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## From informal practices to formal conduct: Which ethical practices and issues for French lobbying consulting?

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**From informal practices to formal conduct:**

**Which ethical practices and issues for French lobbying consulting?**

**Abstract:**

In France, lobbying consulting is at the same time a recent and not well received activity, conversely to the United States. The influence of public decision making is certainly a particularly sensitive occupation, at both managerial and societal levels. This is why ethics as applied to business can play a central role in its establishment. This paper examines the practices and issues of ethics in lobbying consulting.

The chosen field in this exploratory study is France. The case of a lobbying consultancy firm is more specifically developed. A three month participant observation research is complemented by secondary data on the profession in France and in the United States, as well as on French, European, American and Quebec institutions. The results of this research are developed along two lines:

1. The practice of lobbying ethics differs according to age and degree of institutionalization of the profession in the country. In France ethics is informal and based primarily on exemplarity, with a particularly low regulatory potential.
2. The stakes of ethics are both internal to the lobbying consulting profession, in its structuring from an emerging to an established profession, as well as external in the clarifying of its relationship with its stakeholders including customers, government and the civil society.

**Key words:** Ethics, lobbying, management consulting

## **Introduction**

Can lobbying be reduced to “Booze, Blonds and bribes”? In the U.S., Opensecrets.org NGO reveals that *"in addition to campaign contributions to elected officials and candidates, companies, labor unions, and other organizations spent 2.45 billions of dollars in 2011 to lobby Congress and Federal Agencies."* According the website's statistics, between 2000 and 2011, the number of clients represented by lobbyists increased 59%, from 7 034 to 11 164. In Europe, during the month of March 2011, two journalists posing as lobbyists trapped members of the European parliament by offering them money to propose amendments. Meanwhile, in France, Transparency International France, an association leading the fight against corruption, accused the French National Assembly lobbying to lack transparency... The influence of private interests over public decision-making, since this is the issue at stake, definitely attracts a lot of attention.

The word "lobby" was used for the first time in the United States by General Grant who, after the burning of the White House had settled in a hotel whose ground floor ("lobby") was invaded by pressure groups. The term "lobby agents" appears eventually in the United States in 1823 to refer to people who frequent the halls of Congress to influence its members. Today, as Farnel (1993), we define lobbying as *"an activity that consists in carrying out interventions to directly or indirectly influence the development, application or interpretation process of legislation, standards, regulations and more generally, any action or decision by the authorities, "* p. 174. Lobbying practices in France are to be considered at this stage as informal expressions of an emerging profession in a developed society, whereas in the Anglo-Saxon countries these practices are manifestations of a structured, regulated and mature profession.

Who are these lobbyists? In general, there are two main types of pressure groups external to the government: professionals (businesses but also forms of more or less structured collective action such as trade associations, professional associations, and economic development groups) and social pressure groups (e.g. trade unions, advocacy groups, consumers, environmentalists, women rights groups, political parties, alumni networks). Lobbying can be performed with internal resources, or delegated to outside consulting firms that will be more specifically the object of this research and paper. Indeed, the use of an external consulting firm provides access to experienced lobbyists at a lower cost. However, it raises even more acute ethical problems because of the granted delegation of the interests (or agency problem in the words of Jensen and Meckling, 1976).

For these consultants, the practice of lobbying is confronted daily with the question of ethics, be it only in regard to the confidentiality of client information they detain. More generally, the concepts of justice, social responsibility, exemplarity, mutual trust, and respect for others defined by Ricoeur (1988) seem at odds with the exploits of lobbyists the media feed us with. Many cases of corruption and influence peddling have been revealed or guessed, but they mask another reality: that in fact a company's influence may be exercised ethically. This means for the lobbyist to not only to comply with the law but also help establish rules of good practice and to consider the consequences of the defended interests for other stakeholders.

The central question on the subject is: "To what extent do the French players in the lobbying profession adopt ethical practices?" This issue will be covered in this research through two more specific questions:

Q1: What ethical practices can be characterized?

Q2: What is at stake with these practices?

This communication is composed in a classical manner: a review of the literature on the relationship between ethics and lobbying, the presentation of the chosen qualitative exploratory method and French field, results describing the practice of ethics in lobbying firms as well as the related stakes regarding the structuring of the profession and of its relationships with stakeholders.

## **Literature : Ethics and Lobbying, “Dangerous Liaisons”**

### **Lobbying in France: an emerging profession seeking its ethics**

Lobbying is an activity that is barely structured in France while it is historically much more established in Anglo-Saxon countries. Accused of harming public interest, specifically through rent seeking, this activity is in quest of its ethical grounding.

#### Lobbying, a recent and emerging profession in Europe

The United States is considered the birthplace of lobbying, stemming from its origins in the nineteenth century to the 1970s when the political activity of U.S. businesses dramatically increased at the federal level. This unprecedented mobilization only intensified from that period onwards.

In the U.S., figures on lobbying are available and transparent (see for example the [opensecrets.org](http://www.opensecrets.org) website). Today lobbying in the U.S. counts over 40 000 direct players, mainly based in Washington D.C., which must be registered and yield to the relevant regulations ("Foreign Registration Act", 1936, "Federal Registration Act", 1946) (Ansolabehere, De Figueiredo, Snyder, 2003). Furthermore, election campaigns are financed by companies through Political Action Committees (PAC) on which it is possible to obtain detailed data (Bombardini and Trebbi, 2011). More directly, the

Disclosure Law of 1995 mandates transparency about the amounts spent for lobbying and their destination. Finally, a number of authorities similar to independent French administrative authorities, such as the Federal Communications Commission, have very precise data on interest groups and the amounts spent (De Figueiredo, Kim, 2004).

