to guarantee objectivity, and therefore good Administration, in addition to good governance*’. (italics taken from original text) (Ponce Solé, Juli, 2015).

103 To the contrary, ‘promote diverse participation in public decision-making from individuals and groups with a range of perspectives’. ‘Approve legal requirements that allow citizens, interest groups and corporate bodies to equally input into legislative items under consideration’. (Transparency International, 2015, p.11).

104 Lignières, P. ‘La procédure administrative non contentieuse en France: un droit pour rétablir la confiance entre les citoyens et l’Administration’ in: Auby, Jean-Bernard (Ed.) *Droit comparé de la procédure administrative/Comparative Law of Administrative Procedure*. Brussels: Bruylant, 2016.

105 Transparency International (2015), p. 58.

106 In any event, as LaPira and Thomas make clear, ‘lobbying transparency rules, cooling-off periods and other restrictions are insufficient disincentives. Interest group demand for access is simply too strong’. (LaPira, Timothy M and Thomas, Herschel F. (2014, p. 5).

107 Cerrillo i Martínez (2017).

108 The OECD echoes this sentiment in its statement that, ‘globalisation has established similar modes of lobbying practices across a wide number of nations, creating common problems and raising similar issues and expectations in diverse societies’, (OECD, 2009, p.13)

of transparency, integrity and equal access determined by the legislation in force and to channel the necessary accountability to society.<sup>109</sup>

In short, the work that has been accomplished in Catalonia in just a few years in the area of interest groups is as significant as the unmet challenges that lie ahead.

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109 Transparency International suggests that 'there should be an independent agency or body that manages the system, monitors and punishes any breaches committed by the private or the public sector', (TRANSPARENCY INTERNATIONAL, 2014, p. 17). In similar terms see TRANSPARENCY INTERNATIONAL (2015), p. 59.

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