

Taking Lobbying Public

The Transparency of Dutch Banks' Lobbying Activities



Rens van Tilburg & Indra Römgens

December 2013

Colophon

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Authors: Rens van Tilburg & Indra Römgens
Cover layout: Frans Schupp
Cover photo: iStockphoto
ISBN: 978-94-6207-035-6

This publication is made possible with financial assistance from The Dutch Ministry of Foreign Affairs and the Sigrid Rausing Trust. The content of this publication is the sole responsibility of SOMO and can in no way be taken to reflect the views of The Dutch Ministry of Foreign Affairs and the Sigrid Rausing Trust.

Acknowledgement

We would like to thank Jasper Blom and Joost Mulder for their comments on a draft of the report. We would also like to thank our colleagues Roos van Os, Myriam Vander Stichele and Joseph Wilde-Ramsing for their contributions.

Published by



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The Centre for Research on Multinational Corporations (SOMO) is an independent, not-for-profit research and network organisation working on social, ecological and economic issues related to sustainable development. Since 1973, the organisation investigates multinational corporations and the consequences of their activities for people and the environment around the world.

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Acronyms

AFM	Dutch Financial Markets Authority
BCBS	Basel Committee on Banking Supervision
BIS	Bank for International Settlements
BVPA	Dutch Association for Public Affairs (Nederlandse Beroeps Vereniging Public Affairs)
CBOT	Chicago Board of Trade
CFO	Chief Financial Officer
CFTC	Commodities Futures Trading Commission
CPB	Netherlands Bureau for Economic Policy Analysis (Centraal Planbureau)
CSR	Corporate social responsibility
DNB	Dutch Central Bank (De Nederlandsche Bank)
EBA	European Banking Authority
EBF	European Banking Federation
ECB	European Central Bank
EIOPA	European Insurance and Occupational Pensions Authority
EU	European Union
ESM	European Stability Mechanism
FEC	Federal Election Commission
FED	Federal Reserve Bank
FSA	Financial Services Authority
GDP	Gross domestic product
GRI	Global Reporting Initiative
ICT	Information and communication technology
IIF	Institute of International Finance
ILO	International Labour Organization
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions
ISDA	International Swaps and Derivatives Association
ISO	International Organization for Standardization
NGO	Non-governmental organisation
NVB	Dutch Banking Association (Nederlandse Vereniging van Banken)
OECD	Organisation for Economic Co-operation and Development
OTC	Over-the-counter
PAC	Political action committee
SEC	Securities and Exchange Commission
TARP	Troubled Asset Relief Program
UNGC	United Nations Global Compact
VBDO	Dutch Association of Investors for Sustainable Development
VNO-NCW	Dutch Employers' Federation

Main findings

- The Dutch banking sector is susceptible to regulatory capture – the process where policy-makers and supervisors defend the interest of the sector they are meant to regulate and supervise, even at the expense of the public interest.
- More transparent lobbying is a pre-requisite for improving the quality of the policy-making process.
- SOMO finds that, based on the publicly available information, it is not possible to analyse the influence banks have on public policies. Despite claims by Dutch banks that they report on lobbying activities in line with the guidelines of the Global Reporting Initiative (GRI), much of the required information is not available.
- SOMO has formulated ten steps that banks should take to really become transparent regarding their lobbying activities.
- Most banks have pledged they will increase the transparency of their lobbying activities, implementing around half of the steps recommended. Although this still leaves much to be desired, fulfilling these steps would effectively make the Dutch banks global frontrunners in this field.
- The GRI should broaden its reporting guidelines to include all lobbying efforts and improve the quality threshold for companies' reporting using the GRI guidelines.
- The Dutch government should also increase transparency by introducing a mandatory 'legislative footprint' that shows which stakeholders gave input on new laws and regulations and by following the US practice of supervisors reporting on their contacts with the sector.

Executive summary

This report aims to improve the financial policy-making process ...

The financial crisis has given rise to many new laws and regulations. Many more are likely to follow. What has not been discussed much by policy-makers so far, let alone changed, is the policy process itself; the way in which these rules and regulations are developed, decided upon and implemented. The aim of this report by the Centre for Research on Multinational Corporations (SOMO) is to provide banks, supervisors, policy-makers and non-governmental organisations (like the Global Reporting Initiative) with ways to increase the transparency of the lobby by banks and hence improve the democratic legitimacy and the quality of the policy-making process and subsequently the actual policies.

...where lobbying has its part to play...

Lobbying is defined as all activities carried out “with the objective of influencing the policy formulation and decision-making processes” of governmental institutions.¹ It is in itself an activity that can have positive as well as negative effects. Banks, like any private entity, can play a socially useful role in public policy-making. By sharing their specific knowledge of the sector with policy-makers and the broader public, they can contribute to policies that better serve the public and avoid the unnecessary effects of those policies on their private interests.

...but the risk of regulatory capture is always present

However, there is extensive literature on the phenomenon of ‘regulatory capture’ whereby “regulation is acquired by the industry and is designed and operated primarily for its benefit”.² Regulatory capture can take place for the following reasons:

- ❑ the financial industry itself is the most vocal judge of activities of regulators and policy-makers with regard to decision-making in the financial field (‘home bias’).
- ❑ the fact that public officials will often at some point in their career work in the private sector as well (‘revolving door’) and
- ❑ the lure of the status of a profitable sector (‘cultural capture’).

Sectors that are particularly vulnerable for regulatory capture are characterised by:

- ❑ high level of government involvement
- ❑ high level of complexity
- ❑ high profitability
- ❑ high concentration of the market
- ❑ low level of public scrutiny.

As is the case in the Dutch banking sector as well

These are all aspects that characterise the banking sector. The exceptionally high concentration of the Dutch banking market further increases the risk of regulatory capture, as it diminishes the coordination costs of the (few) different players within the sector.

¹ European Commission, “Green paper. European transparency initiative”, 2006, p. 5, available at <http://ec.europa.eu/transparency/eti/docs/gp_en.pdf> (accessed 21 June 2013).

² George J. Stigler, “The theory of economic regulation,” *The Bell Journal of Economics and Management Science*, Vol. 2, No. 1, 1971, p. 3.

Banks initiated many of the deregulations in the run-up to the financial crisis...

Studies show that lobbying activities by banks before 2008, both globally and in the Netherlands, led to regulatory capture and harmed the public interest. Banks often initiated policy change and were able to strongly influence the content of this. Politicians and the wider public showed little interest in this process, which can be characterised as a 'closed shop': a small circle of regulators, specialised policy-makers and the sector itself that decided on the public policies between themselves.

...and are still able to block effective reform

This has changed now that politicians, media and non-governmental organisations (NGOs) are following the debate more intensively. However, given the intensive policy debate, banks have also intensified their lobbying efforts. As they are doing this in a non-transparent way, there is still no open debate and there is a high risk of regulatory capture. According to many commentators now, five years after the start of the financial crisis, banks have been able to effectively block many necessary fundamental reforms.

This dark side of lobbying is reflected by numerous codes and guidelines...

The possible harmful consequences of lobbying in terms of the public interest are acknowledged and reflected by numerous codes of conduct that provide guidelines for responsible lobbying. These range from specific voluntary private sector codes of conduct to obligatory registers for lobbyists and rules on job switching between the private and public sector. Lobbying transparency is an important aspect of many rules and voluntary standards. In the US, regulators like the Securities and Exchange Commission (SEC) and the Commodities Futures Trading Commission (CFTC) publish information about external meetings online, including the organisations and specific people they have spoken to and the content of meetings. Canada is a forerunner with its 'Commissioner for Lobbying', who oversees compliance with the code of conduct for lobbyists and reports about this to the parliament.

...but the Netherlands lags behind in this field

In the Netherlands, no such positions or measures exist, except for a relatively limited lobbying register that was introduced in 2012 and a voluntary code of conduct of the Dutch Association for Public Affairs (BVPA). A proposal for a mandatory legislative footprint has been advised and announced but has not yet been put forward in the Dutch parliament.

All Dutch banks claim to report fully on their lobby activities...

The Global Reporting Initiative provides guidelines for organisations about reporting on lobbying activities. All the six banks included in SOMO's research claim to report fully according to the GRI norms.

...but SOMO finds this not to be the case

However, SOMO finds that not one of the banks meets the GRI-requirements. Based on the publicly available information, it is not possible to analyse the influence banks have on public policies. The research does show that different degrees of transparency exist. SNS REAAL is most transparent with regard to its stakeholder engagement, ING is the most open about its public policy positions and ASN Bank is best in terms of explaining how it carries out its lobbying activities.

Ten recommended steps to take lobbying public...

SOMO has formulated ten steps that banks need to take to really become transparent regarding their lobbying activities.

...with the banks moving in the right direction...

All banks have informed us that they recognise the importance of transparency in the field of lobbying and see this as part of their corporate social responsibility. Rabobank and ABN AMRO both announced they will create a website with an updated overview of their policy positions and submissions for consultations, as ING has done before after earlier SOMO research. ASN Bank and Triodos explicitly stated that they do not lobby individually on financial reform.

...but still steps left to be taken

However, not all steps recommended by SOMO will be taken. None of the banks will publish details of meetings with policy-makers, nor will they publish written documents shared with regulators and policy-makers or be more open regarding revolving door cases. Most banks will not publish work commissioned by their organisation or make the funding transparent.

The Global Reporting Initiative should broaden and strengthen its reporting framework

The GRI should broaden its reporting guidelines to include all lobbying efforts and should better safeguard the quality of the reporting, amongst others through banning controllers that have (repeatedly) failed to provide an accurate and honest check of reporting.

The government should be more transparent itself

The Dutch government should also increase its transparency by introducing a 'legislative footprint' that shows which interaction with stakeholders has taken place and by matching the existing practice in the US where supervisors report on their contacts with the sector during the rule-making process.

Transparency alone won't solve the problem

The focus of this research is on the transparency of lobbying activities. However, it is important to emphasise the limitation of this. In order to really create a diverse and open policy discussion, more is needed than transparency alone. Corporate social responsibility (CSR) policy and regulation in the field of lobbying should therefore not be limited to transparency. Binding codes of conduct with independent oversight are needed, just as non-bank actors that have the capacity to engage in the debate.

1. Introduction

“Business must restrain itself from taking away, by its lobbying activities, what it offers through corporate responsibility and philanthropy.” Former UN Secretary-General Kofi Annan, 2004.³

1.1. The problem with lobbying by banks

The financial crisis has given rise to a fierce global debate on financial reform. Many new laws and regulations have been decided upon and implemented. Many more are likely to come. What has not been discussed much so far among policy-makers and the sector itself, let alone changed, is the policy process itself; the way in which these rules and regulations are developed, decided upon and implemented.

Private financial institutions like banks have come to play an increasingly dominant role over the last few decades when it comes to formulating public policies affecting the financial sector. Banks can play a socially useful role in public policy-making. Through sharing their specific knowledge of the sector with policy-makers and the broader public, they can contribute to policies that better serve the public and avoid the unnecessary effects of those policies on their private interests.

However, there is also a danger that banks put their private interests first during this process, at the expense of the rest of society. This phenomenon is known as ‘regulatory capture’, the process where private companies manipulate the state agencies that are supposed to regulate and supervise them. This is by no means a new phenomenon. Adam Smith – who is generally not seen as an adversary of free markets and private entrepreneurship – warned in 1776 about the participation of private commercial parties (‘dealers’) in the public policy debate:

*“The proposal of any new law or regulation of commerce which comes from this order, ought always to be listened to with great precaution, and ought never to be adopted, till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention. It comes from an order of men, whose interest is never exactly the same with that of the public, who generally have an interest to deceive and even oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it.”*⁴

In the decades before the financial crisis of 2008, Adam Smith’s warning was largely forgotten under the spell of ‘efficient market theory’ and the ‘Great Moderation’. Financial regulation became a ‘low interest’ area for politicians, media and civil society. At the same time, the financial sector became ever more sensitive to regulatory capture with increasing complexity, concentration, profits and pay. Financial policies were deliberated and decided upon between a small circle of policy-makers, financial companies and their supervisors. The influence of banks and other financial players had led to a situation where political debate and public policy development moved from the public arena to the

³ United Nations, “Addressing business leaders at global compact summit, Secretary-General says experience shows that voluntary initiatives ‘can and do work’,” Press Release SG/SM/9387 ECO/71, 2004, available at <http://www.un.org/News/Press/docs/2004/sgsm9387.doc.htm> (accessed 30 January 2013).

⁴ Smith, A. *The Wealth of Nations*. Chicago: University of Chicago Press, 1776, ed. Edwin Canan 1976, Book 1, Chapter XI, p. 278.

private sphere. Colin Crouch calls this the political power of corporations – banks, in this case – which, according to him, is “seen most obviously in the extraordinary lobbying activities that takes place”.⁵ The financial crisis and the large-scale bailouts have once again turned the spotlight on regulatory capture. The private gains in the years prior to 2007 turned into public losses that have disrupted economies and hence government finance all over the world. The euro area and US are still struggling with huge and growing debt levels.

The Western financial crisis has also hit emerging and developing countries in several ways: it has led to the rationing of credit, a reduction in the export of manufactured goods and commodities, a fall in remittances from migrant workers and a decrease in Western donor aid budgets hit by austerity measures. In turn, this has forced governments in developing countries to cut their expenditures in health care and education, stalling for instance the progress towards achieving universal primary education. Since 2009, the broad monetary policy (‘quantitative easing’) in the West has further distorted markets, leading to the overvaluation of emerging countries’ currencies and generating unsustainable credit booms. The rapid reversal of this policy is now threatening the stability of emerging and developing countries. Although it is hard to quantify the impact of this, leading international organisations like the International Labour Organization (ILO) and the World Bank put the number of people in developing countries that have been driven into extreme poverty at between 50 and 100 million. It is now widely acknowledged that many of the regulatory changes before 2007, often actively sought after by the financial sector, resulted in a deeply flawed system.

1.2. Better regulation through more transparent policy-making

The lobbying activities of banks are now part of the discussion about their corporate social responsibility. Demands are increasing for guidelines that guarantee responsible lobbying by banks and more transparency from government and supervisors regarding their contacts with the industry. Lobbying efforts can only be evaluated by third parties if they are conducted in an open manner. More diversity of opinions will improve the quality of the public policy-making process, leading to more robust outcomes.

To the policy-makers and banks that have been used to developing new public policies in small committees, this may seem like an extra burden, slowing down the process. However, if this leads to more robust policies, it will be a highly worthwhile investment. Transparency is crucial; it is necessary that the development of public policy is carried out in an open manner in order to know which voices are heard and which interests are represented. It is only possible to assess whether public policies are developed in a democratic manner when this information is publicly available.

The aim of this research is to improve the quality of the policy process and thereby the actual policies by increasing the transparency of lobbying by banks.

To this end, we answer the following research questions:

- What is a useful theoretical context in which lobbying activities and regulatory capture of banks can be analysed?
- What has been the impact of lobbying activities by banks, before as well as after the financial crisis of 2008?
- What codes of conduct already exist in the field of lobbying and what transparency initiatives are there in this field, both voluntarily and legislative?

⁵ Colin Crouch, “The strange non-death of neoliberalism”. An extract from a book by Professor Colin Crouch, Warwick Business School, 2011 available at <http://www2.warwick.ac.uk/knowledge/business/neoliberalism/> (accessed 1 November 2013).

- What is the current level of transparency regarding lobbying activities of six Dutch banks – the four largest (ING, Rabobank, ABN AMRO, SNS REAAL) – and two banks with an explicit sustainability mission (ASN Bank and Triodos)?
- What recommendations can be given to various actors such as banks, supervisors, policy-makers and NGOs – including the Global Reporting Initiative – to enhance the lobbying transparency of banks?

Whereas the report starts by discussing lobby and regulatory capture in its full breadth, the research itself focuses on the lobbying transparency of Dutch banks and Dutch government's policies in the financial sector. SOMO sees this as a first necessary step. However, much more action is needed in order to really create a diverse and open policy discussion. Since this is not the focus of the current research, no specific recommendations in this field will be made. However, the analysis presented will provide useful insights into developing effective CSR policies and regulations in the field of lobbying beyond transparency. This report builds on earlier SOMO research on lobbying.⁶

1.3. Research method and structure of the report

For this research, we carried out a literature study on the subject of lobbying and regulatory capture. We also conducted extensive desk research in order to analyse the transparency of the lobbying activities of six Dutch banks. The methodology regarding the latter is explained in detail in Chapter 5. The results of our research were discussed in separate meetings with all banks concerned. All six banks were also asked to respond to our recommendations. All six banks did this and indicated which recommendations they would follow through. The Global Reporting Initiative (GRI) guidelines are the main pillar of our comparative research regarding the lobbying transparency of banks. Therefore, a meeting with GRI employees took place to seek clarification about interpretation of the GRI guidelines.