Some studies (such as Levitt, 1995, on the relationship between financial contributions to campaigns and changes in the votes at the House of Representatives and at the Senate) do not find an empirical relationship between lobbying and public decisions. However, a majority of research highlights the influence of political action on its target. Thus, Hall and Wayman (1990), studied three issues submitted to Congress in the 1980s<sup>1</sup>. They demonstrate that financial interests significantly influence the legislative process. In particular, committee members are sensitive to the demands of pressure groups, even if they do not belong to their constituencies. Similarly, Wright (1990) analyzes the votes of the commissions by the 99th Congress by interviewing elected officials as well as by questionnaires sent to lobbyists. He emphasizes that the voting decisions of elected officials depend on interest groups' efforts. In addition, Romer and Snyder (1994), study the pressure from lobbyists on commission members of the U.S. House of Representatives through the financing of election campaigns from 1980 to 1988. They find that there is indeed a link between the famous American PAC and the decisions of the said commissions.

In Europe, the historical dictionary of the French language testifies to the appearance of the word "lobby" in the nineteenth century, in 1843 in the "Revue des Deux Mondes", then in 1857 in the "Revue Britannique", describing an American reality. It is not until 1952 that the word is acclimated about a comparable French practice, first in the

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<sup>1</sup> the law on the control of milk production discussed by the Agricultural Committee in 1982, the Partnership Act for internships in charge of the Education and Labor Committee in 1982 and the Policy Act for the natural gas market studied by the Energy and Commerce Committee between 1983 and 1984

parliamentary environment and in other influential circles (particularly the press). Since then, the practice of lobbying by European companies has significantly changed. First, the globalization of economic activities has been accompanied by increased competition and a "*juridicisation*"<sup>2</sup> of economic and social relations (to the extent that Carbonnier (1996) in France speaks of a "passion for law"). New constraints emerge for companies that may try to overcome them by seeking competitive advantages, for example through lobbying. Moreover, the existence of a process of decentralization (or devolution of the state to local governments) in a number of European countries is a source of additional opportunities for lobbyists. Take for example the case of Great Britain, where, after independence was given to Scotland and Wales, the major London lobbying firms set up subsidiaries in these regions (Picard, Adler and Bouvier, 2000). Finally, European integration implies a transfer of decision-making centers and thus new opportunities for business lobbyists (John, 1992). As such, the introduction of the single market in 1986 was a turning point. Thus, in France, the lobbying firms start to gain professional recognition in the late 1980s.

#### Ethics and lobbying : Managerial and societal stakes

From an economic and social perspective, many critiques are raised against pressure groups. They would work in the background and obscure debates. In addition, their action could hide an exacerbation of corporatism which makes the choices more difficult and less concerned with the common good. Finally, the proliferation of pressure groups would be a source of conservatism and status quo rather than of progress. In recent years, a negative impact of pressure groups was noted: the increase in public spending and the decline in growth rates. For example, for Olson (1978), we can explain the growth

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<sup>2</sup> « *juridicisation* » (not judicialisation), derived from the word "juridique", ie.legal, is the phenomenon of the spread of law and legal solutions to more areas of social and economic life.

rhythms in public spending by the greater or lesser place pressure groups take. Pressure groups form and organize themselves to obtain transfers to their advantage, which leads to the increase of expenditures made in the state budget. Would lobbying thus be a rent-seeking activity? (Stigler, 1975).

There are studies that say that lobbying can certainly generate costs but can create social benefits as well and that an optimal cost level would exist (Lee, 1985). For example, a private company may be more competitive than the state for the production of electricity. Lee (1985) estimated that only a quarter of rent-seeking activities result in a net loss for society. He goes further by attempting to determine the average level of marginal cost of lobbying (that is, of the total volume of lobbying activities) that maximizes the creation of value arising for society. He bases his theory on the assumption that an optimal situation would be where all state activities would be efficient and lobbying unnecessary, but that it does not exist in a context of imperfect information. He therefore seeks for a "second best" solution. The general idea is that one can determine an optimal cost between a very high, cost that would be prohibitive even if the existence of rent creates value, and a very low cost if the activities of the state were virtually efficient.

More broadly, lobbying can be seen as a way to help companies navigate in an environment increasingly subject to standards, a proactive strategy designed to transform the normative constraints into opportunities (Bessire, Cappelletti and Pigé, 2010). In this socio-economic framework, lobbying will be composed of four main areas ("*Tetranormalization*", Svall and Zardet, 2005): accounting and financial market standards, trade regulations, social norms, and environmental, quality and safety standards.

This social and economic questioning of lobbying prompts another question internal to companies: what ethics should frame this activity? Some scarce research articles respond to this issue with an essentially theoretical reflection. These are mainly American and descriptive without being anchored in any particular field. Keffer and Hill (1997) question the effects of lobbying on citizens (externalities), and the weight of lobbyists' argumentation in the scale of legislators. For Hamilton and Hoche (1997), "*business lobbying is a socially responsible activity which needs to be restrained by ethical standards*" (p 118). U.S. law on lobbying would be very loose. Moral limits should therefore be set for this activity (Ostas, 2007). Specifically, for Barker (2008) the ethical problem arises when a lobbyist could promote a policy that will enrich his client to the detriment of citizens.

