

ESB Submission into the Public Consultation for the Second Review of the operation of the Regulation of Lobbying Act 2015

Name of the individual making the submission	Marie Sinnott
Name of the organisation that you are affiliated to	ESB
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
What are the positive features of the Act?	
<p>ESB believes that the Act serves to successfully govern the behaviours of persons carrying on lobbying activities, and ensures that these activities are appropriately transparent.</p> <p>The Act itself is clear, straightforward and relatively understandable, even to a lay person.</p> <p>The Act is implemented via a web-based portal, which simplifies the return process for any registered lobbyist, and ensures that the information submitted is available in a timely manner to any interested parties.</p> <p>The Act is appropriately pitched in terms of the range of activities covered and the current categorization/definition of DPO. It serves to give an appropriate level of insight to interested parties, without being overly burdensome on registered parties.</p> <p>The Act and the associated product of the Act are generally well known to the public and interested parties, ensuring that the information provided under the Act is suitably disseminated.</p>	
Does the Act fulfil the objectives it set out to achieve?	
ESB believes that the Act fulfils its objectives in terms of delivering an appropriate level of transparency on "who is contacting whom about what".	
Have any unintended consequences occurred, in your view?	
ESB is not aware of any unintended consequences arising from the Act.	
Do you think the Act can be improved in any way and, if so, how?	
<p>ESB would propose that the process to seek to delay publication would be refined.</p> <p>Currently an registered entity can apply to SIPO to delay publication, if publication could be reasonably expected to</p>	

- Have a serious adverse effect on the financial interests of the State, national economy, business interests generally, or the business interests of a particular set of people; or
- Cause material financial loss to the person to whom the information relates or prejudice seriously the competitive position of that person in the conduct of the person's occupation, profession or business or the outcome of any contractual or other negotiations

SIPO must make a decision on such an application within 21 days, based on public interest

In the event that the communications being considered in this manner occur close to the threshold reporting date, and the 21 day decision period of SIPO spanned the lobbying return deadline, it is not clear that the registered lobbyist is not in breach of the Act if they do not make the return in question, despite being engaged in a process.

What suggestions for changes, if any, would you make?

ESB would propose that, at a minimum, the Act be altered to confirm that, once a registered entity is engaged in the process to seek a delayed publication, that it is clear that they are not in breach of the Act for the period during which they are engaged in that process. It is further proposed that, in the event that the SIPO decision is not to allow a delayed publication, a defined additional period (of the order of 3 days) be allowed following the end of the engagement process with SIPO, to allow the registered entity to finalise and make the submission.

Further to the above proposal, ESB does not believe that it is necessary for SIPO to make a decision on the exemption. ESB believes that decision should sit with the Lobbyist, as it does with other transparency related legislation such as the Market Abuse Regulation (EU No. 596/2014) or the Freedom of Information Act 2014. ESB suggests that DPER consider the introduction of a self-assessment regime, supported by a guidance issued by SIPO, and with the option of a lobbyist approaching SIPO for additional guidance, if required.