The report is structured as follows:

- Chapter 2 describes the analytical framework used in this research: The definition of 'lobbying' and the various forms it can take, the concept of regulatory capture, both in general terms and specifically in the financial sector.
- Chapter 3 looks at the practice of regulatory capture: the specific vulnerability of the Dutch banking sector and case studies on the lobbying practices of banks and its harmful effects, before and after the financial crisis of 2008.
- Chapter 4 discusses already existing codes of conduct and initiatives – both voluntary and legislative – aimed at ensuring responsible lobbying, and increasing lobby transparency.
- Chapter 5 describes the degree of lobbying transparency of six Dutch banks.
- Chapter 6 draws conclusions and formulates recommendations for both the banks themselves and the supervisors and regulators and NGOs working in the field of transparency.

⁶ F. Weyzig & B. Slob, "The lack of consistency between corporate lobbying and CSR policies," SOMO working paper, 2008; J. Wilde Ramsing, K. Racz & B. Slob, "Belangenbehartiging van de Nederlandse biobrandstofindustrie," SOMO report, 2012; M. Vander Stichele, "Financial regulation in the European Union. Mapping EU decision making structures on financial regulation and supervision," 2008; SOMO, "ING Group N.V. Selected CSR issues in 2010", SOMO report, 2011.

2. Theory of lobbying and regulatory capture

“Wisdom is not to destroy the Commission, but to utilize it.” Attorney Richard Olney, 1892.⁷

In order to analyse the practice of lobbying and to measure the lobbying transparency of banks, this chapter will provide a theoretical framework. First, we will define lobbying and identify different approaches and types of lobbying. We will then sketch the most prominent theories and empirical findings on the concept of regulatory capture: what it is and how it works. From this, we will be able to identify the specific sector characteristics that determine the risk for regulatory capture.

2.1. What is lobbying?

In this report, we follow the European Commission definition, which holds that ‘lobbying’ includes all activities carried out “with the objective of influencing the policy formulation and decision-making processes” of governmental institutions.⁸

This is a neutral definition according to which lobbying is not necessarily a good or a bad phenomenon. Thus, lobbying can be both with the intent (and result) of serving the wider public interest and of serving solely the private interest, possibly at a cost to the rest of society.

However, for the wider public, the term lobbying has a negative connotation. This is also reflected in some definitions of lobbying that stress the element of seeking private gain. For instance, Hillmann et al define lobbying as “attempts to shape government policy in ways favorable to the firm”.⁹

Professional lobbyists prefer to use terms such as ‘public affairs’, ‘public relations’ or ‘government affairs’. However, the Dutch Association for Public Affairs (BVPA) defines ‘lobbying’ in a very similar way to the European Commission: “all legal actions undertaken to influence the (political and official) decision-making process”. The BVPA defines ‘public affairs’ as a broader concept: “The strategic process of responding to political decision-making, to changes in society and in public opinion, which affect the functioning of the organization”.¹⁰

There are also definitions of lobbying that limit it to certain activities. For instance van Venetië and Luikenaar define lobbying as “the informal ways to influence formal policy”.¹¹ This definition excludes formal ways of influencing policy, such as through expert groups. Instead, the definition we follow in this report is all-encompassing; lobbying can be done both formally and informally.

⁷ Corporate attorney Richard Olney advising railroad president Perkins in 1892 not to fight the installment of the then new Railroad Commission, but rather to use it to the benefit of the railroad company. As quoted in D. Carpenter & D. Moss, ‘Introduction’ in Carpenter & Moss (eds.) Preventing regulatory capture: special interest influence and how to limit it, (Cambridge University Press, The Tobin Project, 2013), p. 7.

⁸ European Commission, Green paper. European transparency initiative, 2006, p. 5, available at http://ec.europa.eu/transparency/eti/docs/gp_en.pdf (accessed 21 June 2013).

⁹ A.J. Hillman et al. “Corporate Political Activity: A Review and Research Agenda”, in Journal of Management, Vol. 30, 2004, p. 838.

¹⁰ BVPA Handvest, p.2-3, available at http://bvpa.nl/page/downloads/BVPA_Handvest.pdf (accessed 21 June 2013).

¹¹ E. van Venetië & J. Luikenaar, Het grote lobby boek. De ongeschreven regels van het spel, (Amsterdam: Atlas Contact, 2012), p. 17.

Box 1: Government institutions – policy-makers and supervisors

Lobbying is defined as trying to influence government institutions. In this report we distinguish two different government institutions: policy-makers and supervisors.

Policy-makers (or lawmakers) refers to everyone involved in drafting and/or deciding upon the laws and regulations that govern the financial sector. This includes the members of national cabinets, European Commission and European Council, parliamentarians (national and European) and civil servants (here mostly, but not exclusively, of the Ministry of Finance).

Supervisors (or regulators) refers to everyone involved in implementing and supervising laws and regulations. This includes, at the EU level the three European Supervisory Authorities (EBA, ESMA, EIOPA) and starting 1 January 2014 also the European Central Bank (ECB). In the Netherlands, this includes the Dutch Central Bank (DNB) and the Dutch Financial Markets Authority (AFM) (in the US: the Commodities Futures Trading Commission (CFTC), Securities and Exchange Commission (SEC) etc).

In practice, the distinction between policy-makers and supervisors is not a strict one, as supervisors often have ample discretionary room when it comes to implementing and interpreting laws and regulations into technical standards (like with the level 2 guidance in EU).

Supervisors are also members of international bodies (like the central banks such as DNB in the Basel Committee on Banking Supervision, the market authority AFM in the International Organization of Securities Commissions (IOSCO) that initiate and prepare new laws and regulations.

Table 1 maps several lobbying aims, methods and strategies that we have found in the academic literature.¹² It provides a framework that allows the identification of different lobbying strategies.

Two main approaches can be distinguished:

- **The ‘Relational approach’** of lobbying, which aims to increase ‘structural influence’ through close relations between companies and policy-makers and supervisors. This ‘relational approach’ is seen in the case of a ‘revolving door’, where public office holders move to private sector parties and vice versa. ‘Networking’ is another relational lobbying strategy, which targets not only public officials, but also experts and opinion leaders on the issues concerned. Networking as a strategy ranges from combining board memberships of different organisations to informal meetings at the concert hall.
- **The ‘Transactional approach’** of lobbying, which aims to change or maintain a specific proposal. Organisations can give policy-makers and experts information. As well as sharing information, organisations can put pressure on target groups more explicitly, for example, by giving political donations to politicians or parties, or by initiating an alternative. In this way, they can prevent any legal developments by claiming self-regulation is already in place.

Both the Relational and the Transactional approach can be deployed by individual banks or collectively through either ad hoc or permanent associations.

Table 1 gives an overview of the two different approaches and possible lobbying strategies, depending on which groups are defined as target groups.

¹² F. Weyzig & B. Slob, The lack of consistency between corporate lobbying and CSR policies, SOMO working paper, 2008, p. 7; A.J. Hillman et al. “Corporate Political Activity: A Review and Research Agenda”, in Journal of Management, Vol. 30, No. 6, 2004, p.837-857.

Table 1: Combined framework for analysis of channels of influence

Approach and orientation	Main direct target group	Type of lobbying strategy	Explanation
Relational approach	Policy-makers and supervisors	Revolving doors	Government officials becoming company executives or lobbyists and vice versa
		Networking	Government officials and company executives building a network through becoming board members, having informal meetings etc.
	Experts and opinion leaders	Networking	Lobbying by company executives and lobbyists hired by companies through informal meetings, building old boys' network etc.
Transactional approach, mainly information-oriented	Policy-makers	Direct lobbying	Lobbying by company executives, lobbyists hired by companies, and/or by representatives of professional associations
	Experts and opinion leaders	Influencing experts and opinion leaders	Lobbying by company executives and lobbyists hired by companies, and/or by representatives of professional associations
Transactional approach, mainly pressure-oriented	Policy-makers	Political donations, charity	Donations and charity by companies
		Promises and threats	Linking company investment decisions to policy outcomes
		Self-regulation	Industry initiative to pre-empt stricter legal regulation
	Stakeholders and grassroots organisations	Constituency building	Mobilisation and funding by companies
	General public	Advocacy advertising	Campaigns sponsored by companies and/or professional associations

2.2. Regulatory capture

2.2.1. What it is

Whereas lobbying is defined as an activity, neutral in its effect, the term has become somewhat tainted in the eyes of the general public. This is because, through lobbying, private interest can use public institutions to serve their narrow private interest, even at the expense of the wider public.

Political scientist Marver Bernstein is often credited as being the first person to address this question in a systematic way through his “life cycle of regulatory commissions”.¹³ Whereas the regulating agency starts as the solution to a clear problem in “an aggressive, crusading spirit”, it gradually becomes part of the sector it is meant to supervise. According to Bernstein, “it is unlikely that the commission, in this period, will be able to extend regulation beyond the limits acceptable to the regulated groups”.

¹³ M. H. Bernstein, “Regulating business by independent commission,” (Princeton: Princeton University Press, 1955). The quotes are taken from R. A. Posner, “The concept of regulatory capture: a short, inglorious history,” in D. Carpenter & D. Moss (eds.), Preventing regulatory capture: special interest influence and how to limit it, (Cambridge University Press, The Tobin Project, 2013).

In a seminal paper from 1971, Nobel Prize laureate George Stigler argues that “regulation is acquired by the industry and is designed and operated primarily for its benefit”.¹⁴ This essentially means that agents not only influence the regulation policies they are subjected to, but initiate these policies as well. A more detailed definition of regulatory capture stems from Carpenter and Moss: “the result or process by which regulation, in law or application, is consistently or repeatedly directed away from the public interest and toward the interests of the regulated industry, by the intent and action of the industry itself”.¹⁵

Economist Mancur Olson, building on his theory of collective action,¹⁶ provides a further explanation of the phenomenon. In ‘The Rise and Decline of Nations’ (1982), he describes how small coalitions tend to form lobby groups over time that influence policies in their favour, at the expense of society. Since these policies benefit only coalition members, while the costs are diffused throughout the whole population, ‘logic’ dictates that there will be little public resistance to them. Hence as time goes on, and these distributional coalitions accumulate in greater and greater numbers, the nation burdened by them will fall into economic decline.

According to Stigler, four different kinds of policies or resources are sought after by industry agents:¹⁷

- ▣ a direct subsidy of money
- ▣ the control over entry by new rivals
- ▣ policies that affect substitutes and complements and
- ▣ policies regarding price fixing.

This way the incumbent parties in an industry are able to use regulation to exclude new competitors and maximise profits. More recent literature on the topic emphasises that regulatory capture has undergone a transformation from this direct use of regulation (‘entry-barrier capture’) towards ways of softening the stance of the regulator – so-called ‘corrosive capture’ or ‘regulatory corrosion’.¹⁸

2.2.2. How it works

How can a regulator that has been installed with a clear mandate to serve the public interest transform into an agent serving the private interest he is meant to be supervising, even at the expense of the public?

Home bias

As Bernstein points out, the problem for regulators is that, whereas they are installed to supervise a sector, during their professional life they are much more dependent on this sector than on the public that has given them their task in the first place. Groups and politicians that fought for its instalment lose interest and public support becomes diffused. A “desire to avoid conflicts and enjoy good relations with the regulated groups” becomes the dominant driver, leading to “the commission’s surrender to the regulated”. Barth et al call this the ‘home bias’. Referees in several types of sport are found to be biased in favour of the home team, and this may be true for supervisors as well.¹⁹ “For

¹⁴ G. J. Stigler, “The theory of economic regulation” in *The Bell Journal of Economics and Management Science*, Vol. 2, No. 1, 1971, p. 3.

¹⁵ D. Carpenter & D. Moss, ‘Introduction’, p.15 in Carpenter & Moss (eds.), *Preventing regulatory capture: special interest influence and how to limit it*, (Cambridge University Press, The Tobin Project, 2013).

¹⁶ M. Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups*.(Boston: Harvard University Press, 1965).

¹⁷ *Ibid*, p. 4-6.

¹⁸ D. Carpenter & D. Moss, ‘Introduction’, p.20 in in Carpenter & Moss, *Preventing regulatory capture: special interest influence and how to limit it*, (Cambridge University Press, The Tobin Project, 2013).

¹⁹ J. R. Barth, G. Caprio & R. Levine, *Guardians of Finance. Making Regulators Work for Us*, (Cambridge (MA): MIT Press, 2012), p. 15.

regulatory officials, the ‘home crowd’ is the financial services industry. People from the financial services industry ‘surround’ regulatory officials; they meet with regulators daily. It is the financiers who will immediately jeer and taunt officials if they do not like their ‘calls’.”²⁰ Leaver points out that mistakes of regulators in favour of the ‘home crowd’ have a much smaller chance of being exposed and hence have any negative impact on the career of a regulator. Hence, in doubt, they prefer to make a mistake in favour of the regulated, rather than against it.²¹

Revolving doors

One specific way of identification between regulator and industry actors that enables regulatory capture is known as ‘revolving doors’: the job switching through which government officials like regulators become company executives or lobbyists and vice versa. By using the imaginary revolving door, a public official can become a consultant within the same field of expertise he/she used to develop policies in, and vice versa. The revolving door can be part of the relational approach to lobbying, and can impair “the integrity of public officials” and “undermine public trust in government”.²²

The revolving doors practice does not necessarily harm the public interest. Most employees in all sectors make use of knowledge and experiences provided by former jobs. However, switching from a public official position to a job at a private firm (or the other way around), within the same field, may give rise to conflict of interest. The revolving door practice also increases the identification between policy-makers, supervisors and industry agents within the financial industry. As James Kwak puts it: “the normalcy of moving from an administrative agency to the financial sector and the sheer number of people making the transition imply that the regulators and the representatives of financial institutions are really the same people, only at different points in their careers.”²³

Cultural capture

In the preceding explanations of regulatory capture, regulators were rational actors maximising their self-interest. However, Kwak refers to ‘cultural capture’²⁴ as “non-rational forms of influence which interest groups can exploit to achieve the practical equivalent of capture – favorable policy outcomes”.²⁵ Cultural capture works through three mechanisms of influence: identity, status, and relationships.

Whereas the identity aspect is similar to the revolving door phenomenon described above, which might have its non-rational effect as well, the status aspect is the result of the wealth and success of the financial sector: its glamorous image (up until a few years ago) and an imposing academic pedigree. As the financial sector benefited from a high status, this motivated policy-makers and supervisors to adopt its worldview and policy positions.²⁶ Growth in lobbying expenditures, and increasing salaries in the financial sector, also increased its status compared to federal agencies.

²⁰ Ibid, p.8.

²¹ C. Leaver, “Bureaucratic Minimal Squawk Behavior: Theory and Evidence from Regulatory Agencies” in *American Economic Review*, Vol. 99, No. 3, 2009; in L. Zingales, “Preventing Economists’ Capture” in D. Carpenter and D. Moss, *Preventing regulatory capture: special interest influence and how to limit it*, (Cambridge University Press, 2013) p. 572–607.

²² OECD, *Revolving Doors, Accountability and Transparency – Emerging Regulatory Concerns and Policy Solutions in the Financial Crisis*, report by Expert Group on Conflicts of Interests, 2009, p. 9, available at <http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=GOV/PGC/ETH%282009%292&docLanguage=En> (accessed 29 January 2013).

²³ J. Kwak, “Cultural capture and the financial crisis”, in D. Carpenter & D. Moss, *Preventing regulatory capture: special interest influence and how to limit it*, (Cambridge University Press, The Tobin Project, 2013), p. 15.

²⁴ Ibid.

²⁵ Ibid, p. 6-7.

²⁶ Ibid, p. 19-21.

As Kwak states, “financial regulators are likely to share more social networks with financial institutions and their lawyers and lobbyists than with competing interest groups such as consumers”.²⁷

2.3. Regulatory capture risk factors

Having looked at the mechanisms through which regulatory capture can work, what are the specific characteristics of a sector that increase the risk of regulatory capture?

Strong government involvement in the sector

In order to have regulatory capture, policy-makers and supervisors need to have a substantial influence on the sector. The role that public policy-makers and supervisors play differs greatly between economic sectors. Where public interests are particularly great, for instance, in the maintenance of roads and dams, the government may even take the whole sector into public hands. In other sectors, several degrees of public involvement exist, depending on the structure of the market (with monopolistic/network markets like telecommunications and energy being highly regulated) and the transparency of the market, the ability of the consumer to judge by itself whether a product is right and the effect of bad products (for example, food safety). Only when regulation plays an important role will lobbying pay off. Research also finds that lobby expenses are positively correlated with financial performance only in highly regulated industries.²⁸

High complexity

The growing complexity of a sector is a characteristic that increases its possibilities for capturing the regulator.²⁹ Nolan McCarty defines complex policy domains as domains where “bureaucrats find it very difficult to establish autonomous sources of information and expertise about the consequences of different policies”.³⁰ Regulators then become dependent on the regulated industry for relevant information and expertise. McCarty concludes that “complexity makes agencies more prone to influence capture”.³¹

Zingales adds that, as regulators need a lot of industry-specific information to help them do their job properly and to prevent embarrassing mistakes, regulators often have to bargain with the companies they regulate in order to obtain that information: “This creates an easy opportunity for the regulated to ‘trade’ information in exchange for favorable treatment. This quid pro quo is generally implicit. The regulator tries to establish a cooperative environment with the regulated. To support this cooperation they have to make concessions and they expect cooperation from the industry in terms of information. Both sides operate under the implicit threat of withdrawing this cooperation.”³²

High profitability

The status of a sector depends to a large extent on the profits made in that sector. These translate into high pay and the ability to attract employees, including former policy-makers. High profitability

²⁷ Ibid, p. 23.