Very recently, the work around corporate social responsibility gives a new significance to the theme of the ethics of lobbying (Nero, 2010). For Weyzig (2009), activities with a large potential impact such as corruption or lobbying should have more prominence in the agenda of corporate social responsibility. Some questioning can be even more radical: is rent-seeking lobbying compatible with corporate social responsibility (Boatright, 2009)?

Different theoretical ethics frameworks are examined by these authors to design that which could be used to think and evaluate lobbying activities.

### **What framework of ethics to conceive lobbying**

Literature linking ethics and lobbying offers an essentially normative approach (Oberman, 2004)

Keffer and Hill (1997), incorporating the work of Etzioni (1993) suggest the application of a communitarian ethics to lobbying, where the satisfaction of all interests would be an element of democratic development (Keffer and Hill, 1995), named pluralism. Etzioni (1993), however, identifies two types of pluralism: unbounded and unwholesome pluralism and pluralism-within-unity. The latter encourages competition while taking into account the common interests of all stakeholders. For Hamilton and Hoche (1997) it is Kant's utilitarian approach that should be mobilized: ethical lobbying would represent an action that maximizes gains while minimizing losses for others. These authors establish the conceptual possibility of an ethical lobbying and emphasize the need to inform all stakeholders: media consumers, pension funds, and other pressure groups...

More recently, the theoretical framework of corporate social responsibility has been often mentioned about the ethics of lobbying (Barker, 2008; Boatright, 2009). A socially responsible lobbying would consist in creating socially beneficial activities while avoiding generating negative externalities. Boatright (2009) offers an economic rationale based on a "morality market" (Dunfee, 1990), in which individuals would express their moral preferences. It would be the support demonstrated for lobbying in this type of market that would measure the social responsibility aspect of the practice. The latter article specifically endorses the need for normative judgments on lobbying, joining Néron (2009) for whom the growing interference of companies in the political process justifies the development of a normative theory of lobbying.

De facto, literature on the relationship between ethics and lobbying often leads to the establishment of a set of criteria of ethical lobbying. Oberman (2004) presents one of the first criteria matrices for political action ethics that raises nine key questions to lobbyists. Barker (2008) questions ethics in relation to three standards: legal, ethical and "admirable.". In a more detailed manner, Hamilton et Hoche (1997) propose a list of eight criteria to be respected: *"1) Maximize good and minimize harm for those affected; 2) Don't make exceptions for yourself; 3) Let others make their own choices ; 4) Use the publicity test; 5) Respect human rights; 6) Insure a fair distribution of benefits and burdens; 7) Honor the social contract; 8) Act in accordance with your character and the company's reputation."*

Ostas (2007) directs us to the nine articles of the ethical code of the American League of Lobbyists (ALL) that has been in existence since 1979<sup>3</sup>: *"1) honesty and integrity; 2) compliance with applicable laws, regulations & rules; 3) professionalism; 4) conflicts of interest; 5) due diligence & best efforts; 6) compensation and engagement terms; 7) confidentiality; 8) public education; 9) duty to governmental institutions."*

The most famous study on the subject remains that of the "Woodstock Theological Center" of Georgetown University, published in 2002. It offers seven principles for an ethical lobbying: *"1) The pursuit of lobbying must take into account the common good, not merely a particular client's interests narrowly considered ; 2) The lobbyist-client relationship must be based on candor and mutual respect; 3) A policy maker is entitled to expect candid disclosure from the lobbyist, including accurate and reliable information about the identity of the client and the nature and implications of the issues; 4) In dealing with other shapers of public opinion, the lobbyist may not conceal or misrepresent the identity of the client or other pertinent facts; 5) The lobbyist must avoid conflicts of interest; 6) Certain tactics are inappropriate in pursuing*

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<sup>3</sup> <http://www.alldc.org/ethicscode.cfm>

*a lobbying engagement; 7) The lobbyist has an obligation to promote the integrity of the lobbying profession and the public understanding of the lobbying process.”*

These different criteria mainly cover common sense general requirements around the notions of: compliance with laws and regulations (minimal commitment), honesty and integrity (feebly pragmatic somewhat incantatory speech) and awareness vis-à-vis internal stakeholders (professionalism, conflict of interest) and commitment to external stakeholders (transparency, information sharing).

#### The broader literature on ethics allows to better think ethics as processes

We have chosen in this work to not distinguish ethics and deontology as the players use both terms interchangeably. However, as pointed out by Issac and Mercier (2000), the two terms do not theoretically cover the same thing. *"A deontological code is a set of rules which a profession defines and applies to itself". "A code of ethics formalizes the values, principles and rules of conduct of a business."* P.3

#### The path of ethics and deontology in developing a structured and regulated profession

Observation of the ethical drifts of graduates from the world's greatest business schools during the Enron or Worldcom scandals has questioned researchers on the value of "management code of ethics" (Nohriah & Khurana, 2008). Such a framework exists in regulated professions governed by deontological codes of conduct. Compliance with these codes is symbolized by pledging the Hippocratic Oath for doctors, Galen for pharmacists (others exist for lawyers, judges, postal workers, etc.). The question that concerns us here is the potential role of ethics or professional ethics as structuring elements of an established profession. In the example of the Hippocratic Oath, although it has no legal value as such, the

code of professional ethics issued by the French National Medical Association Council is directly inspired by it, and it actually constitutes a chapter of the French Code of Public Health.

Hence, is a code of ethics or of professional conduct a manifestation of the maturity of a profession, and could it be a tool to develop an emerging profession into an established one?

#### Genesis of a professional code of ethics: the potential impact of the example

Research on charismatic (Weber, 1947; House & Baetz, 1979, Bass 1985) and transformational leadership (Burns, 1978; Bass and Avolio, 1993) uses the term 'role modeling' to identify the impact of leadership exemplarity on employees. It would enable to 'lead the way' and generate collective change by the leader's behavioral example. It has been demonstrated that in the absence of an established framework or during periods of instability, individuals seek the engagement of significant people as markers (Shapiro, 1995; Morgan, 1998; Simons, 2002, Melkonian, 2006). For Hirèche (2004), who examines the impact of leadership ethical behavior, exemplarity represents what Dherse and Minguet (1998) call "embodied ethics": when corporate ethical policies are developed, subordinates reproduce the example of their supervisors rather than adhering to company policy.

The concept of organizational justice (Folger and Cropanzano, 1998) in turn is manifested at three levels. The distributive dimension is concerned with the perception of fairness of treatment, the procedural dimension, with the application of established processes, and the interactional dimension with the quality of interpersonal relationships in the application of the processes. In the case of ethical leadership, Moorman (1991) demonstrates that of these three dimensions, interactional justice is the one that contributes most to influence the individuals' commitment.

**Methodology and field: a qualitative exploratory approach of the French lobbying consulting profession**

**Field context: France as a country traditionally opposed to lobbying**

Rules that regulate interest groups are in essence laws that emerged from local customs in given cultures. In Anglo-Saxon countries that are historically favorable to the expression and the defense of individual interests, lobbying of diverse stakeholders has been acknowledged and regulated for decades. This is not the case in countries such as France that promote collective and community interest above the interests of individuals or specific parties. Cultural background has significant influence in the perception and historical development of lobbying, as the contrast of these two examples will further demonstrate. As for the European Community, its consideration and treatment of interest groups is somewhere in between, with a framework that is to this date in the process of being defined.

Anglo-Saxon countries draw their lobbying customs from the British philosophy, dominated by the thinking of Bentham: State, to defend public interest, should as much as possible take into account the requests of each social group and seek to fairly satisfy them. Historically, England shaped a specific Parliamentary regulation on lobbying interest groups that included registers and deontological codes. Further, parliamentary groups were created to this end; as members of parliament have been allowed to be employed by economic groups, such a status offered extensive possibilities to lobbyists. In British law, a member of parliament has but one obligation in this matter: that of transparency through the “Annual declaration of interests”. A member of parliament, elected by the population, is meant to be in a position to defend, as well as spend a certain amount of time defending, specific interests. British

government secretaries don't share such a prerogative; the short duration of their terms does not enable them to represent such interests.

In the United States, as early as 1787, the constitution's first amendment legitimizes pressure groups, specifying that "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*". Later, the right to lobby is confirmed by a ruling of the Supreme Court (Cruikshank, 1876) considering the right to petition as a direct consequence of the democratic system, and in 1946 the "Lobbying Act" confirms this ruling. Among other, the American legislation permits the financing of election campaigns by electors grouped into Political Action Committees (PAC). We have stated earlier that this practice is the essential vector of private enterprise influence in the United States.

As in the US, the European Community recognizes and legitimates lobbying. A communication titled "*Transparency within the Community*" (JOCE, C 166, 1993) aims to bring the public and the European Community institutions closer, particularly through the publication of public interest documents in the European Union (EU) Official Journal. Furthermore, in 1997 the European Commission developed a communication for the European Council and Parliament on "*Anti corruption policy of the EU*" concerning the corruption of European Union public servants and of lobbyists. More specifically, the Commission defined a lobbying framework in its major "*An open and structured dialogue between the Commission and special interest groups*" (JOCE, C 63 5.3.93). In June 2011 the European Parliament and the European Commission created a joint public "Transparency register" on lobbyists that provides more detailed information than the two registers the institutions had separately established in 2008. Before being merged, these registers included

entries for more than 4000 different organizations, including a bit shy of 300 consulting agencies.

Conversely, France does not have a lobbying tradition. Jean-Jacques Rousseau, in *Du Contrat Social*<sup>4</sup> condemns any intermediary group, writing for example: “*it thus matters, in order to have the statement of the general need, that there be no partial society within the State and that every citizen agrees only by It.*”. This perspective was shared among most philosophers of the enlightenment period and was fed by the observation of the oppressive corporations and guilds of the “Ancien Régime”. The Le Chapelier law ruling of 1791 totally prohibits pressure group activities. Almost a century later, with the 1884 law granting freedom of unions, many trade groups reestablished themselves as unions. However, these official unions acted as representatives of their members’ collective interests and did not per se constitute lobbies. Professional organizations (more than 1500 currently exist in France) appeared and initiated claims for specific sectors. Eventually, the status of lobbying would be developed very recently in France though no legislative or regulatory texts directly address it.