²⁸ M. Hadani, D. A. Schuler, “In search of El Dorado: The elusive financial returns on corporate political investments” in *Strategic Management Journal*, Vol. 34, No. 2, 2013, p. 165–181.

²⁹ J. Kwak, *Cultural capture and the financial crisis*, in Daniel Carpenter & David Moss, *Preventing regulatory capture: special interest influence and how to limit it*, Cambridge University Press, The Tobin Project, 2013, p. 28.

³⁰ Nolan McCarty, “Complexity, Capacity, and Capture” in Daniel Carpenter & David Moss (eds.), *Preventing regulatory capture: special interest influence and how to limit it*, (Cambridge University Press, The Tobin Project, 2013), p. 4.

³¹ Ibid, p. 25.

³² L. Zingales, “Preventing Economists’ Capture” in Daniel Carpenter and David Moss, *Preventing regulatory capture: special interest influence and how to limit it*, (Cambridge University Press, 2013), p. 6.

therefore increases both the identification between policy-makers and supervisors with the sector and the status of the sector. It also provides the means used in lobbying.

High concentration in the market

When a beneficiary group is composed of too many organisations, this can hamper the success of its lobbying efforts due to the ‘problem of collective action’, here described as “concerted efforts to lobby the government”.³³ The problem of collective action can be overcome by a group with a common interest “only if it has the advantage of small numbers or is blessed with access to ‘selective incentives’”.³⁴

Low public awareness

On the one hand, the ‘home bias’ depends on the status and intensity of the contact of the regulated sector and on the other hand, on the closeness of the policy-makers and the wider public, the media etc. The more scrutiny the wider public pays the regulator, the more the regulator will be afraid of making mistakes that err on their side, as this will then be noticed and have consequences as well.

³³ M. Olson, *The rise and decline of nations: Economic growth, stagflation, and social rigidities*, (Yale University Press, 1982); M. Olson, “The varieties of Eurosclerosis” in Nicolas Crafts and Gianni Toniolo (eds.) *Economic growth in Europe since 1945*, (Cambridge: Cambridge University Press, 1996), p. 74. See also W. R. Kerr, W. F. Lincoln, P. Mishra, *The Dynamics of Firm Lobbying*, NBER Working Paper No. 17577, 2011; and E. Dal Bó, “Regulatory capture: a review” in *Oxford review of economic policy*, Vol. 22, no. 2, 2006, p. 205.

³⁴ *Ibid*, p. 74.

3. Lobbying and regulatory capture in practice

“Much of the inadequacy of current regulations and regulatory structures is the result of financial markets’ political influence.” Nobel Prize winner Joseph Stiglitz, 2008.³⁵

The previous chapter showed that policy-makers and supervisors can become ‘captured’, serving the private interests of the companies they are meant to regulate and supervise. Private companies can contribute to this ‘regulatory capture’ through their lobbying. In this chapter, we look at the practice of the banking sector, both globally and specifically in the Netherlands.

First, we look at whether the risk factors for regulatory capture that we identified in the previous chapter are present in the Dutch banking sector. We then look at the period before the financial crisis in 2008 and last, we see whether and how this has changed since then.³⁶

3.1. Risk of regulatory capture in the Dutch banking sector

How vulnerable is the financial sector in general, and the Dutch banking sector specifically, in terms of regulatory capture? How does the sector score on the risk factors identified in the previous chapter?

- **Government involvement in the sector:** First of all, government regulation does play an important role in the financial sector, due to the wide public interest in the soundness of the payment system and the confidence in the value of money. Also the fact that financial consumers in general are not very good at making decisions on the intangible and often complex financial products adds to this.
- **Complexity:** The financial sector is not just complex for consumers. Many regulators find it difficult to fully comprehend the structure of the financial sector and its innovations as well. Over the last few decades in particular, the complexity and dynamism have grown due to increased use of information technology in the financial sector, and the internationalisation and deregulation of the sector. As the financial industry is constantly developing new, often highly complicated, financial products and/or risk management strategies, it is difficult for the supervisor to assess the potential benefits and threats of these innovations. In these circumstances, the supervisor is highly dependent on the ways in which financial market actors legitimise their business practices.
- **Profitability:** Add to that the high profitability and still relatively high salaries in the financial sector and you can see why it is able to compete strongly for the ‘best and brightest’ in the industry.
- **Concentration:** The Dutch banking sector is highly concentrated: it is characterised by a small number of banks.³⁷ The benefits that result from lobbying efforts therefore have to be shared with only a small group of other organisations, which means that a large share of the benefit will be obtained by each individual group member. This can even motivate each member to take (unilateral) action that can benefit the whole group.³⁸

³⁵ J. Stiglitz, “Testimony to House Financial Services Committee”, 21 October 2008, available at http://www.house.gov/apps/list/hearing/financialsvcs_dem/stiglitz102108.pdf

³⁶ Throughout this chapter, several leading actors in the financial industry play a key role. For clarification purposes, Appendix I offers a short overview of the most important financial players.

³⁷ R. van Tilburg, *Het financiële overgewicht van Nederland*, SOMO report, 2012, available at http://somo.nl/publications-nl/Publication_3890-nl/

³⁸ M. Olson, *The rise and decline of nations: Economic growth, stagflation, and social rigidities*, (Yale University Press, 1982); M. Olson, “The varieties of Eurosclerosis” in Nicolas Crafts and Gianni Toniolo (eds.) *Economic growth in Europe since 1945*, (Cambridge: Cambridge University Press, 1996), p. 74 .

- **Public attention:** What reduces the chance of regulatory capture at this moment is the fact that general policy-makers, the media and the wider public nowadays pay relatively close attention to what happens in the financial sector. Regulators therefore know that taking a lax approach towards the sector has a big chance of being noticed. Looking ahead, the question is whether, or how long, this high public interest in the financial sector will last.

3.2. Lobbying and regulatory capture *before* 2008

Lobbying and regulatory capture globally

There is a widespread belief that lobbying through regulatory capture contributed to the financial crisis. The following paragraphs present an overview of the evidence regarding regulatory capture in the years before the crisis.

Box 2: Economists on lobbying and the financial crisis

After the crisis, the role of the financial lobby has been highlighted by many prominent economists. For instance, Barth, Caprio and Levine argue that senior regulatory officials knew that their policies were destabilising the global financial system and yet chose not to act. According to them, the current system is simply not designed to make policy choices on behalf of the public, as it is virtually impossible for the public and its elected officials to obtain informed and impartial assessment of financial regulation and to hold regulators to account.³⁹ Belgian economist Paul de Grauwe writes that banks “captured” the efficient markets’ paradigm that “provided the intellectual backing” for the banking lobby’s demand for deregulation.⁴⁰ Economists of the Dutch Central Bank (DNB) conclude that “There is indeed evidence that the financial sector – and especially large financial institutions – was quite successful in the run-up to the financial crisis in influencing financial market regulation.”⁴¹

Due to a lack of data, as much of the lobbying takes place behind closed doors and is hard to measure, not many quantitative economic studies have been done in this field. One of the few quantitative studies available was published in 2009 by the IMF. It “examines empirically the relationship between lobbying by financial institutions and mortgage lending in the run-up to the financial crisis”.⁴² The study finds that lobbying on laws and regulations related to mortgage lending and securitisation is associated *ex ante* with more risk-taking and *ex post* with worse performance. These results suggest that “the political influence of the financial industry might have the potential to have an impact on financial stability”.⁴³

In addition to this quantitative research, many sources of qualitative studies are either sociological and political, or the work of journalists. The picture that emerges from the following overview is clear: many of the deregulations, or decisions not to regulate new financial products and markets, have been initiated and/or highly influenced by the financial sector. Politicians and the wider public showed little interest in this process that therefore can be characterised as a ‘closed shop’ of a small circle of supervisors and specialised policy-makers and the sector itself. As we now know, this resulted in a deeply flawed regulatory environment that gave rise to the current financial and economic crisis.

³⁹ J. Barth, G. Caprio and R. Levine, *Guardians of Finance: making regulators work for us*, (Cambridge (MA): MIT Press, 2012); see also L. Zingales, *Capitalism for the people: Recapturing the Lost Genius of American Prosperity*, (New York: Basic Books, 2012).

⁴⁰ Paul de Grauwe, *The Banking crisis: causes, consequences and remedies*, CEPS Policy Brief No. 178, 2008, p. 3-4, available at <http://aei.pitt.edu/11706/>

⁴¹ Cavelaars et al. *Key challenges for financial supervision after the crisis*, WRR Web publication No. 71, 2013 available at http://www.wrr.nl/fileadmin/nl/publicaties/PDF-webpublicaties/Web_71.pdf (accessed 13 November 2013), see also Arnoud Boot, “Van luchtbel naar lobbycratie”, *NRC Handelsblad*, 7 January 2011.

⁴² D. Igan, P. Mishra & T. Tressel, *A Fistful of Dollars: Lobbying and the Financial Crisis*, IMF Working Paper, No. 09/287, 2009, p. 4.

⁴³ *Ibid*, p. 6.

From the lobby for the first trading of financial derivatives...

The modern financial derivatives market set off in 1972 when the US regulators allowed the Chicago Board of Trade (CBOT) to extend its trade beyond commodity derivatives into financial derivatives in stocks and currencies.⁴⁴ The CBOT was created in 1848 for trading between producers of commodities, like farmers, and their 'commercial parties', the traders of commodities and the companies using their products. This trade in the 1970s almost disappeared because of the certainty that US farmers got through the minimum prices that the US government introduced. CBOT wanted to keep the trade going by extending the scope of financial products, specifically options on equities and currencies. At that time, however, there was much regulatory resistance to this. According to the SEC there were 'absolutely insurmountable obstacles' as this trading was considered immoral like gambling, or worse, associated with market manipulation. Therefore, following the crisis of the 1930s, these trades had been largely forbidden.

The CBOT and the Mercantile Exchange, which also wanted to start a financial derivatives market in Chicago, got academics to write reports about the social value of these trades. Especially influential was the report written by Milton Friedman of the Chicago Business School. Then Treasury Secretary George Shultz was quoted as saying: "If it's good enough for Milton, it is good enough for me."⁴⁵

...to keeping regulation away from new financial products...

The next step in the development of the markets for financial derivatives was when not only options were written on stocks, currencies and interest rates, but also on the default risk of companies and later mortgages (so-called 'credit default swaps'). These were later securitised: bundled and sliced according to their risk characteristics (so-called 'collateralised debt obligations'). This market played a crucial role in the build up and spread of risk, in a highly opaque way, that froze global financial markets in 2008 and made so many financial institutions dependent on the support of their government. The financial industry lobbied heavily and successfully against any new rules and/or oversight.⁴⁶

It was in the late 1980s that regulators started to take a look at the market for financial derivatives that at that time was vastly expanding. The industry created the International Swaps and Derivatives Association (ISDA), of which three of the largest Dutch banks are currently a primary member.⁴⁷ One of its first actions in 1987 was to successfully lobby against the proposed regulation by the Commodities Futures Trading Commission (CFTC) of interest rate and currency swaps in the same way it monitored commodities derivatives.⁴⁸

Following several accidents with these products in the 1990s, regulators again proposed legislation to curb what the US General Accounting Office called "significant gaps and weaknesses" in risk management that created a wider systemic risk. In 1994, four bills proposing regulations were

⁴⁴ This paragraph is primarily based on the following source: O. Velthuis and L. Noordegraaf-Eelens, *Op naar de volgende crisis*, 2009, p. 51-53. The original source is D. MacKenzie, *An engine, not a camera. How financial models shape markets*, (Cambridge (MA): MIT Press, 2006).

⁴⁵ For a personal history of importance of the report by M. Friedman, "The need for futures markets in currencies", 1971, see this memoir of L. Malemad, former Chicago Mercantile Exchange (CME) director <http://www.leomelamed.com/essays/07-Friedman-oral.htm>

⁴⁶ This paragraph is primarily based on G. Tett, *Fool's Gold: The Inside Story of J.P. Morgan and How Wall St. Greed Corrupted Its Bold Dream and Created a Financial Catastrophe*, (New York: Free Press, 2009), Chapter 2 'Dancing around the regulators'.

⁴⁷ ABN AMRO Bank, Rabobank and ING Bank are all primary members of ISDA. SNS Bank has a subscriber membership. Source: <http://www2.isda.org/membership/members-list/>

⁴⁸ G. Tett, *Fool's Gold: The Inside Story of J.P. Morgan and How Wall St. Greed Corrupted Its Bold Dream and Created a Financial Catastrophe*, (New York: Free Press, 2009), p. 31.

submitted to Congress.⁴⁹ Again, however, the ISDA lobbied against the proposals in what Tett described as “one of the most startling triumphs for a Wall Street lobbying campaign”.⁵⁰

In the late 1990s, a last attempt to regulate this market was carried out by CFTC Head Brooksley Born. She also wanted to oversee off-exchange markets (so-called ‘over-the-counter’ or ‘OTC’ trade). However, under heavy pressure from the financial lobby and due to the resistance of other regulators legislation was adopted prohibiting regulation of derivatives by the CFTC. In 2000, the Commodities Futures Modernization Act specifically stressed that ‘swaps’ were not futures or securities and therefore could not be controlled by the CFTC or SEC.⁵¹

...the creation of one free European financial market...

In the 1990s, the financial industry in Europe played a crucial role in creating one financial market. Mügge documents how the big national champions took the initiative to come to an integrated financial market. This allowed them to gain the scale needed for the investment banking that had made such huge profits for their US peers. To this end, in the middle of the 1990s, banks like ABN AMRO and Deutsche Bank set up lobbying offices in Brussels. After intense consultation with the financial industry, the European Commission proposed to come to one internal market for financial products.⁵² A crucial role was played by ‘expert groups’ that were overwhelmingly dominated by representatives from the financial industry with scarcely any representatives from academia, consumer groups or unions, advising the Commission. Case studies on key issues such as banking regulation, hedge funds, credit rating agencies, accountancy rules and tax havens show how the financial sector was actively involved in designing the policies that contributed to the financial instability of 2008 and beyond.⁵³

...and the freedom to self-determine the risk-weighting...

Globally, probably the single most important regulation introduced in the decades preceding the financial crisis was the so-called Basel II accord (see Box 3). This process was initiated and heavily influenced by bank lobbying as well, which resulted in an accord that was actually weaker than its predecessor and benefited the major financial institutions.⁵⁴ It gave banks the freedom to independently ‘weigh’ the risk of their possessions, resulting in a further steady decline of risk weighted assets towards total assets. This happened at the same time as risk in the system was building up. It allowed banks to operate with increasingly less equity, the capital that can be used to take unexpected losses. Among other things, Basel II made mortgages more attractive and in anticipation of the implementation of Basel II, banks like Citi acted on the assumption that “mortgage securitisation could be accelerated and pushed into off-balance sheet vehicles”, raising “the return on capital right away without waiting for the new regime”.⁵⁵

⁴⁹ Ibid, p. 43.

⁵⁰ Ibid, p. 46.

⁵¹ See R. Smitt, ‘Prophet and Loss’ in *Stanford Alumni*, 2009, available at http://alumni.stanford.edu/get/page/magazine/article/?article_id=30885 (accessed 13 November 2013).

⁵² D. Mügge, *Widen the market, narrow the competition: banker interests and the making of a European capital market*, (Colchester: ECPR Press, 2010).

⁵³ ALTER EU, *A captive Commission; the role of the financial industry in shaping EU regulation*, 2009,

⁵⁴ See J. Blom, “Banking on the public: market competition and shifting patterns of governance”, dissertation, Amsterdam: University of Amsterdam, 2011 and S. Claessens, G. R. D. Underhill & X. Zhang, *The Political Economy of Basle II: The Costs for Poor Countries*, *The World Economy*, 2008.

⁵⁵ A. Blundell-Wignall et al. “The Current Financial Crisis: Causes and Policy Issues” in *OECD Journal Financial Markets Trends*, Vol. 2008, No. 2, p. 6.

At the time, there were ample warnings from academics and NGOs about the risks of the new regime.⁵⁶ When the financial crisis hit, the ‘simple leverage ratio’ indeed proved a better predictor for trouble at banks than the more ‘sophisticated’ risk weighing of the banks themselves.