There are nevertheless other sources that provide some legal framework around the influence of enterprise interests, such as the Penal code and the laws that regulate financing of political parties. Articles 432-11, 432-12 and 432-13 condemn passive corruption, illegal acquisitions of interest and influence peddling committed by civil servants. Articles 433-1 and 433-2 similarly cover corruption and influence peddling committed by individuals. Financing of political life is more regulated in France than in the United States. Political parties’ and candidates’ expenses for election campaigns actually lacked legal framework until 1988. This

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<sup>4</sup> ROUSSEAU J.J., 1762, *Du Contrat Social*, Livre II, Chapitre 3, p. 95, Bordas, Paris, 1985.

lack had favored drifts that the parliament addressed by a series of laws<sup>5</sup>. Among the dispositions established through these texts, a number of guarantees regarding transparency of political parties' and candidates' resources were created in such a manner to avoid occult financing and pressure of financial powers. In the same perspective, since 1995, authorities decided to cut the umbilical cord between corporate money and political funds, definitely prohibiting corporations from participating in the financing of political life.

Today the status of lobbying in France is changing. The presidency of the National Assembly published in November 2009 a list of private interest representatives authorized to access the Palais Bourbon (National Assembly building in Paris). By virtue of the Assembly's new regulation, in order to appear on this list lobbyists have to fill a form "providing information on their activity and the interests they promote". An identical approach was adopted by the French Senate as recently as January 2010.

**Elements of methodology: a qualitative case study extended as an exploratory research on the profession of lobbying consulting**

In France lobbying consulting is an emerging profession. This is why, as in the case of associations' lobbying (Lévy, Rival, 2010) previously studied, it seemed appropriate to initiate the inquiry by a qualitative exploratory study. On a relatively similar subject "French ethics whistle-blowing" Charreire, Petit and Surply (2008) equally take a methodological

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<sup>5</sup> "organic" and "ordinary" laws of March 11th 1988 relative to the financing of political life ; law of January 15<sup>th</sup> 1990 relative to the limitation of election expenses and to the clarification of financing of political activities; law of January 29<sup>th</sup> 1993 relative to the prevention of corruption and to the transparency of economic life and public procedures; law of January 19<sup>th</sup> 1995 relative to the financing of political life

position of a “*continuous local empirical analysis*” (Miles and Huberman, 2003, p. 264), and of a generalization of analytical nature (Yin, 1990).

Few field studies have been conducted on the topic of “Ethics and lobbying” with the exception of WTCGU (2002) and Baker (2008). WTCGU (2002) relates to the profession in general and was built on interviews and focus groups over a period of three years. Barker (2008) deals with the lobbying of U.S. real estate brokers. His research is actually an economic “supply and demand” model that studies the effects of brokers’ training and experience on their spending, their income and the quality of services offered. These two studies of very different nature lead to quantitative results, prescriptive in the first case and descriptive in the second.

The research presented here is therefore deliberately positioned in a different methodological perspective: a qualitative approach and an analytical treatment.

Overt participant observation also known as Participatory action research (Whyte, 1943) was conducted in a lobbying consulting firm for three months in 2011 by a member of the research team.

During this period, ten formal non directive interviews of two hours each were conducted, recorded and transcribed (see Appendix 1). The first two were lead by two researchers in the selected lobbying firm’s external environment and qualify as expert interviews. One involves a governmental department engaged with the issues of professional ethics, the other a societal rating firm evaluating the transparency of lobbying activities. The remaining eight interviews were conducted within the lobbying consulting firm. For the purpose of maintaining confidentiality, the name of the firm (that we name “LC”, as Lobbying Consulting), of its consultants and clients will not be shared. LC is a lobbying consulting agency founded in Paris in 2001 and employing 17 people. We were able to meet the firm’s CEO several times

and to interview five of its consultants as well as two of its operational managers (organization and IT).

In addition, two types of LC internal documents were of particular interest for this study:

- An Ethics code / frame of reference of "responsible lobbying" was studied and enhanced in collaboration with LC consultants (see Appendix 2);
- 18 LC confidential client files (representing 38.6% of LC revenue) were made available to us. These files were mainly on lobbying activities performed in 2011 and 2010.

We chose to not encode the corpus of the interviews but rather to use the verbatim to construct the case stories. The verbatim presented further are therefore particularly noteworthy elements in the eyes of the researcher and illustrate key elements of the case. In order to improve the validity of this qualitative approach, we established triangulations by cross referencing the information drawn from the interviews with other sources of data:

- LC Internal: letters to members of parliament, public information pamphlets, internal memos, press releases and other documents;
- External: websites of the French lobbying trade association, of LC competitors, of the French Senate, National Assembly, Parliament and of the European Commission.

At the broader trade level the French Association of Lobbying Consulting (AFCL), created in 1991, was specifically studied. It groups firms devoted solely to political action and as of 2012 counts 26 members (LC included). It produced a charter on the exercise of lobbying consulting profession that starts with the following definition: *"A lobbying consultant represents the interests and defends the rights of individuals, companies, associations, groups or communities, through the delivery of accurate information to private or public bodies that may make decisions affecting those interests or rights."* Other more diffuse professional

networks were also included in this study, such as the BASE association founded in 2004 that groups young lobbyists from businesses and consulting agencies.

**Results and Interpretation: How and why ethics would make their way into the lobbying profession?**

This research has initially allowed us to observe different practices of ethics in the context of lobbying consulting, starting with the LC case and extending our research to the profession in France, Europe and the United States. In a second stage, we inquire on the implications of the ethics of lobbying.

**A descriptive approach: What ethics practices are manifested in lobbying consulting?**

**In France: an ethics of exemplarity**

The case study of LC and the collection of secondary data on the lobbying profession in France have allowed us to establish an initial assessment.

The basic agreement between the various professionals hardly goes beyond the rule of law, and AFCL members aren't subject to any risk of penalty whether they respect its code of ethics or not. The AFCL code of ethics, including the definition of "professional integrity"<sup>6</sup>, is pragmatically structured around respect of the criminal code referenced above, the law on conflicts of interest in 2011, as well as the regulations of the various French and European

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<sup>6</sup> <http://afcl.net>

assemblies. The “legal” standard of Barker (2008) is emphasized here. Control within the profession seems limited and we have observed how weakly institutionalized - and always suspect - the profession is: *"I really do not see how we can check unless we're permanently breathing down the necks of the lobbyists. How can we prove that there are no briefcases full of banknotes running around? We can consider what is established in the United States, that is to say a statement of activity as a lobbyist, so that there is more transparency. But the rest is difficult."* (EC Department)

Through the voice of its CEO, LC wishes to go further in establishing a frame of reference of *"responsible lobbying."* The basic prerequisites of the profession are stated in it, *i.e.* respect of the law. Elements within Barker's (2008) “ethics” standard are also included: *"dialogue"*, *"transparency"* and *"deontology"* qualifying nine of the fifteen LC indicators. These are reminiscent of the notions of transparency, sharing of information and integrity found in the existing literature (Hoche and Hamilton, 1997; Ostas, 2007; WTCGU, 2002).

Two indicators of LC's “responsible lobbying”, *"individual responsibility"* and *"organizational responsibility"* appear in Barker's "admirable" category. In practice, the first of these two items means that on sensitive issues consultants will give themselves some time for reflection. *"I've refused assignments that were not compatible with my ethics, such as the work an alcohol company wanted to undertake targeting student parties."* (LC consultant). It goes without saying that consultants can question their potential missions only if their CEO considers this questioning benevolently, which is the case with LC. The second item of “responsible organization” also implies that the CEOs of lobbying consulting agencies take a stand: *"The argumentations are built from a general interest perspective and it is the same for any proposed amendments; LC may be required to influence the discourse of the customer*

*in this direction.*" (LC CEO). How is this possible? The CEO, older than any of LC's employees, has thirty years experience in politics and twenty years in lobbying. A strong charismatic legitimacy (Weber, 1947) related to the character of the individual adds to her established competency based legitimacy.

To go beyond the weak regulation of the profession in France presupposes a leader's strong personal conviction, as observed at LC. We recognize features of an exemplarity of ethics developed above.

However, the LC's CEO, though in an influent position on the board of the AFCL, has not yet been able to impose her opinions to the rest of the profession: *"I prefer to speak in my own name rather than as a representative of AFCL, because my opinion is not shared by all and does not represent a consensus."* (LC CEO).

#### In the United States and in Europe: from compliance with procedures to interpersonal ethics

As we saw earlier in this paper, unlike France, the United States and Europe recognize lobbying and have institutionalized its activity. However, to what extent is the practice of ethics similar in both of these environments?

In the case of the United States, lobbying dates back several centuries. It was gradually regulated, first by the courts, then through legislation, and is the object of detailed procedures and registrations. The resulting scope and depth of publicly available data (see for example [opensecrets.org](http://opensecrets.org) internet site) demonstrate the potential regulatory power of these obligations.

In contrast, European Parliament and Commission lobbying only date back a couple of decades. For many years European ethical practice has been that of a strong, yet completely informal, control. Registration of interest groups was created for the two institutions only four years ago and still remains optional. In 2010 a study published by ALTER EU (Alliance for the regulation of transparency and ethics in lobbying) revealed that 60% of the EU lobbying agencies were not included in the European register. Parliament members have regularly asked the Commission formal and public questions on the need for compulsory registration as well as on the possibility of developing more formal guarantees that lobbying ethics be respected and enforced. The answer given by Barroso on behalf of the Commission reaffirms a strong interpersonal practice of ethics, less formal than on the other side of the Atlantic Ocean: *« The Commission exercises various powers conferred by the Treaty which requires some interaction with stakeholders and is under a Treaty obligation to consult widely before initiating legislation. This is why the Commission considers that meeting representatives of groups which have not signed up to the register cannot be subject to a decision of principle, as suggested by the Honorable Member, to be applied systematically and across the board in all circumstances. It requires a judgment call to be made each time, on a case by case basis and depending on the objective of the meeting in question. The Register of interest representatives is a voluntary register and is not an accreditation system. Therefore it remains the responsibility of each consultancy and lobbyist to decide whether to register or not. The Commission continues to promote the register and notes the steady increase in the number of registrants with satisfaction. »*<sup>7</sup>

It would thus seem that the age of the profession influences the degree of formalization of ethics in lobbying consulting, while its institutionalization enables a more or less strong regulatory control.