Box 3: Lobbying the way to Basel II

Basel I was the first global regulatory accord, following the globalisation of the banking sector. It acknowledged the need for a multilateral approach in order to overcome competitive inequality and represented a strengthening of international governance. The governments of the G10 countries (followed by non-G10 countries) prepared an agreement that had not been subject to much input from banks.⁵⁷ When the banks’ assumption that there would be enough room for them to influence the implementation of the agreement on a national level turned out to be false, their involvement increased immensely during the negotiations of the subsequent Basel II accords. Two reports laid the groundwork for new negotiations; one came from the G30, an international body of leading financiers and academics. The second was drafted by the Institute of International Finance (IIF), the global association for financial institutions that was created by banks in the 1980s.⁵⁸ Especially the latter clearly represented the private interests of banks, proposing that banks should be allowed to use their own risk management models. During the negotiations of Basel II, the Basel Committee on Banking Supervision (BCBS) played a more central and crucial role in the policy-making. Moreover, private interest groups now had direct access to the BCBS through formal consultations, in contrast to the earlier lobbying efforts directed at national policy-making institutions. According to Blom, “[e]xtensive informal consultation with the private sector took place continuously at the domestic level and – more importantly – increasingly at the global level”.⁵⁹ Blom concludes that the consultative process facilitated the preferences of private sector parties.⁶⁰ Bieling and Jäger argue too that the interests of banks heavily influenced the Basel II negotiations, and they claim that large banks in particular benefited.⁶¹ The use of internal risk models, for example, is beneficial for large banks, but small-scale and public banks opposed internal modelling because of the extra costs it would incur, which are more difficult for small banks to manage. The dense and technical nature of the policies under negotiation and the effects of groupthink allowed for private interest input to dominate the policy-making process.

Kevin Young emphasises that access and influence should not be equated. Studying this same Basel II process, he concludes that: “while private sector lobbyists had unprecedented access to the regulatory policy-making process, this access did not always translate into influence.”⁶²

...the whole spectrum of lobbying strategies is deployed

In this historic overview, we have seen that the financial lobby uses several of the lobbying approaches identified in the first chapter – starting with the use of academics in an information-oriented transactional approach to overcome regulatory resistance to broadening the trade in financial derivatives. In keeping regulation away from the rapidly growing derivatives markets in the late 1990s, the dominant mode was direct lobbying by the financial industry itself.

⁵⁶ See J. Danielsson, P. Embrechts, C. Goodhart, C. Keating, F. Muennich, O. Renault & H.S. Shin, An Academic Response to Basel II, LSE Financial Markets Group Special Paper No.130, 2001. See also M. Vander Stichele, *Is de financiële crisis voorbij?*, SOMO (Amsterdam), 1999; and *Critical Issues in the Financial Industry*, SOMO Financial Sector Report, 2005.

⁵⁷ J. Blom, *Banking on the public: market competition and shifting patterns of governance*, dissertation, (Amsterdam: University of Amsterdam, 2011), p. 118. The box ‘Lobbying the way Basel II’ has been largely based on this dissertation.

⁵⁸ *Ibid.*, p. 125.

⁵⁹ *Ibid.*, p. 129.

⁶⁰ *Ibid.*, p. 133.

⁶¹ H-J. Bieling & J. Jäger, “Global finance and the European economy: the struggle over banking regulation”, paper presented at PSA Conference ‘Europe and Global Politics’ (11-13 April 2007 University of Bath), p. 12-13.

⁶² K. Young, “Transnational regulatory capture? An empirical examination of the transnational lobbying of the Basel Committee on Banking Supervision” in *Review of International Political Economy*, Vol. 19, No. 4, 2012.

Tetts' description of the ISDA-lobby campaign clearly shows how what Kwak labelled 'cultural capture' did play a role. The idea that the pursuit of self interest in efficient markets would result in the best possible outcome for all.

Instigating change of the Basel I accord again was done together with academics, switching to direct lobbying with ample access to policy-makers when the Basel II negotiations started.

In the US, the giving of donations as a form of the pressure-oriented transactional approach increased rapidly. In 1990, the financial sector donated \$61 million dollars to political campaigns. By 2006, this had increased to \$260 million (the industry that was the next largest donor, healthcare, donated \$100 million in 2006).

Acemoglu and Robinson argue that potentially efficiency-enhancing deregulation through increasing the size and political power of the financial industry led to a vicious circle of increasing profits and further deregulation that resulted in the financial crisis. Because economists did not take into account the political consequences of the changes they unleashed, they "dramatically understated the likelihood of the costs that actually occurred."⁶³

The relational approach of lobbying was most visible through the revolving door between the public and private sector. An exemplary case of the US revolving door is Robert Rubin, who, after 26 years at Goldman Sachs, traded his position as co-chairman to become the head of the National Economic Council in 1993 and in 1995 for that of Secretary of the Treasury. In that role, he fought the regulation of financial derivatives and repealed the Glass-Steagall Act, which had forbidden the combination of investment banking and the taking of savings deposits. In 1999 he moved to the financial conglomerate Citi, a merger made possible by Rubin's deregulation, and also the bank that needed the biggest bail-out in 2008. A bail-out that was orchestrated by the then Secretary of Treasury Hank Paulson who had been the CEO of Goldman Sachs until 2006.

In the UK between 2000 and 2008, 26 of the 36 different members of the Financial Services Authority (FSA) board "had connections at board or senior level with the banking and finance industry either before or after their term of office, whilst nine continued to hold appointments in financial corporations while they were at the FSA".⁶⁴

The strong Dutch connection in the global regulatory debate

Whereas the Netherlands is a small country, in the world of finance it punches above its weight. In 2007, two of the 10 largest banks (by assets) in the world were Dutch.⁶⁵ In 2011, the Dutch banking sector was still the seventh largest in the world, according to the Bank for International Settlements. The Dutch have also been important players in setting the international regulatory agenda. Key positions within the main international financial lobby organisation have been held by Dutch bankers:

- Cees Maas of then ING has been an IIF board member since 1996. He has been IIF Treasurer since 1999, and ViceChairman since 2003.⁶⁶
- From 1999 until 2002, former ABN AMRO Chair Jan Kalff chaired the IIF Steering Committee on Regulatory Capital, "one of the most senior groups ever assembled by the Institute, to

⁶³ D. Acemoglu & J. A. Robinson, "Economics versus Politics: Pitfalls of Policy Advice" in Journal of Economic Perspectives, American Economic Association, Vol. 27, No. 2, 2013, p. 173-92.

⁶⁴ OECD, Revolving Doors, Accountability and Transparency – Emerging Regulatory Concerns and Policy Solutions in the Financial Crisis, 2009, report by Expert Group on Conflicts of Interests, p. 29.

⁶⁵ ABN AMRO (8) and ING (9), see <http://www.banksdaily.com/topbanks/World/2007.html> (accessed 11 October 2013).

⁶⁶ Institute for International Finance, The first 25 years: 1982-2007, 2007, p.9

consider and react to the proposed Capital Adequacy framework issued by the Basel Committee on Banking Supervision".⁶⁷

- In 2007, Tom de Swaan, Member of the Supervisory Board of Van Lanschot Bankiers N.V. was Vice Chairman of IIF.

Dutch Central Bank President Nout Wellink played a prominent role on the side of the global supervisors, as director of the Bank for International Settlements (BIS) from 1997 to 2012 and Chairman of the Board from 2002 through 2006. From 2006 to 2011, Wellink was also Chairman of the Basel Committee on Banking Supervision (BCBS), the organisation responsible for drafting the Basel accords.

The lobby of Dutch banks nationally

Lobbying activities within the Netherlands have been the focus of a parliamentary enquiry into the financial crisis. The 'Commission de Wit' stated that the process of policy-making in the case of the BCBS has been non-transparent. Moreover, the Commission claims in its report that, at a national level, there is a lack of transparency regarding the actors and opinions that have influenced decision-making of financial policies.⁶⁸

The Dutch newspaper *NRC Handelsblad* revealed the power of lobbying efforts by the Dutch financial sector in the case of expanding the possibilities for banks to remove lending activities from their balance sheet. According to the article, the banks initiated these rule changes and there was hardly any parliamentary debate about these rules that increased the kind of risk that almost brought the financial sector down in 2008.⁶⁹ In 2003, Minister of Law Donner submitted another amendment to broaden the trading of loans. The amendment allowed banks to resell loans without informing the customers concerned. The law proposal was accompanied by an explanatory memorandum, which is a more than 50 per cent copy of a letter of the Dutch Banking Association (NVB) in which it explains why the law has to be changed. However, this letter is largely a copy of an earlier letter of DNB, with the one big difference that it very selectively quotes the DNB.⁷⁰

The Dutch parliament, which has the job of monitoring the government's proposals, has failed in these instances as well. It practically never raised questions about the risks banks and the financial sector were taking due to a lack of expertise and critical attention.

In 2000, the Dutch banks also opposed the position of the DNB, this time regarding mortgages. The DNB recommended abolishing mortgages with loan-to-value ratios of over 100 per cent (up to 125 per cent where the EU average is around 80 per cent), the so-called 'tophypotheken'.⁷¹ Here the NVB claimed that the intention to abolish 'tophypotheken' possibly threatened the stability of the Dutch housing market.⁷² Government parties also rejected the idea and the Minister of Finance stated that "it is not up to the government to determine the choice of the consumer and the lender".⁷³ This does not

⁶⁷ Ibid, p.20

⁶⁸ Tweede Kamer der Staten-Generaal (2010) 'Eerste rapport parlementair onderzoek financieel stelsel', No. 31 980, available at http://www.tweedekamer.nl/images/Eerste_rapport_Tijdelijke_commissie_onderzoek_financieel_stelsel_118-206542.pdf (accessed 24-01-2013), p. 134.

⁶⁹ Jeroen Wester, 'Hoe Den Haag de banken bediende: onderzoek politiek en kredietcrisis' in *NRC Handelsblad*, 27 June 2009.

⁷⁰ Jeroen Wester, 'Hoe Den Haag de banken bediende: onderzoek politiek en kredietcrisis' in *NRC Handelsblad*, 27 June 2009.

⁷¹ DNB (2000) *Het bancaire hypotheekbedrijf onder de loep; Rapport over de ontwikkelingen op de hypotheekmarkt in de periode 1994-1999*.

⁷² NRC Handelsblad, 'Weerstand tegen plan hypotheek; uit politiek en markt', 21 January 2000.

⁷³ Kamerbrief 26 800 IXB 'Vaststelling van de begroting van de uitgaven en de ontvangsten van het Ministerie van Financiën (IXB) voor het jaar 2000'.

necessarily prove that the banks' lobbying efforts were influential, but it does show their active involvement in the public policy debate.

The revolving door turning in the Netherlands

The revolving door is also a common practice in the Netherlands. Prominent transfers from the public to the private spheres before the financial crisis were not unusual:

- Cees Maas moved in 1992 from serving as Treasury-General at the Ministry of Finance to the position of Chief Financial Officer and Vice-Chairman of the Executive Board at ING.
- Tom de Swaan exchanged his position as director of the Dutch Central Bank in the late 1990s for a job as Chief Financial Officer at ABN AMRO bank.
- Joop Wijn, the former Deputy Minister of Economic Affairs (2002-2003) and Minister of Finance (2003-2006) and Economic Affairs (2006-2007) became Director at Rabobank in 2007, and a board member at ABN AMRO in February 2009 – the bank where Wijn had worked since 1994 before joining the Dutch parliament in 1998.
- In 2003, Frank Heemskerk left ABN AMRO, where he had worked since 1995, to become a member of parliament for the PvdA (Social-Democrats). Between 2007 and 2010, he served as Deputy Minister of Economic Affairs. Currently he is the Dutch delegate at the World Bank in Washington.
- The current Chief Financial Officer (CFO) of ABN Amro is Kees van Dijkhuizen, who left the Ministry of Finance in 2005 for the position of CFO at NIB Capital.
- Former Deputy Minister of Economic Affairs Karien van Gennip (2003-2007) left parliament in 2008 for a job at ING bank. Before being Deputy Minister, she worked at the financial regulator AFM. This is not an exhaustive overview of all revolving door cases, but illustrates the continuing switching of job positions between public and private spheres.

The most discussed transfer between the public and private sector was doubtlessly that of Gerrit Zalm, Minister of Finance between 1994-2002 and 2003-2007 and now CEO of ABN AMRO. Before moving to ABN AMRO between June 2007 and December 2008, Zalm was employed by the now bankrupt DSB Bank, from December 2007 onwards as CFO and board member.

This move from the public to the private side in the financial sector illustrates the kind of tensions that can arise. Zalm moved to DSB, the bank that – due to its aggressive lending policy – has come to exemplify the dark side of banking, where a sophisticated financial institution takes advantage of the limited financial knowledge and understanding of the general public. An important marketing channel of DSB, its TV ads, came under parliamentary scrutiny in 2006. As Minister of Finance, half a year before moving to DSB Bank, Zalm decided not to prohibit TV commercials for personal lending, as was requested by a majority of parliament.⁷⁴ After Zalm stepped down, his successor Bos also did not act upon this parliamentary wish.

When at DSB, his presence kept the supervisors at a distance. This is something that has generally been lamented after the fall of DSB. Zalm himself wrote to his fellow board members about DNB and AFM that threatened to act upon longstanding complaints about DSB's risky and consumer-unfriendly business model: "my attendance will keep them off for some time (the advantage of having been the Minister) but it will not stay like that."⁷⁵

⁷⁴ Motie Vietsch (CDA) TK 2006-2007 29942 nr. 28.

⁷⁵ "Nu houdt mijn aanwezigheid ze nog wel even af (het voordeel van het Minister zijn geweest) maar dat blijft niet zo." Mail Zalm to CEO and CFO of DSB bank, cited in Report of the DSB-Curator, 19 June 2012, p.52-53 see <http://www.dsbbank.nl/media/verslagen/DSB%20Bank-Onderzoek-naar-de-oorzaken-van-het-faillissement-van-DSB%20Bank-NV-dd-19-juni-2012.pdf>

Apart from these well-known public figures switching between the public and private sector, no information is available about transfers in the levels below the top management.

Whereas little is known about the way this revolving door influences actual decision-making, a rare glimpse behind the scenes is offered in a book by the current Minister of Social Affairs and Deputy Prime Minister Lodewijk Asscher of the Social Democratic Party. He recalls the moment in 2006 when Amsterdam's Schiphol airport was to be privatised. It was a move that he, as new Alderman of the City of Amsterdam, opposed. Strong pressure was put on him to concede. Asscher describes how Wilco Jiskoot, then board member of ABN AMRO, during a private conversation about this decision, informs about Asscher's ambitions in life 'after politics'.⁷⁶ That this anecdote has become public information and Schiphol Airport has remained public are probably not unrelated.

3.3. Lobbying and regulatory capture *after* 2008

Crisis waking up policy-makers, supervisors and the wider public...

So how has the bank lobby changed since the outbreak of the financial crisis in 2007 and 2008? It was a crisis that, in the words of former US Federal Reserve Chairman Alan Greenspan, proved the 'ideology' of self-regulating financial markets wrong.⁷⁷ In Europe, Charlie McCreevy, former Commissioner for Single Market and Services of the EU responsible for financial regulation and a fervent believer in self-regulation, stated in 2009: "What we do not need is to become captive of those with the biggest lobby budgets or the most persuasive lobbyists: We need to remember that it was many of those same lobbyists who in the past managed to convince legislators to insert clauses and provisions that contributed so much to the lax standards and mass excesses that have created the systemic risks."⁷⁸ However, McCreevy's words are in stark contrast to his own career path. He was the first Commissioner banned from a job by the European Commission when he was told to resign from the board of the London-based bank NBNK Investments, based on the Commission's suspicion of potential conflict of interest.⁷⁹

...but financial lobby is intensified in response to this

It is no surprise that public trust in banks has fallen sharply. Politicians, the media and NGOs are following the debate more intensively. This diminishes the risk of regulatory capture. Some note that the financial lobby has actually become less effective.⁸⁰ However, others mainly point to a change in lobbying style. Looking at the advocacy strategies of the global banking and derivatives industries, Young concludes that financial industry groups have adapted their advocacy strategies due to the challenging environment. They are shifting their emphasis from outright vetoing of regulatory proposals towards more subtle advocacy strategies like self-regulation and a strong focus on the timing, rather than the content, of new regulations.⁸¹

As the government has stepped in to re-regulate the sector, the role of government increases, as does the risk of regulatory capture. Indeed, given the intensive policy debate, banks have also intensified their lobbying efforts. In an article about the determinants of the lobbying activities by banks, the authors claim that the announcement of the Volcker rule – a rule that was part of the larger financial

⁷⁶ L. Asscher, *De ontsluiting van de stad* (Amsterdam: Bert Bakker, 2010).