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<sup>7</sup> <http://europa.eu/transparency-register>

The Quebec case was added to our analysis because it seemed to illustrate the case where lobbying is a historically established profession, though weakly institutionalized. We were able to consult the Quebec governmental and press websites on the topic of this research. The press regularly highlights cases of corruption associated with lobbying. Yet, since 2002, there is a law on "lobbyism" (Canadian terminology) transparency and ethics. It states "*a consultant lobbyist*" means any person, whether or not a salaried employee, whose occupation or mandate consists, in whole or in part, in lobbying on behalf of another person in return for compensation."<sup>8</sup>. This law provides for the obligation to register and adhere to a code of conduct, or face sanctions. The Quebec Code of Conduct for Lobbyists' was established in 2004, which can be seen as very recent in terms of North American lobbying history. It sets out very general values with a low level of control, such as "*respect for institutions*", "*honesty*", "*integrity*" and "*professionalism*."

#### Ethical practices in lobbying consulting matrix

	Established profession	Emerging profession
Recognized and Institutionalized Profession	<u>American case:</u> Respect of established procedures Strong regulation Formal ethics	<u>European case:</u> Respect of interpersonal judgment Strong regulation Informal ethics
Weakly Recognized and Institutionalized Profession	<u>Quebec case:</u> Respect de recent procedures Weak regulation Formal ethics	<u>French case :</u> Respect of Exemplarity Weak regulation Informal ethics

<sup>8</sup> <http://www.commissairelobby.qc.ca/en/commissioner/transparency>

An analytical approach: What stakes around ethics for lobbying consulting firms?

This section is mainly meant to pave the way for future research, and thus is more exploratory than the previous one.

Within consulting firms: in search of lobbying ethics as a factor of internal structuring

As in other professions, the establishment and respect of ethics allow to structure consulting firms, within each firm as well as in their relationships with one another.

In LC, the respect of the code of “responsible lobbying” enables a *“professionalization of the process”* (LC CEO) and therefore a better control on employees’ activities. A number of procedures are established, including for example those concerning the organization of roundtables with elected officials on any given subject: *“two steps must be met before the invitations are issued, then the procedure is very strict; it’s the customer who signs it with their own header”* (LC operational manager). In addition, the use of systematic data centralization in a computerized CNIL<sup>9</sup>-declared database also participates in the structuring of the firm and its activity. The targeted goal is to improve organizational performance and rationalize decision making *“the mapping of elected officials and their interests automatically gives us the list of people to invite,”* (operational manager, LC).

Within the lobbying consulting profession, the minimum code of ethics followed at AFCL, whether at the National Assembly or at the Senate, allows setting some common sense rules and clarifying of different factual items. As proof, the accuracy of this extract of the rules of the French National Assembly. *“The representatives of public or private interests that are registered on a list established by the Bureau or its delegation authority, and made public, shall receive, upon request, badges valid for one day, giving access to the great Rotunda, to*

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<sup>9</sup> National Computing and Liberty Commission

*the room of peace and to the hall of the Four columns, except for this room on Tuesdays and Wednesdays, one hour before the opening of the session in the afternoon and up to half an hour after the end of the questions to the government or of the vote of a public ballot pursuant to Article 65-1 of the Regulations. To be on this list, lobbyists undertake to respect the code of conduct adopted by the Bureau.*"<sup>10</sup>

Apparently proactive players, LC and BASE (the association of young lobbyists) want to go further in this structuring of the profession by formalizing an ethical framework. We could consider them as institutional entrepreneurs in the sense of Di Maggio (1988), i.e. individuals or organizations that create standards consistent with their identity and their interests and establish the standards as legitimate. *"In France, it is more nascent. And vis-à-vis the government, that's how we can use CSR; to have entrepreneurs that are proactive towards regulation, to that are in fear of the police. German companies do not work like that, in fear of the police."* (EC Department)

The ethics of lobbying consulting as part of external structuring: clarified relations with stakeholders

In the words of Isaac and Mercier (2000), *"the use of the formalization of ethics or a professional code of conduct can be seen as a tool for regulating relations between the organization and its diverse stakeholders"* (p .3). The stake of ethics appears to be particularly important for lobbying consulting firms. Three types of stakeholders are regularly mentioned orally and in writing: the state, the clients and the civil society.

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<sup>10</sup> <http://www.assemblee-nationale.fr/representants-interets/> Article 26, paragraphe III-B de l'Instruction générale du Bureau adopté le 2 juillet 2009 et modifié le 24 février 2010

We call State the group of policymakers considered as potential targets of influence by lobbying firms. In this regard, the separation of public and private interests, which usually corresponds to the basic compliance with applicable laws, is adopted by lobbying consulting firms. It is possible to go further, as LC does, which asserts respecting the *"political schedule"* and especially *"to refrain from intervening during the time a final decision is in the hands of policy-maker"* (LC CEO). Is such a limit applicable or actually applied?

Respect for the client seems generally obvious in a commercial approach. However, a number of dilemmas will arise in the lobbying firm: what to do in case of a conflict of interest between two customer cases? How to reconcile the principle of confidentiality on the issues covered and the obligation of transparency of the various official lobbyists registers? How far can one go to meet a client's demands? LC responds to all these questions through its "responsible lobbying" frame of reference, which enables to set perennial limits with what could be a potentially invasive stakeholder.

Civil society includes all individuals or organizations that may be impacted by lobbying firms' activities. For Benseddik Fouad, director of institutional relations and methods of Vigeo<sup>11</sup>, things are pretty clear: *"we have created a criterion of "transparency and integrity of the strategies and practices of influence" which is scored on the internet and in annual company reports. All that is done must be available for public information"*. LC in turn defines a criterion called *"inclusion of all stakeholders"*: *"Dialogue must allow the expression of all concerned stakeholders without exception, such as territorial institutional actors, NGOs, consumer associations and other opinion vehicles."*(LC consultant). It nevertheless

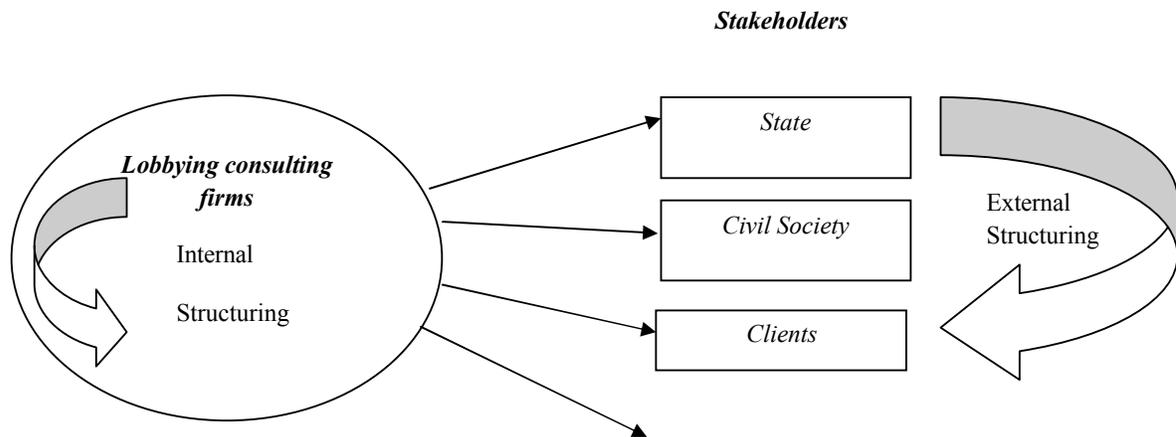
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<sup>11</sup> French notation agency expert in the assessment of companies and organizations with regard to their practices and performance on environmental, social and governance issues.

appears that in practice, due to lack of time and resources, such consultations are rarely implemented.

The diagram below summarizes the various internal and external issues of ethics observed in lobbying consulting during our study.

### Stakes of Ethics for lobbying consulting



## **Conclusion**

In conclusion, this exploratory research, mainly focused on the case of French lobbying firms, allows us to highlight two types of results:

- The practice of ethics in lobbying firms is different according to the age and degree of institutionalization of the profession in a given socio-cultural and legal environment. Seniority of the profession's establishment creates a formalization of ethics, as in the United States or Quebec, that does not exist when the profession is recently established, such as in Europe and more specifically in France. Furthermore, a highly institutionalized lobbying consulting activity proves to be more heavily regulated. However, each geographical, cultural case has its own practice of ethics. These range from compliance with ethics procedures, to interpersonal judgment and application of ethics principles, to the socialized concept of exemplarity as a normative function.

- The stakes of ethics in lobbying consulting are of a dual structuring nature for the establishment of what can be considered today an emerging profession in France: internally strengthening of the profession itself as well as externally clarifying the relationships between the profession and its various stakeholders.

Last but not least, the question of lobbying ethics appears as an increasingly visible, salient element of the research agenda on corporate social responsibility. This should provide opportunities for further study of ethics principles and processes as applied to the lobbying profession, and a legitimate ground for identifying and implementing best practices.

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## Appendices

### 1. List of interviewees

- EC Ministère : EC, department head for responsible consumption and production, Department of Ecology, Sustainable Development, Transports and Housing, General Commission on Sustainable Development (*“Chef du Bureau de la consommation et de la production responsables, Ministère de l'Écologie, du Développement durable, des Transports et du Logement, Commissariat général au développement durable ”*).
- FB Vigeo : FB, Director of methods and institutional relationships on the criteria of “influence strategies and policies transparency and integrity” *“Directeur des méthodes et des relations institutionnelles de Vigeo sur le critère « transparence et intégrité des stratégies et des pratiques d'influence ”* ;
- LC : LC CEO, 5 client-consultants, 2 operational managers.

### 2. LC “Responsible lobbying” ethics framework

	<b>A. Democracy</b>  (respect of existing practices)	<b>B. Dialogue</b>	<b>C. Transparence</b>	<b>D. Deontology</b>	<b>E. Responsibility</b>
<b>Factor 1</b>	Respect of all constituted assemblies	Sharing of information	Transparence on mission and mandate	Useful and limited invitations	Responsibility of the individuals
<b>Factor 2</b>	Respect of the “political schedule”	Consideration of all stakeholders	Transparence on expertise	Refraining from applying pressure	Responsibility of the lobbying organization
<b>Factor 3</b>	Separation of public and private interests	Objectivity and equity of the debate	Transparence on actions and positions	Official information distribution	Professionalism of the lobbying process