⁷⁷ See statement Alan Greenspan, 23 October 2008, at minute 3.40 <http://www.youtube.com/watch?v=R5IZPWNFizQ>

⁷⁸ Charlie McCreevy, 'The Credit Crisis – Looking Ahead', speech at the Institute of International and European Affairs, Dublin, 9 February 2009, available at http://europa.eu/rapid/press-release_SPEECH-09-41_en.htm (accessed 21-12-2012)

⁷⁹ Corporate Europe Observatory, 'McCreevy strikes back, ridiculing Commission's rules', 4 April 2011, available at <http://corporateeurope.org/blog/mccreevy-strikes-back-ridiculing-commissions-rules> (accessed 4-11-2013)

⁸⁰ Cavelaars et al. (2013) *Key challenges for financial supervision after the crisis*, WRR Web publication No. 71, available at http://www.wrr.nl/fileadmin/nl/publicaties/PDF-webpublicaties/Web_71.pdf (accessed 13-11-2013)

⁸¹ Kevin Young (2013) 'Financial industry groups' adaptation to the post-crisis regulatory environment: Changing approaches to the policy cycle' in *Regulation and Governance*, Vol. 7, p. 460-480.

regulatory reform in the US – was followed by “significant higher lobbying intensity on behalf of banks with higher trading revenues”.⁸² Research by *USA Today* points out that, since the issuing of the Volcker Rule in late 2011, around 85 per cent of 253 Washington meetings of industry with regulators “featured finance industry representatives challenging it”.⁸³ According to the US-based Center for Responsive Politics, the spending of the financial sector on lobbying has increased in the years after the financial crisis and it is one of the largest sources of campaign contributions to federal candidates and parties.⁸⁴ In the UK, the “City’s contribution to the Conservative Party has more than doubled since David Cameron became its leader”, according to the Bureau of Investigative Journalism.⁸⁵ In commemorating the fifth-anniversary of the fall of Lehman Brothers, many commentators drew the conclusion that the fundamental problem of banks being ‘too big to fail’ has not been solved, nor are resolution plans in place that ensure that taxpayers will not be called upon again. Many pointed towards the role of the financial lobby in obstructing more fundamental change.⁸⁶ In reference to Mancur Olson’s theory on economic decline, *Financial Times*’ John Plender concluded that today the pre-eminent interest group consists of finance professionals: “Tackling such interest groups both in the US and Europe is one of the biggest post-crisis tasks for policy-makers and a key to addressing concerns about systematic legitimacy.”⁸⁷

In the US: More lobbying, more government support

Research has found that, during the height of the crisis, the time of the bail-outs, the financial lobby paid off as firms that lobbied the US government had a 42 per cent higher chance of receiving government support from the Troubled Asset Relief Program (TARP) that was set up in 2008 to strengthen and support the financial sector. The study combined lobbying expenses and political connections into what the authors call ‘political engagement’. Their research suggests that “not only is political engagement related to *who* received TARP support, but political engagement is also related to *when* firms received support.”⁸⁸ This essentially means that banks that are politically engaged through spending money on lobbying and employing individuals that worked for the government or the other way around, have a greater chance of being bailed out.

Globally: Basel 3 limited to Basel 2.01

“Banks win more flexible Basel rules”, was the headlines of an article in the *Financial Times* published in January 2013, referring to the weakening of Basel III’s global liquidity standards: “the industry lobbied hard to get the rules watered down”.⁸⁹ According to Martin Hellwig, the new capital and liquidity rules would be more appropriately called Basel 2.01⁹⁰ (see Box 4).

⁸² Rajna Gibson Brandon & Miret Padovani (2012) ‘The determinants of banks’ lobbying activities’, Swiss Finance Institute Research Paper No. 11-56, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1785435

⁸³ USA TODAY, ‘Dodd-Frank Act: after three years, a long to-do list’, 4 June 2013, available at <http://www.usatoday.com/story/money/business/2013/06/03/dodd-frank-financial-reform-progress/2377603/> (accessed 05-06-2013)

⁸⁴ Center for Responsive Politics, “Ranked Sectors”, available at <http://www.opensecrets.org/lobby/top.php?showYear=2011&indexType=c> (accessed on 21 December 2012).

⁸⁵ N. Mathiason & Y. Bessaoud, “Tory Party funding from City doubles under Cameron”, The Bureau of Investigative Journalism, 25 October 2011, available at <http://www.thebureauinvestigates.com/2011/02/08/city-financing-of-the-conservative-party-doubles-under-cameron/> (accessed on 21 December 2012).

⁸⁶ See for instance A. Admati, “Five Years of Financial Non-Reform”, Project Syndicate 13 September 2013 <http://www.project-syndicate.org/commentary/the-failure-of-bank-reform-since-2008-by-anat-admati> and S. Johnson, “The Problem of Too Big to Fail Is Even Bigger Than Before 2008”, Institute for New Economic Thinking, 18 September 2013, available at <http://ineteconomics.org/blog/institute/simon-johnson-problem-too-big-fail-even-bigger-2008>

⁸⁷ J. Plender, “The code that forms a bar to harmony, Capitalism in crisis-series”, *Financial Times*, 9 January 2012.

⁸⁸ B. Blau, T.J. Brough & D.W. Thomas, Corporate lobbying, political connections, and the bailout of banks, in *Journal of Banking and Finance*, Vol. 37, 2013, p. 3008.

⁸⁹ B. Masters, “Banks win more flexible Basel rules” in *Financial Times*, 6 January 2013.

⁹⁰ M. Hellwig, “The financial crisis and regulatory reform”, keynote speech at the Bundesbank, 19 November 2011.

Box 4: Lobbying by the Institute of International Finance on Basel III: it's all about timing

The new Basel III accords are the centrepiece of the worldwide financial reform. They set the new global regulatory standards on bank capital adequacy and liquidity. At the end of 2010, members of the BCBS agreed on a proposal that was endorsed by the G20 leaders at their summit in Seoul in South Korea in November 2010. The process leading up to the endorsement of Basel III was not without interference. As *The Economist* wrote: "It is here that the most vicious and least public skirmish between banks and their regulators is taking place".⁹¹

After the BCBS decided on broad outlines for new capital requirement standards in September 2009,⁹² it issued two consultation documents with detailed proposals for the public to review and comment on 19 December 2009. The BCBS allowed a public comment period ending on 16 April 2010, which resulted in 272 responses. After the consultation ended, but right before meetings in June by the BCBS⁹³ and the G20, the IIF published its 'Interim Report on the Cumulative Impact on the Global Economy of Proposed Changes in the Banking Regulatory Framework'.⁹⁴ According to an earlier SOMO report, "ING bears a special responsibility due to its relatively heavy involvement in producing this report and its rather exclusive place on the IIF board."⁹⁵

According to the IIF, "by 2015 the level of G3 real GDP under a regulatory change scenario is projected to be about 3.1% below what it would otherwise be. (...) For the US, the path of real GDP is projected to be 2.6% lower by 2015; for Japan, the path is 1.9% lower; but for the Euro Area the path is as much as 4.3% lower".⁹⁶ The predicted cumulative effect on employment was around 10 million jobs, which was a scarily high number at a time when unemployment figures were on the rise in many countries. As the first to issue a report on the impact of the Basel III proposals, the IIF was able to exert maximum influence in the framing of the issue of capital requirements. It was widely reported in the press and drew the attention of policy-makers and the general public.

However, the report is based on assumptions that have subsequently been criticised by both academics and policy researchers in fundamental ways as 'a basic fallacy'.⁹⁷ A group of prominent financial economists argued that the IIF claim that requiring more equity will increase their overall funding cost "reflects a basic fallacy. Using more equity changes how risk and reward are divided between equity holders and debt holders, but does not by itself affect funding costs. [...] Bankers warn that increased equity requirements would restrict lending and impede growth. These warnings are misplaced. First, it is easier for better-capitalized banks, with fewer prior debt commitments hanging over them, to raise funds for new loans. Second, removing biases created by the current risk-weighting system that favour marketable securities would increase banks' incentives to fund traditional loans. Third, the recent subprime-mortgage experience shows that some lending can be bad for welfare and growth. Lending decisions would be improved by higher and more appropriate equity requirements." Admati et al conclude that "[i]f handled properly, the transition to much higher equity requirements can be implemented quickly and would not have adverse effects on the economy".⁹⁸

Consequently Admati and other articles, such as that of Miles et al,⁹⁹ recommend capital ratios that are substantially higher than the ones set by the Basel Committee. Other reports also arrived at similar, much smaller effects, e.g. the OECD,¹⁰⁰ the BIS¹⁰¹ and the Netherlands Bureau for Economic Policy Analysis (CPB). The CPB concluded that "[a]t current capital levels, the long term costs of stricter capital requirements are small relative to the benefits due to a lower probability of a systemic crisis".¹⁰² Due to the timing of the report, however, the dramatic pictures painted in the IIF report heavily influenced the perception amongst policy-makers and the wider public regarding the consequences of Basel III.

⁹¹ The Economist, "The banks battle back. A behind-the-scenes brawl over new capital and liquidity rules", 27 May 2010.

⁹² BCBS, "Comprehensive response to the global banking crisis", 7 September 2009, available at <http://www.bis.org/press/p090907.htm> (accessed 13 November 2013).

⁹³ BCBS, "Adjustments to the Basel II market risk framework announced by the Basel Committee", 18 June 2010, available at <http://www.bis.org/press/p100618.htm> (accessed 13 November 2013).

⁹⁴ Institute of International Finance, "Global Financial Industry Leaders Support Constructive Dialogue to Secure Financial Sector Stability and Economic Growth", 10 June 2010, available at <http://www.iif.com/press/press+151.php> (accessed 13 November 2013).

⁹⁵ SOMO, ING Group N.V. Selected CSR issues in 2010, 2011, p. 12, available at http://www.somo.nl/publications-nl/Publication_3652-nl

⁹⁶ Institute of International Finance, 10 June 2010 (see footnote 92).

⁹⁷ Admati et al. "Much More Bank Equity Is Needed and Is Not Socially Costly", in Financial Times, 9 November 2010, available at <http://www.gsb.stanford.edu/news/research/admatiopen.html>; See also A.R. Admati, P.M. DeMarzo, M.F. Hellwig and P. Pfleiderer, Fallacies, Irrelevant Facts, and Myths in the Discussion of Capital Regulation: Why Bank Equity is Not Expensive, Stanford GSB Research Paper 2065, 2010.

⁹⁸ Admati et al. "Much More Bank Equity Is Needed and Is Not Socially Costly", in Financial Times, 9 November 2010.

⁹⁹ D. Miles, J. Yang & G. Marcheggiano, "Optimal bank capital" in The Economic Journal, Vol. 123, No. 567, 2013, p. 1-37.

¹⁰⁰ Slovik, P. & B. Cournède, Macroeconomic Impact of Basel III, OECD Economics Department Working Papers, No. 844, 2011.

¹⁰¹ P. Angelini et al. BASEL III: Long-term impact on economic performance and fluctuations, BIS Working Papers, No 338, 2011.

¹⁰² M. Bijlsma & G. Zwart, Are stricter capital requirements costly?, CPB Document 215, 2010, available at <http://www.cpb.nl/en/publication/are-stricter-capital-requirements-costly> (accessed 13 November 2013).

In the case of estimating the impact of the Basel III proposals, the banks overstated the negative effects (and left out the positive) of higher capital ratios. Low capital requirements may serve the short-term narrow financial interest of the financial industry. However, they do not necessarily create a stable banking sector that is in the long-term interest of society. As Admati et al. put it, “Many bankers oppose increased equity requirements, possibly because of a vested interest in the current systems of subsidies and compensation. But the policy goal must be a healthier banking system, rather than high returns for banks’ shareholders and managers, with taxpayers picking up losses and economies suffering the fallout”.¹⁰³

Dutch lobby, troubled but still influential

In the Netherlands, the common lobby of banks through the NVB was hampered not only as a result of increased public vigilance, but also due to internal fights.¹⁰⁴ However, the banking lobby was still strong enough to be lamented by Hans Hoogervorst, then Director of the Dutch Financial Markets Authority (AFM), for putting on hold much needed changes in mortgage lending.¹⁰⁵ According to Hoogervorst, the government gave too much room to the NVB to influence the decision-making process. When leaving as chair of the Association of Small and Medium-Sized Enterprises (MKB-Nederland), Hans Biesheuvel lamented the dominance of banks within the federation of employers (VNO-NCW).¹⁰⁶

Revolving door keeps on turning

The financial crisis did not stop the revolving door from turning either. In the US, Mary Shapiro, former Chairperson of the US Securities and Exchange Commission (2009-2012), is now Managing Director and Chairman of the governance and markets practice at consulting firm Promontory Financial Group. A recent example in the Netherlands of a ‘topambtenaar’ making his way to the private sector is Chris Buijink. In 2013, he exchanged his position as the highest official at the Dutch Ministry of Economic Affairs to become chairperson of the Dutch Banking Association. In 2011 Jan Sijbrand became Head of Supervision at De Nederlandsche Bank, leaving his post as Chief Risk Officer at NIBC Bank (2008-2011). Before that, Sijbrand worked at ABN AMRO (1996-2007) and Rabobank (1992-1996).

¹⁰³ Admati et al, “Much More Bank Equity Is Needed and Is Not Socially Costly”, in Financial Times, 9 November 2010.

¹⁰⁴ See A. Sterk, “Ruzie tussen Rabo en ING over lobby naar politiek Den Haag”, Dow Jones News Service, 4 October 2012, available at <http://www.beurs.nl/nieuws/binnenland/3173355/ruzie-tussen-rabo-en-ing-over-lobby-naar-politiek-den-haag-media> (accessed 13 November 2013).

¹⁰⁵ See Business News Radio, 29 November 2010, <http://www.youtube.com/watch?v=9hp2HK-htsE> (in Dutch).

¹⁰⁶ E. Smit, “Het herstel van banken gaat over de rug van de kleine ondernemer”, Follow the Money, 30 September 2013, available at <http://www.ftm.nl/exclusive/herstel-banken-gaat-rug-kleine-ondernemer/> (accessed 13 November 2013).

4. Responsible lobbying and transparency

“Members of the Professional Association for Public Affairs are honest and trustworthy in their professional contacts with politicians, policy-makers, other professions, and the public.”
Charter of the Dutch Professional Association for Public Affairs (BVPA).¹⁰⁷

The previous chapter demonstrated that regulatory capture can and did have harmful consequences for the public interest. This is acknowledged by numerous codes of conduct that aim to provide guidelines for responsible lobbying. This chapter offers an overview of the most important initiatives. First we look at specific codes of conduct, both government and sector initiatives, that aim to enhance responsible lobbying. We will then look more specifically into the issue of lobby transparency.

4.1. Responsible lobbying: government initiatives

Lobbying for the responsible cause...

It is now widely acknowledged that companies do not merely have to stick to the law. In order to earn a ‘license to operate’, firms need to behave in a ‘socially responsible’ way. Although there is no definition of socially responsible corporate behaviour, just as there is no definition of ‘the public interest’, over the last few years many guidelines have been developed in the field of corporate social responsibility (CSR). The lobbying of firms is part of several leading CSR-guidelines. Responsible lobbying means that the company uses its lobbying power to support policies that are in line with the values that the company promotes in its CSR policies.

According to the commentary accompanying operating principle 16 of the United Nations Guiding Principles on Business and Human Rights:¹⁰⁸ “business enterprises need to strive for coherence between their responsibility to respect human rights and policies and procedures that govern their wider business activities and relationships. This should include, for example, policies and procedures that set financial and other performance incentives for personnel; procurement practices; and lobbying activities where human rights are at stake.”¹⁰⁹

In explaining the United Nations Global Compact,¹¹⁰ it is also stated that “A company that takes its UNGC commitment seriously arguably has an obligation to promote public policies to this effect, particularly where it is present in or entering a country with weak institutions and rule of law.”¹¹¹ Businesses that participate in the UNGC are required to submit an annual Communication on Progress; they have to be transparent about their developments and improvements regarding the 10 principles. This means they have to be transparent about possible lobbying efforts related to complying with the UNGC principles.

¹⁰⁷ Charter of the Dutch Professional Association for Public Affairs (‘Beroepsvereniging voor Public Affairs’), available at http://bvpa.nl/page/downloads/BVPA_Handvest.pdf (accessed 19 September 2013).

¹⁰⁸ UN Guiding Principles for Business and Human Rights, 21 March 2011, available at <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf>

¹⁰⁹ Ibid, p. 16.

¹¹⁰ United Nations Global Compact: <http://www.unglobalcompact.org/AboutTheGC/index.html> (accessed 19 September 2013).

¹¹¹ S. Anastasiadis & S. M. Wagner, “Responsible Lobbying” in the Global Compact International Yearbook, 2011, p. 27, available at <http://www.csr-manager.org/en-wAssets/docs/GCYB2013/Global-Compact-Jahrbuch-2013-Screen.pdf> (accessed 19 September 2013). See also David Vogel who stated in the Harvard Business Review: “It is not enough for companies to engage in sophisticated private initiatives, however strategic. They must also be willing to support public policies that make it easier for them and other firms to do the right thing.” D. Vogel, “Socially Responsible Lobbying” in Harvard Business Review, February 2008, Vol. 86 Issue 2, p. 17-45.

...in a responsible way

As well as lobbying for a 'responsible' change of public policies, responsible lobbying also requires that lobbying itself should be done in a responsible way. There are many guidelines in place that aim to ensure this.

The 'Code of Conduct' of the EU Transparency Register provides guidelines for lobbyists aiming to influence European institutions and their staff. It requires, among other things, that lobbyists should: identify themselves, not obtain any information in a dishonest manner, provide up-to-date information, not sell any information received by EU institutions, and not induce any EU staff members "to contravene the rules and standards of behaviour applicable to them".¹¹²

National governments also have codes of conduct. For example, the Canadian government has a Lobbyists' Code of Conduct that aims "to assure the Canadian public that lobbying is done ethically and with the highest standards with a view to conserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of government decision-making".¹¹³ Conflicts of interest, according to the Canadian Code of Conduct, are not allowed "without the informed consent of those whose interests are involved". Moreover, "lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder." A Commissioner for Lobbying is appointed to review and investigate alleged breaches of the Code. After investigation, a report must be tabled in both Houses of Parliament, where a further course of action is decided upon.

In the United Kingdom, a Code of Conduct applies not to lobbyists, but to members of -parliament: "Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest."¹¹⁴ A code of conduct that aims to direct the behaviour of lobbyists and a public register is currently in development in the UK.¹¹⁵

The Netherlands has no legislation governing the interactions between public office holders and the private sector.¹¹⁶

Slowing down the revolving door

The threat of conflicting interests posed by the switching of positions between private and public agencies ('revolving door') has given impetus to voluntary as well as mandatory measures. The importance of the issue is underlined by the OECD in a report in 2009 that states that "tackling the revolving door is an indispensable part of the process of restoring confidence in both the political system and the financial markets more generally."¹¹⁷

¹¹² EU Transparency Register, "Code of Conduct", available at <http://ec.europa.eu/transparencyregister/info/about-register/codeOfConduct.do?locale=en> (accessed 19 September 2013).

¹¹³ Office of the Commissioner of Lobbying of Canada, "The Lobbyists' Code of Conduct", available at http://ocl-cal.gc.ca/eic/site/012.nsf/eng/h_00013.html (accessed 14 August 2013).

¹¹⁴ UK Parliament, The Code of Conduct together with The Guide to the Rules relating to the conduct of Members, available at <http://www.publications.parliament.uk/pa/cm201012/cmcode/1885/188502.htm#a5> (accessed 14 August 2013).

¹¹⁵ UK Parliament, Lobbyists (Registration of Code of Conduct) Bill 2013-14, available at <http://services.parliament.uk/bills/2013-14/lobbyistsregistrationofcodeofconduct.html> (accessed 14 August 2013).

¹¹⁶ M.M. Malone, Regulation of lobbyists in developed countries – current rules and practices, Institute of Public Administration study, 2008, available at <http://www.environ.ie/en/Publications/LocalGovernment/Administration/FileDownload.2048.en.pdf> (accessed 13 November 2013).

¹¹⁷ OECD, Revolving Doors, Accountability and Transparency – Emerging Regulatory Concerns and Policy Solutions in the Financial Crisis, report by Expert Group on Conflicts of Interests, 2009, p. 66, available at <http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=GOV/PGC/ETH%282009%292&docLanguage=En> (accessed 16 August 2013).

The European Parliament adopted new Staff Regulations that will apply to all European institutions. A cooling-off period of 12 months is introduced for senior officials, as well as an assessment of conflicts of interest regarding newly appointed staff members: “Before recruiting an official, the appointing authority shall examine whether the candidate has any personal interest such as to impair his independence or any other conflict of interest.”¹¹⁸

According to Revolving Door Watch,¹¹⁹ these represent the first steps in the right direction, but more is needed:¹²⁰

- A cooling-off period of at least two years for all EU institution staff members entering new posts that present a conflict of interest (like lobbying or advising on lobbying).
- Tackling loopholes in the current rules, like the exclusion of staff working as ‘contract agents’.
- Scrutiny of all staff joining EU institutions for potential conflicts of interest.
- Publish a list of all revolving door cases on EU institutions’ websites.
- Ensure sufficient resourcing for investigating and monitoring revolving door cases.

National regulation on revolving doors exists in France where public officials are obliged to report a job switch that might lead to a conflict of interest. Cases are reviewed by an ethics commission that has advisory power. Most cases reported to the ethics committee (in 2006) were public officials moving to the banking and finance sector.¹²¹ Six years later, in 2012, the total number of reported cases has tripled, reaching more than 3,000. Among all public officials moving from state government to another position, 6.6 per cent moved to a job within the banking or assurance industry.¹²² As well as these hurdles, French law also includes a punitive element that applies to public officials in a position of supervision and control. It prohibits people in charge of supervision to acquire or receive an interest from any private enterprise it should be supervising or controlling through “work, advice or capital outlay before the expiry of three years following the termination of these supervisory or control functions”.¹²³ Punishment can range from prison to paying a fine.

In the US, new public office holders are required to pledge: “I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that are directly and substantially related to my former employer or former clients, including regulations and contracts.”¹²⁴

¹¹⁸ European Parliament legislative resolution of 2 July 2013 on the proposal for a regulation of the European Parliament and of the Council amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union (COM(2011)0890 – C7-0507/2011 – 2011/0455(COD)), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0287+0+DOC+XML+V0//EN> (accessed 16 August 2013).

¹¹⁹ Corporate Europe Observatory, “New EU Staff Regulations adopted: Small steps on revolving door, giant leaps still needed”, 4 July 2013, available at <http://corporateeurope.org/revolving-doors/2013/07/new-eu-staff-regulations-adopted-small-steps-revolving-door-giant-leaps> (accessed 16 August 2013).

¹²⁰ Corporate Europe Observatory and ALTER-EU, “Revolving doors”, available at <http://corporateeurope.org/revolving-doors>

¹²¹ Group of States against Corruption (GRECO), “Rules and guidelines regarding revolving doors /pantouflage Presentations and summary record”, Tour de Table October 2007, p. 48, available at http://www.coe.int/t/dghl/monitoring/greco/meetings/Greco%282007%2923E_TourdeTableGR34_en.pdf (accessed 16 August 2013).

¹²² Ministère de la réforme de l'état, de la décentralisation et de la fonction publique. Commission de déontologie de la fonction publique Accès des agents publics au secteur privé Rapport au Premier ministre, ‘Rapport d'Activité 2012’, p. 12, available at http://www.fonction-publique.gouv.fr/files/files/publications/coll_outils_de_la_GRH/deontologie/commission-deontologie-rapport-2012.pdf (accessed 28 August 2013).

¹²³ Ibid.

¹²⁴ Executive order, 21 January 2009, available at http://www.whitehouse.gov/the_press_office/Ethics-Commitments-By-Executive-Branch-Personnel/

4.2. Responsible lobbying: private initiatives

Non-governmental initiatives

Not only national governments and international bodies like the UN and the EU have drafted guidelines for responsible lobbying. Increasingly also private standards are set, generally, by specific sectors and by individual companies.

International examples: ISO 26000 and Transparency International

Two prominent general initiatives for responsible lobbying have been set by the International Organization for Standardization (ISO) and the German branch of Transparency International. These initiatives correspond with most strategies of the lobbying framework, also explicitly referring to the revolving doors strategy. They both demand the transparency of lobbying activities, which will be discussed in the next paragraph.

The ISO standard for corporate responsibility offers guidance, but it is not a management system, nor is it intended for third-party certification.¹²⁵ According to Chapter 6.6 on responsible political involvement, organisations should:

- Train employees and representatives and raise their awareness regarding responsible political involvement and contributions and how to deal with conflicts of interest.
- Establish and implement policies and guidelines to manage the activities of people retained to advocate on the organisation's behalf.
- Avoid political contributions that amount to an attempt to control or that could be perceived as exerting undue influence on politicians or policy-makers in favour of specific causes.
- Prohibit activities that involve misinformation, misrepresentation, threat or compulsion.

The Transparency International Germany principles require responsible lobbyists to:¹²⁶

- Not hire Commissioners or civil servants for a period of three years after they leave office if they have dealt with issues they would deal with working for the lobbyist.
- Not employ parliamentarians, directly or through a consultancy contract.
- Not send employees to work in European institutions while employed by the lobbyist.
- Only offer hospitality and travel if it has a clear information character; only reasonable food and drinks should be offered and these occasions should be documented.
- Not try to covertly influence public opinion.
- Not contract journalists as hosts or in other functions if they report about the company or market in question.
- Only contract lobbying service providers who also adhere to these principles.

Self-regulation lobby industry

Lobby professionals have also drawn up their own guidelines. The European Public Affairs Consultancies Association has adapted their code of conduct to that of the EU institutions. Most of their rules overlap largely with the ones drafted by the European Parliament and Commission.

In the Netherlands, a similar Code of Conduct as in the EU has never been drafted or adopted by the government. The Dutch government does not require lobbyists or members of parliament to adhere to rules specifically designed to ensure responsible lobbying, enhance transparency and promote public

¹²⁵ ISO 26000 Social Responsibility, available at <http://www.iso.org/iso/home/standards/iso26000.htm>

¹²⁶ Transparency International Deutschland, Verhaltenskatalog für verantwortliche Interessenvertretung, 2009 in ALTER EU, Bursting the Brussels Bubble, 2010, p. 181.

trust. However, the Association for Public Affairs in the Netherlands (BVPA) formulated its own Code of Conduct instructing “public affairs practitioners” to:

- Always be open and show integrity in their contacts with politicians, policy-makers and other stakeholders
- Comply with the law
- Carry out their lobbying activities in a professional manner
- Actively avoid representation of conflicting interests
- Maintain confidentiality regarding their work

A commission consisting of members of the association has the task of enforcing these rules. This commission reports to the board that can impose a sanction (reprimand, suspension, expulsion). It is not clear if or how often this has happened in the past. The four large banks included in our research (ING, Rabobank, ABN AMRO and SNS REAAL), together with the Dutch Banking Association (NVB), are all members of BVPA and therefore automatically subscribe to the Code of Conduct.

Few company initiatives

There are few companies that have adopted comprehensive guidelines like the ones above, let alone set internal structures to manage lobbying. Most of the companies that do have some policies in place either have a clear sustainability mission, or are operating in the energy and extraction sector, reflecting the potentially negative effects companies in these sectors can have on the environment, communities and public health.¹²⁷ For example, BP has published a code of conduct on political activities and the way in which BP’s lobbying activity is internally regulated.¹²⁸

Responsible lobbying initiatives do not cover all lobbying strategies

The rules and standards to ensure responsible lobbying, initiated by governments as well as other organisations, address both the relational and transactional approach of lobbying practices. Most initiatives include rules to regulate contacts between lobbyists and policy-makers, aiming to ensure that lobbyists act in a manner that helps to prevent conflicts of interest. In this way, the initiatives address the direct lobbying strategy (transactional approach) and the revolving door practices (relational approach). What is much more difficult to tackle is networking, which is part of a relational approach. Building relations through networking often happens informally and out of sight.

Although both government and the lobby sector itself formulated a broad variety of measures to promote responsible lobbying, one instrument proposed in the literature is not used. It is increasing the plurality of voices in the regulatory process.¹²⁹ For instance, through the creation of ‘proxy advocates’: internal agencies tasked to provide expertise and information from a consumer or broader societal perspective, to challenge policies and to represent the public interest at large in the decision-making process.¹³⁰ Or to strengthen external checks and balances, by creating an external and independent institution responsible for “checking the operations of regulatory authorities in order to detect deviation from the public interest.”¹³¹ The creation of Finance Watch in Brussels, partly with funding from the European Commission, is a clear example of this.

¹²⁷ World Wildlife Fund (WWF), *Influencing Power Reviewing the conduct and content of corporate lobbying*, 2005, p. 13, available at <http://www.wwf.org.uk/filelibrary/pdf/influencingpower.pdf> (accessed 29 January 2013).

¹²⁸ BP, “Governments and communities”, p. 9, available at http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/downloads/C/coc_en_gov_comm.pdf

¹²⁹ S. Pagliari, “How Can We Mitigate Capture in Financial Regulation?” in Stefano Pagliari (ed.) *Making good financial regulation: towards a policy response to regulatory capture*, (London: Grosvenor House Publishing, 2012).

¹³⁰ *Ibid.*, p. 25

¹³¹ *Ibid.*, p. 42

4.3. Lobbying transparency: government initiatives

Promoting lobbying transparency is universal, but different approaches exist

Several governments have taken initiatives to increase the transparency of lobbying. The most common way is by creating a register in which parties can declare their lobbying activities. Lobby registers aim to increase transparency in legislative and policy-making procedures in order to allow citizens to evaluate whether these processes comply with the rule of law, respect ethical principles, and give privileged or illegitimate access to some actors. These registers can be kept for specific institutions such as parliament or for public office holders. Registration can be mandatory and involve monthly reporting of specific lobbying activities. While in the case of access to parliament, registration can be a condition for physical access, it is often not linked with disclosure of activities. In some instances, registration and reporting is voluntary, as is the case in the EU. As a rule, companies are the ones being registered, often accompanied by the people representing the company. In the case of consultancy firms lobbying on behalf of corporate clients, separate rules can apply that require them to disclose their clients.^{132,133} The registration of lobbyists, amounts of money spent on lobbying and the topics discussed, correspond mostly with information-oriented strategies of the framework of lobbying approaches.

In EU, discussion of making more compulsory...

In 2010, EU Commissioner for Inter-Institutional Relations and Administration Maroš Šefčovič proposed merging the European Parliament and the Commission lobby registers into one (voluntary) transparency register.¹³⁴ Whether the registry will become mandatory in the near future is doubtful, but Šefčovič recently reiterated the meaning and importance of signing the registry, arguing that “in reality, though, what really makes lobbying most effective is being transparent, accurate, having nothing to hide, and following the ethical guidelines that signing the register implies”.¹³⁵ It is clear that the voluntary character of the register will be subject to an ongoing discussion.¹³⁶

...Dutch system remains voluntarily and ad-hoc

Since 2012, a lobbying register is in place that requires all lobbyists with a pass for parliamentary entry (without needing an official meeting) to register their name and organisation. This information is publicly available. Forms of lobbying that go beyond entering the parliament – via email, phone,

¹³² The actual reporting could consist of a number of details ranging from the person and department contacted, the date of contact, specific laws that have been lobbied on, field of interest of the lobbyist, and the amount spent on lobbying. Periodic reporting is necessary for a precise public record. Deadlines vary between one month after the actual lobbying effort and bi-annually. In some instances, these inputs are checked with public office holders by an overseeing institution, but more often this oversight is the responsibility of the public. This can be done by people individually or civil society organisations. For example, in the US the Centre for Responsive Politics analyses all lobby inputs on their website [opensecrets.org](http://www.opensecrets.org). In the EU lobbying organisations do not need to supply a lot of (precise) information. Still, the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) demonstrated that the reported information contained a lot of obvious errors that the Commission did not pick up on. For instance, small companies seemed to report their annual turnover, rather than their lobbying budget, which made them by far the largest lobbying companies.

¹³³ ALTER EU, “Pet loonies and other distortions: why the EU lobby register needs fixing!”, briefing note, 2011, available at http://www.alter-eu.org/sites/default/files/documents/petloonies_and_other_distortions_in_the_ec_lobby_register-1.pdf

¹³⁴ Martin Banks, “EU set to unveil new code of conduct for ex-commissioners” in the Parliament, 15 November 2010 <http://www.theparliament.com/latest-news/article/newsarticle/eu-commission-set-to-unveil-new-code-of-conduct-for-ex-commissioners/> (accessed 30 January 2013).

¹³⁵ EU Press Release, “Lobbying – a legitimate exercise?” 3 June 2013, available at http://europa.eu/rapid/press-release_SPEECH-13-497_en.htm (accessed 05 June 2013).

¹³⁶ See, for example, this recent meeting: <http://alter-eu.org/events/2013/06/04/mandatory-or-voluntary-time-for-a-lobby-register-that-really-works>.

conferences, external meetings etc. – are not covered by the register. There has been talk about proposing a mandatory lobby register and legislative footprint.¹³⁷

In the Netherlands, some form of a legislative footprint is sometimes included in a law proposal. Mostly this is a short paragraph on the consultations that have taken place. However, this is not mandatory and is not a standard procedure. During the law-making process, the government might ask for input through a public consultation. These are often available online. Submissions are published after the consultation closes, but only if the contributor gives his permission, which is not mandatory.¹³⁸ The existing transparency in the Dutch law-making process is based on a purely voluntary and seemingly ad hoc system.

The US and Canada have strong regulation on transparency

Table 2 compares the various ways in which lobbying transparency is regulated. The US has more specific regulations in place to oversee lobbying than the EU. However, the US also permits financial donations by companies to politicians that are not permitted in most other countries.

Table 2: The different types of regulation¹³⁹

	Canada	United States	European Union	Germany	Netherlands
Scope lobby register?	Public office holders and parliament: mandatory.	House of representatives and Senate: mandatory.	Parliamentary entry: mandatory. Commission: voluntary.	Bundestag entry: mandatory. Bundesrat: no register.	Parliamentary entry: mandatory ¹⁴⁰
What needs to be specified?	Department, bill number, lobbying method, date of communication.	Department, subject, expenditures, targets specified.	Fields of interest, estimation of expenditures.	Subject, sphere of interest.	Aim, subject, organisation represented.
Who monitors?	Commissioner of lobbying, an independent member of parliament.	General public / non-governmental organisations.	General public / non-governmental organisations.	General public / non-governmental organisations.	-

¹³⁷ Motie Lid van Gerven, 16 January 2013 (32 813, Kabinetsaankpak Klimaatbeleid op weg naar 2020, Nr. 27) proposes to set up a mandatory lobby register for parliament (including the Senate, or 'Eerste Kamer'). Available at <https://zoek.officielebekendmakingen.nl/dossier/32813/kst-32813-27?resultIndex=4&sorttype=1&sortorder=4> (accessed 24 January 2013). Member of parliament for the Social Democratic Party, Lea Bouwmeester, announced in 2012 that she is working on a law proposal that would require government officials to disclose which lobbyists they talked to, on what subjects, and which interests were discussed. Every law proposal submitted to the parliament would have to include a so-called lobby paragraph in which this information is reported. See her website for a more extensive explanation: <http://www.pvda.nl/berichten/2012/06/Maak-lobby-openbaar>

¹³⁸ A list of closed consultations and received submissions can be found here: <http://www.internetconsultatie.nl/geslotenconsultaties>

¹³⁹ Sources: Chari et al, *Regulating lobbying : a global comparison*, Manchester University Press, 2010; M.M. Malone, *Regulation of lobbyists in developed countries – current rules and practices*, Institute of Public Administration study, 2008, available at <http://www.envron.ie/en/LocalGovernment/LocalGovernmentAdministration/StandardsinPublicLife/PublicationsDocuments/FileDownload.2048.en.pdf> (accessed 1 February 2013) ; websites of the different lobby registers.

¹⁴⁰ The lobby register was introduced in July 2012 and is only mandatory for lobbyists that want to apply for parliamentary entry through a so-called 'Rijkspas'. The registry at this moment (as of 28 August 2013) includes 75 people from 75 different organisations, as every organisation can only apply for one pass. Source: http://www.tweedekamer.nl/over_de_tweede_kamer/lobbyistenregister/

US supervisors taking the lead on transparency

In the US, following the Open Government Directive issued by President Obama in 2009, the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) have introduced extensive transparency policies on top of existing laws and regulations.¹⁴¹ Both report on various forms of comments and contacts they engage in during the rule-making process. The public is almost always invited to publicly comment on proposed rules. These comments are made available on the website, even before the period of public consultation has ended. When private companies or lobby organisations ask for a meeting with officials of the SEC and CFTC, reports of these meetings are made available online, including information about the organisations and specific people spoken to, and the content of the meeting. An example report of such a meeting is displayed in Figure 1.¹⁴²

Note that no information is disclosed on the specific interests discussed. What does JP Morgan want with regard to the registration of SEF (Swap Execution Facility)? Moreover, contact via phone or email is not revealed.

Figure 1: CFTC reporting on external meeting with sector

EXTERNAL MEETINGS: MEETING WITH JP MORGAN	
WHEN:	12/6/2012 3:15 PM
Rulemaking(s):	XIII. SEF Registration General
CFTC Staff:	Mark Wetjen Joseph Cisewski Scott Reinhart Paul Hayeck
Visitor(s):	Don Thompson Blythe Masters
Organization(s):	JP Morgan
Discussions concerning cross-border and SEF issues.	

4.4. Lobbying transparency: private initiatives

General guidelines...

A number of voluntary initiatives have arisen over the years that offer companies guidance and standards to report on their lobby. The widely used ISO 26000 standard demands of companies to: "Be transparent regarding its policies and activities related to lobbying, political contributions and political involvement".

More detailed guidelines can be found in the 2009 Code of Conduct developed by Transparency International Germany, demanding companies to:

- Register in all lobby registers, including those that are voluntary.

¹⁴¹ See for the SEC's open government policy here: <http://www.sec.gov/open>. See for the CFTC's transparency policy here: <http://www.cftc.gov/Transparency/index.htm>

¹⁴² CFTC, 'External meetings: meeting with JP Morgan', 12 June 2012, available at http://www.cftc.gov/LawRegulation/DoddFrankAct/ExternalMeetings/dfmeeting_120612_1995

- Allow lobbying service providers to publish name as a client and the financial details of their lobbying engagement.
- Publish on the website all policy papers or positions that are sent or given to European institutions or individuals working with the European institutions, including expert groups.
- Publish all legal opinions, surveys and reports by independent institutions which were commissioned to influence public policy and opinion and make the funding transparent.
- Include detailed information on lobbying activities in annual reporting, including all employees who primarily conduct lobbying activities, all legislative procedures that they have sought to influence, and all events and journeys hosted.

... and individual companies

Individual companies have also taken initiatives with regard to the transparency of their lobbying activities. HP and Ford provide a list of issues where they are active on their websites, including their arguments and views.¹⁴³

Google is also relatively transparent, being one of the top spenders when it comes to lobbying expenses in the US.¹⁴⁴ Google has an area on its corporate governance website especially dedicated to its public policy approach. The company states that “Google’s goal in Washington, D.C., is simple: Defend the Internet as a free and open platform for information, communication, and innovation.”¹⁴⁵ It explains in detail which issues are of importance to them and why (openness, innovation and protecting consumers). Moreover, in the same digital space, Google publishes a list of political candidates that receive contributions from the company. The list lists contributions up to 2018.¹⁴⁶

BASF reports to “support the registration of lobbyists” with political institutions such as the EP.¹⁴⁷ It lists all their interest representatives online and, as a principle, does not make donations to political parties. Of course, BASF is not the only one supporting registration; many companies choose to register their lobbyists, for example, with the EU Transparency Register.

The Global Reporting Initiative: providing comparable information

Since its inception in 1997, the Global Reporting Initiative has become the most widely used standard in terms of reporting on sustainability. Comparability is one of GRI’s most important reporting principles, “necessary for evaluating performance”¹⁴⁸, not only over time but also relative to other organisations.

Companies can decide to report on three different levels that range from reporting on all indicators (A) to reporting on a minimum number of indicators (C). They can add a ‘+’ to their application level when the report is externally assured, for example, by an accounting firm.¹⁴⁹

¹⁴³ Ford, “Public policy positions”, available at <http://corporate.ford.com/microsites/sustainability-report-2009-10/governance-management-public-positions>; HP, “Public policy”, available at <http://www.hp.com/hpinfo/globalcitizenship/society/publicpolicy.html> (accessed 01 February 2013).

¹⁴⁴ Center for Responsive Politics, “Top spenders 2013”, available at <http://www.opensecrets.org/lobby/top.php?indexType=s&showYear=2013> (accessed 23 August 2013).

¹⁴⁵ Google, “U.S. Public Policy”, <http://www.google.com/publicpolicy/> (accessed 23 August 2013).

¹⁴⁶ Google, “U.S. Public Policy – Transparency”, <http://www.google.com/publicpolicy/transparency.html> (accessed 23 August 2013).

¹⁴⁷ BASF, “Guidelines for lobbying and political communication”, available at <http://www.basf.com/group/corporate/en/sustainability/dialogue/in-dialogue-with-politics/lobbying/index> (accessed 1 February 2013).

¹⁴⁸ GRI, “Sustainability Reporting Guidelines Version 3.1”, p. 14, available at <https://www.globalreporting.org/resourcelibrary/G3.1-Sustainability-Reporting-Guidelines.pdf> (accessed 5 June 2013).

¹⁴⁹ This applies to the G3 and G3.1 Guidelines that are in place till Dec 31, 2015. For the new G4 Guidelines this system has been discontinued. In this report ‘the GRI-Guidelines’ will refer to G3.1, as this is the framework used by the banks in

The GRI does not provide guidelines regarding who can give external assurance, stating that it “accepts the reporter’s own choice of assurance provider and the scope of the assurance”.¹⁵⁰

Companies report by filling out the GRI index: reporting directly on indicators or referring to places on websites or annual reports where the topic concerned can be found, or by explaining why it is not in a position to report on a certain indicator, due to legal reasons, for example.

The company must indicate which application level has been applied. Then, a company can choose to obtain external assurance, which means that an external actor assesses the quality of the information provided in the report and- in some cases- whether a company has sufficiently addressed the GRI indicators (based, of course, on the chosen Application Level).

Lastly, a company can ask the GRI itself to carry out an application level check, which “confirms whether the report contains the required set and number of disclosures to meet the organization’s self-declared Application Level”.¹⁵¹ This check consists of verifying whether all required disclosures have been met, whether the GRI index has been filled out correctly and whether valid reasons for omission have been given, if necessary. The check only includes a sample check to assess the location and type of the organisation’s reported indicators (disclosures).¹⁵² The GRI application level check therefore is not a full check on the content of the reporting, for instance, by checking whether all compilation points have been met.

The GRI index enables companies to exercise a high level of freedom in reporting. This is in line with the voluntary character of the GRI reporting framework. The GRI framework is also not meant to be a static one. This is illustrated by the response of GRI to a report finding that the GRI reporting of many companies does not live up to the standards: “GRI cannot police or control quality of all reports. We strongly encourage organizations to engage stakeholders in the development of their report; and we also encourage stakeholders to stay engaged and challenge reporting organizations on their sustainability goals and their reported performance.”¹⁵³

However, at the same time, the GRI provides clear and strict guidelines that a company – by stating that it reports according to a certain Application Level – has addressed a particular set of GRI disclosures.

With regard to lobbying transparency, the GRI guidelines include six indicators that are relevant (for more details see the methodology paragraph in the next chapter). They ask companies to report on:

- ❑ stakeholder engagement (including policy-makers and supervisors)
- ❑ public policy positions and participation in public policy development
- ❑ contributions to political parties

reporting on 2012 (and in most cases will be for reporting on 2013). The new GRI Guidelines (G4) do not include an application level (A, B, C). This has been replaced with a new system called ‘In Accordance’. A company can claim to report ‘in accordance’ with the Guidelines. The GRI explains: “Any report containing a statement that it is prepared ‘in accordance’ with the Guidelines should be prepared in accordance with the criteria presented in this section, and should present the GRI Content Index. (...) In the GRI Content Index a reference to the External Assurance Report should be included, if the report has been externally assured. GRI recommends the use of external assurance but it is not a requirement to be ‘in accordance’ with the Guidelines.” Hence, a company can claim to report ‘in accordance’ without needing a check by GRI or an external assurer.

¹⁵⁰ GRI website, “External assurance”, <https://www.globalreporting.org/reporting/report-services/external-assurance/Pages/default.aspx> (accessed 06 June 2013).

¹⁵¹ GRI, “GRI Application Level Check Methodology”, 2013, p. 2, available at <https://www.globalreporting.org/SiteCollectionDocuments/ALC-Methodology.pdf> (accessed 06 June 2013).

¹⁵² Ibid, p. 5.

¹⁵³ See comments at blog post by E. Cohen, “False claims in sustainability report”, 17 November 2012, available at <http://csr-reporting.blogspot.nl/2012/11/false-claims-in-sustainability-reports.html?showComment=1354124743084>

..but in practice, many inconsistencies are found in company reporting using the GRI Guidelines

Recently, several studies have found that corporate reporting using the GRI Guidelines – and the application level scores the companies give themselves – are frequently inaccurate and/or misleading. Transparency International looked at the reporting of 21 large German companies¹⁵⁴ and concluded, for the aspects Corruption and Public Policy, that “the obligations taken by selecting Application Level A (...) are to a large extent not fulfilled.”¹⁵⁵ Specifically with regard to lobbying (indicator SO5), it concluded that only seven out of 21 companies report according to the GRI guidelines. Transparency International did not include the third compilation point. If they had done so, only one company would have complied with GRI guidelines.

A research team in Vienna compared the GRI reporting of 131 companies (all on the Forbes 250 list) on 15 indicators relating to labour conditions and human rights policies. It turned out that 86 per cent of all companies claim they report on labour indicators but only 11 per cent actually do so. Regarding the Human Rights Indicators, 62 per cent of the companies claim they report and only 20 per cent actually do so.¹⁵⁶

In 2012, SOMO compared the reports of 20 energy companies using the GRI Guidelines.¹⁵⁷ SOMO's analysis revealed that more than 60 per cent of the claims of ‘full’ reporting on the indicators included in the study were at least partly false or misleading. Alarming, many of the misleading reports had been checked by an external assurance company and/or by the GRI.

Do the lobbying transparency initiatives cover all lobbying strategies?

Rules and standards for lobbying transparency on a government level mainly address official meetings and contacts between industry officials and policy-makers. They also require openness regarding names of organisations, people and lobbying expenses. This provides more transparency on the transactional approach of lobbying that is aimed at changing or maintaining specific laws or proposals, by exchanging information or putting pressure on relevant policy-makers. The relational approach, with revolving doors and networking as main lobbying strategies, is not often addressed by the transparency initiatives.

Transparency regarding revolving doors is, for example, one of the main missing lobbying strategies in the GRI framework. Specific information regarding lobbying contacts and meetings with policy-makers and supervisors, which are important stakeholders, is also not required by the GRI. New GRI Guidelines (‘G4’) have been developed in the meantime. Revolving doors are still not part of the guidelines, nor is more specific information required. The new guidelines provide organisations with more room for interpretation. This can lead to even less transparency regarding lobbying activities, or to more flexibility and more relevant information, the latter being the aspiration of the GRI itself.

¹⁵⁴ Transparency International Germany, “Sustainability reporting of major German companies. A study of compliance with the GRI guidelines in the area of anti-corruption”, 2012, available at http://www.transparency.de/fileadmin/pdfs/Themen/Wirtschaft/Sustainability_Reporting_of_Major_German_Companies_12-11-28.pdf (accessed 13 June 2013).

¹⁵⁵ Ibid, p. 11.

¹⁵⁶ E. Cohen, “False Claims in Sustainability Reports”, 17 November 2012, available at <http://csr-reporting.blogspot.nl/2012/11/false-claims-in-sustainability-reports.html?showComment=1354124743084> (accessed 13 June 2013).

¹⁵⁷ SOMO, “Use of the Global Reporting Initiative (GRI) in Sustainability Reporting by European Electricity Companies”, 2012, available at http://somo.nl/publications-en/Publication_3918?set_language=en (accessed 13 June 2013).

5. Lobbying transparency of Dutch banks

“The cornerstone of everything we are going to do will be building trust and showing care” new CEO of ING Ralph Hamers, 2013.¹⁵⁸

In this chapter we describe the way in which six Dutch banks report on their lobbying activities. The chapter starts out by explaining the methodology used. The second part of this chapter presents the research findings:

- By theme: looking at the transparency of stakeholder engagement (including policy-makers and supervisors), public policy positions and contributions to political parties) and
- By bank.

We end with a short discussion of our findings and the context of each bank’s GRI reporting on lobbying transparency. Appendix II provides a full overview of the GRI analysis of each bank, including summaries.¹⁵⁹

5.1. Methodology

Are banks transparent enough about their lobbying effort?

To measure the level of transparency of banks’ lobbying activities, the current study examines six Dutch banks that use the GRI Guidelines in their reporting. The GRI Guidelines include indicators on the reporting company’s contacts with policy-makers and supervisors (when identified as stakeholders), on the reporting company’s position on public policy issues and on the company’s contributions to political parties.¹⁶⁰ In addition to the banks’ GRI reporting indices, the study analyses other publicly available information, such as annual reports, news articles and other documents published on their corporate website in order to determine the degree of lobbying transparency provided by the banks.

First of all, the research findings will demonstrate whether discrepancies exist between banks’ reporting claims and the information they actually provide to comply with reporting standards. Secondly, the research findings will show what information is publicly available in order to analyse the lobbying efforts of banks. As has been demonstrated earlier in this report, transparency is necessary to be able to carry out a comprehensive study on the influence of lobbying efforts. With this in mind, this comparative research aims to provide insights into which information is publicly available and which information is missing.

GRI as the common, though imperfect, framework

The study uses the GRI reporting framework as a methodological tool because all of the selected banks use the GRI guidelines in their reporting. The GRI framework allows for comparison between banks across various indicators. It must be acknowledged, however, that the GRI guidelines do not cover all lobbying strategies employed by banks. Strategies such as the revolving doors phenomenon

¹⁵⁸ See ‘Straight talk with Ralph Hamers’ 1 October 2013 at minute 1.29, <http://www.youtube.com/watch?v=1ikdR4fzU7g> .

¹⁵⁹ The information in Appendix II is the information that was shared and discussed with each individual bank.

¹⁶⁰ The GRI indicators used in this report are included in the GRI 3.1 Guidelines. Since then, the G4 guidelines have been adopted (May 2013). However, the annual reports in 2012 still use the GRI 3.1 guidelines.

are not addressed. Despite these shortcomings, the GRI reporting is the most complete and widely used framework available.

The specific indicators for lobby transparency: on stakeholder engagement...

With regard to lobbying transparency, the GRI guidelines include six relevant indicators, which are displayed in Table 3. Indicators 4.14, 4.15, 4.16 and 4.17 require organisations to provide information about their stakeholder engagement. This offers insights into which stakeholders the organisation is in regular contact with, how the stakeholders are selected, and which topics are key to their discussions. The GRI defines stakeholders as: “entities or individuals (...) whose actions can reasonably be expected to affect the ability of the organization to successfully implement its strategies and achieve its objectives.” Since regulation and supervision are such an important factor in the financial sector, policy-makers and supervisors should certainly be regarded as stakeholders.

Lobbying can be regarded as part of stakeholder engagement, but this does not mean that all stakeholder engagement is lobbying, which is defined as activities “with the objective of influencing the policy formulation and decision-making process”. Discussions with NGOs and clients about the banks’ policies and practices do not have this aim and are therefore not regarded as lobbying.

...and public policy positions and political contributions

Two so-called ‘society’ indicators that are particularly important are SO 5 and SO 6. SO 5 addresses the issue of public policy development: what are the issues that are the focus of the organisation’s involvement in public policy-making, and what are its core positions on these specific issues? SO 6 requires organisations to be open about any political contributions they make.

The indicators apply to all activities and relationships of an organisation, within all policy areas. Companies that use GRI guidelines sometimes interpret them to only apply to sustainability issues. However, this is not the case. SO 5 applies to all public policy positions taken by organisations that are of material relevance to them, not solely on sustainability issues. GRI confirmed that “a public policy position needs to be reported if it is has significant economic, environmental and social impacts associated with it or if such position would substantively influence the assessments and decisions of stakeholders”.¹⁶¹

Full reporting means reporting on all compilation points

In the GRI Guidelines, the six indicators are broken down into various compilation points in order to make it as easy and clear as possible for companies to use the GRI indicators. Table 3 displays the indicators and corresponding compilation points. With SO 5 (Public policy positions and participation in public policy development and lobbying), it is important to note that the compilation points only require reporting on the content of the positions and not on the actual ‘participation’ through requiring details of the frequency of contact and key topics raised. Frequency of contact with stakeholder *groups* is covered by compilation points in GRI-indicator 4.16 on stakeholder engagement. However, these do not require organisations to report on the specifics of contacts with stakeholders, such as names of organisations, people and exact frequency.

While evaluating the degree of completeness of reporting by the banks, SOMO considers (in line with the GRI Guidelines)¹⁶² reporting to be ‘full’ only when all compilation points are addressed, ‘partial’ if

¹⁶¹ Employees of the GRI stated this in a joint meeting in August 2013.

¹⁶² GRI confirm that, in their application level check, they assume that a company reports on all compilation points when it claims to fully report on an indicator (phone conversation with GRI, 28 May 2013).

only some of the compilation points are addressed and 'none' if none of the compilation points is addressed.

Table 3: GRI indicators and compilation points¹⁶³

GRI indicator number	Content	Compilation points
4.14	List of stakeholder groups engaged by the organisation.	List of stakeholder groups engaged by the organisation.
4.15	Basis for identification and selection of stakeholders with whom to engage.	<ol style="list-style-type: none"> 1. Basis for selection of stakeholders with whom to engage. 2. Including the organisation's process for defining its stakeholder groups. 3. Including the organisation's process for defining its stakeholder groups. 4. Including the organisation's process for determining the groups with which to engage and not to engage.
4.16	Approaches to stakeholder engagement, including frequency of engagement by type and by stakeholder group.	<ol style="list-style-type: none"> 1. Including frequency of engagement by type. 2. Including frequency of engagement by stakeholder group. 3. Indicate whether any of the engagement was undertaken specifically as part of the report preparation process.
4.17	Key topics and concerns that have been raised through stakeholder engagement, and how the organisation has responded to those key topics and concerns, including through its reporting.	<ol style="list-style-type: none"> 1. Key topics and concerns that have been raised through stakeholder engagement. 2. How the organisation has responded to those key topics and concerns, including through its reporting.
SO 5	Public policy positions and participation in public policy development and lobbying.	<ol style="list-style-type: none"> 1. Significant issues that are the focus of the reporting organisation's participation in public policy development and lobbying. 2. Core positions held on each of the reported issues above. 3. Any significant differences between lobbying positions and stated policies, sustainability goals or other public positions.
SO 6	Total value of financial and in-kind contributions to political parties, politicians and related institutions by country.	The total monetary value broken down by country for those countries where the organisation has major operations and/or sales, the organisation holds a significant share of the market in comparison to other organisations, or the sums contributed are significant compared to the amount contributed globally.

¹⁶³ The compilation points of SO5 and other indicators in the G3.1 Guidelines will be replaced by a set of standard disclosures in the G4 Guidelines that apply to all so-called disclosures on management approach (DMA). Standard disclosures require a company to report why the Aspect (Public Policy in this case) is material, and the impacts that make this Aspect material. A company must report how the organization manages the material Aspect or its impacts. Finally, a company is to report the evaluation of the management approach. In addition to a standard set of disclosures, the Guidelines include Aspect-specific for some Aspects. According to the GRI "if Aspect-specific Guidance is available, organizations then use it to report their management approach for that Aspect in more detail." (GRI G4, Part II Implementation Guide, p. 63) For the Aspect Public Policy, the Guidelines provide the following so-called Guidance: "Describe the significant issues that are the focus of the organization's participation in public policy development and lobbying. This refers to participation at the level of the entire organization, rather than individual operations. Provide the organization's core position for each of the identified issues, and describe any significant differences between lobbying positions and stated policies, sustainability goals, or other public positions." (GRI G4, Part II Implementation Guide, p. 209) There are no compilation points that company needs to 'check' and it is unclear whether a company can claim to report 'in accordance' when it does not address all elements of the Aspect-specific Guidance.

The six banks included in the research

Six Dutch banks are included in the research: the four large, so-called ‘systemically important banks’, and two smaller banks known for their sustainability approach. Together, they cover around 90 per cent of the Dutch banking sector. Table 4 provides a short overview of the six banks, their size, level of GRI reporting, and whether or not they are registered in the EU Transparency Register.

Table 4: Dutch banks included in the study

	ING Group	Rabobank	ABN AMRO	SNS REAAL	ASN Bank	Triodos
Total assets (in EUR million)¹⁶⁴	1,169,000	752,410	394,404	133,641	10,587	5,291
Net income (in EUR million)¹⁶⁵	3,894	2,112	948	(968)	34.7	22.6
GRI application level check	GRI A+	GRI A+	GRI B	GRI B+	GRI A+	GRI A+
External assurance	Yes. External assurer: KPMG Sustainability ¹⁶⁶	Yes. External assurer: KPMG Sustainability ¹⁶⁷	No	Yes. External assurer: KMPG Accountants NV	Yes. External assurer: KMPG Sustainability	Yes. External assurer: KPMG Accountants ¹⁶⁸
EU Transparency Register	Yes, with a budget of €150,000- 200,000 ¹⁶⁹	No	No	No	No	No

¹⁶⁴ These numbers are based on 2012 annual reports. ING: “Total assets 2012”; Rabobank: “Total assets 2012”; ABN AMRO: “Total assets 2012”; SNS Retail Bank: “Total assets 2012”; SNS REAAL: “Total assets 2012”; ASN Bank: “Total assets 2012”; Triodos: “Balance sheet total 2012”.

¹⁶⁵ These numbers are based on 2012 annual reports. ING: “Net result 2012”; Rabobank: “Net profit 2012”; ABN AMRO: “Profit for the year 2012”; SNS Retail Bank: “Net result for the period 2012”; SNS REAAL “Net result for the period 2012”; ASN Bank: “Net profit 2012”; Triodos: “Net profit 2012”.

¹⁶⁶ ING’s sustainability report was audited by KPMG Sustainability. The GRI index is part of the sustainability report. See: ING Group, “Sustainability report 2012”, p. 79. The assurance report does not clarify whether the whole or parts of the GRI Index was audited.

¹⁶⁷ Rabobank’s sustainability report was audited by KPMG Sustainability. The GRI index is part of the sustainability report. See: Rabobank Group, “Sustainability report 2012”, p. 53. The assurance report does not clarify whether the entire GRI Index was audited, or only parts of it.

¹⁶⁸ Regarding the external assurance of its application level, Triodos refers to KPMG’s verification declaration, which can be found here: <http://verslag.triodos.nl/nl/2012/impactenengagement/algemeen/verificatieverklaring.html?cat=i> (accessed 11 June 2013). Note that this verification declaration only applies to Triodos environment and social reports, which do not include the relevant GRI indicators used in this research. Triodos is the only bank that publishes a note from the accountant regarding GRI reporting specifically, which gives openness about which parts of the GRI reporting were in fact externally assured.

¹⁶⁹ EU Transparency Register, “ING”, <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=12112965774-95> (accessed on 10 June 2013).

5.2. Research findings

Not possible to analyse the influence banks have on public policies and laws...

The full findings on the lobbying transparency of the six banks can be found in Appendix II. Here we present a comparison of the six banks by theme (the transparency of stakeholder engagement, -of public policy positions and -of political contributions) and by bank.

None of the six banks analysed is either sufficiently transparent about its role in public policy development or about its lobbying activities directed at governmental and regulatory bodies. Based on the information that can be publicly acquired, it is not possible to analyse the influence banks have, or aim to have, on public policies and laws. The research shows that different degrees of transparency exist among the banks.

...and GRI reporting is below the level claimed

Table 5 shows how the banks claimed they reported on each indicator compared to SOMO's assessment based on analysis of the bank's reporting using the GRI compilation points. Bear in mind that there are many differences in the degree of transparency on lobbying efforts between the banks, even though they might have the same 'score' on a certain indicator. Despite the fact that all of the banks use the GRI Guidelines, these inconsistencies in reporting make it difficult to compare the banks' actual performance on the issues.

Table 5: Research findings

	ING		Rabobank		ABN AMRO		SNS REAAL		ASN Bank		Triodos	
	Bank	SOMO	Bank	SOMO	Bank	SOMO	Bank	SOMO	Bank	SOMO	Bank	SOMO
4.14	Full	Full	Full	Full	Full	Partial	Full	Full	Full	Full	Full	Full
4.15	Full	None	Full	Partial	Full	None	Full	Full	Full	Partial	Full	Partial
4.16	Full	Partial	Full	Partial	Full	None	Full	Partial	Full	Partial	Full	Partial
4.17	Full	Full	Full	Partial	Full	Partial	Full	Partial	Full	Partial	Full	Partial
SO 5	Full	Partial	Full	Partial	Full	None	Full	Partial	Full	Full	Full	Partial
SO 6	Full	None	Full	Full	Full	Full	Full	Full	Full	Full	Full	Full

5.2.1. Transparency of stakeholder engagement

SNS REAAL is the most transparent bank with regard to stakeholder engagement. In its annual reports, SNS REAAL includes an extensive overview of all the stakeholder groups it is in contact with, why these are important stakeholders, what the key expectations and key issues are and which types of communication SNS REAAL uses for dialogue. This includes a stakeholder group with the title 'regulatory bodies/government'. SNS REAAL seems to have a process for identifying stakeholders, which include working groups of employees. Regarding the frequency, SNS REAAL is a little less clear, but in some cases still provides information about the regularity of communication with specific stakeholder groups. SNS REAAL does not give insight into which specific organisations it engages with. It would be interesting to know which organisations SNS is in contact with (even though this is not required by GRI).

In its GRI reporting, ASN Bank does not recognise policy-makers and supervisors as stakeholders. However, in its annual report, ASN Bank describes how, together with MN Services and APG Asset Management, the bank successfully lobbied for a prohibition on investments in cluster munitions.¹⁷⁰ Here ASN Bank actively lobbied for an issue that was close to its sustainability mission.

¹⁷⁰ ASN Bank, "Jaarverslag 2012", p.29.

ING discloses which stakeholders it engages with and what the key topics of discussion are. The reporting on stakeholder management is relatively good in the sense that ING reports on the selection procedure and assessment of key issues raised by stakeholder groups. However, in spite of ING's reporting on stakeholder management, it is not clear with whom ING engages precisely and which topics it discusses with each individual stakeholder. For example, the report mentions "frequent bilateral contacts with regulatory and government authorities, civil society organisations".¹⁷¹ Which authorities or organisations the bank engages with is not elaborated upon, nor is it clear which specific topics were discussed.

Rabobank and ABN AMRO provide information about stakeholders as well, but only those that are active within sustainability areas.

Triodos distinguishes three categories of stakeholders. The bank mentions a few specific organisations that it cooperates with on the website.¹⁷² Triodos does not report in more detail on the content of interactions.

5.2.2. Transparency of public policy positions

ING is the most open of the six banks about its public policy positions. Following earlier SOMO research in the field of lobbying, in 2012 ING started a page on its sustainability website, where it collects public contributions of the bank's positions in the public policy debate.¹⁷³ In its sustainability report, ING has also included a fairly extensive overview of its positions on issues highlighted in 2012.¹⁷⁴ Whether the list is conclusive is not clear. However, combined with the paragraph on the financial and regulatory environment in the annual report, ING provides an extensive overview of ongoing discussions and its positions. Despite this transparency, we still score ING on this indicator as reporting only in a 'partial' way and not 'fully', as ING does not discuss the potential conflicts between the different objectives of the bank and its stakeholders in these policy discussions (as required by compilation point three).

Box 5: Full reporting means reporting on all compilation points

One of the problems that seems to cause discrepancies in what banks claim to report and what our research analysis found is the fact that all compilation points have to be complied with before one can claim to report 'fully' on a certain indicator. Specifically in the field of 'public policy positions', none of the banks complies with the third compilation point of SO 5, which would require reporting on "Any significant differences between lobbying positions and stated policies, sustainability goals or other public positions". Transparency International Germany decided not to include this compilation point in their research methodology, stating that "we took the position that mentioning the topic is not required if there were no 'significant differences'".¹⁷⁵

ING does state that its involvement in public policy and regulatory developments will enhance the "(implementation of) financial regulation and supervision that support the interests of ING's stakeholders".¹⁷⁶

¹⁷¹ ING Group, "Sustainability Report 2012", p.14.

¹⁷² Triodos website, "Onze deskundigheid," available at <http://www.triodos.nl/nl/over-triodos-bank/wat-we-doen/onze-deskundigheid/> (accessed 28 August 2013).

¹⁷³ See ING's website "ING & supervision and regulation" <http://www.ingforsomethingbetter.com/our-approach/stakeholder-engagement/ing-supervision-and-regulation> (accessed 06 June 2013).

¹⁷⁴ ING Group, "Sustainability Report 2012", p. 23-26.

¹⁷⁵ Transparency International Germany, Sustainability reporting of major German companies. A study of compliance with the GRI guidelines in the area of anti-corruption, 2012, p. 8, available at http://www.transparency.de/fileadmin/pdfs/Themen/Wirtschaft/Sustainability_Reporting_of_Major_German_Companies_12-11-28.pdf (accessed 13 June 2013).

¹⁷⁶ ING Group, "Sustainability Report 2012", p. 77.

Rabobank and ABN AMRO both claim to report fully on “public policy positions and participation in public policy developments and lobbying” (SO 5). SOMO judges that they report respectively ‘partial’ and ‘none’. Rabobank published a few position papers on its website on topics such as agricultural commodities derivatives and the armaments industry. Given the public debate on financial reform, this seems a rather incomplete and ad hoc selection of topics. On the website, some positions can be found in a few press releases¹⁷⁷ or under ‘Economic Research’. With ABN AMRO, the necessary information is not provided anywhere in the sustainability report, nor on the website. It only reports on its anti-bribery policy.

‘Partial’ is also the reporting of SNS REAAL. Its annual report includes a chapter on the future outlook of the bank and its environment. It discusses the influence of new laws and regulations and the way SNS REAAL is responding to these developments. This paragraph does not explain the views of SNS REAAL on current developments and its changing environment. The only topic SNS REAAL addresses in its annual report is the housing market.

Although Triodos is very clear on its sustainability mission and its role in promoting sustainable finance, in its report it does not elaborate on specific policy positions (as is required by indicator SO 5). ASN Bank does not report on its position on financial regulation, but explains that the bank only lobbies for a sustainable society when relevant.¹⁷⁸ ASN Bank and Triodos explained in our discussions that both banks do not carry out any lobbying activities that aim to influence financial regulation.

5.2.3. Transparency of political contributions

All six banks explicitly state that they do not make any political contributions. However, in earlier research we did find that, despite the claim of no political contributions made by ING, ING’s Chief Compliance Officer did give a waiver to ING Insurance US of ING’s ‘Gifts, Entertainment and Anti-Bribery Policy’.¹⁷⁹ Since then, ING has not publicly stated why this waiver was given, what ING Insurance US has done with it. Also no report has been made that ING Insurance US has stopped either giving political contributions or that the waiver has expired.

Secondly, employees of ING America Insurance Holdings Inc have established a so-called ‘political action committee’ or PAC. A PAC is “organized for the purpose of raising and spending money to elect and defeat candidates”.¹⁸⁰ Documents of the Senate Office of Public Records show that ING US PAC is an important contributor that gave political contributions to Republicans as well as Democrats.¹⁸¹ For instance, political donations of \$2,000 were made to Senator Charles Schumer from New York, a protagonist for a deregulatory agenda¹⁸² and Johnny Isakson, the Senator from Georgia, who voted against the Restoring American Financial Stability Act in 2010.¹⁸³

¹⁷⁷ Example: “Piet Moerland geeft visie op toekomst bankenlandlandschap”, 22 April 2013, https://www.rabobank.com/nl/press/search/Piet_Moerland_geeft_visie_op_toekomst_bankenlandschap.html?pt=PressReleasepage (accessed 27 May 2013).

¹⁷⁸ ASN, “GRI Index 2012”, p. 28.

¹⁷⁹ SOMO, ING Group N.V. Selected CSR issues in 2010, SOMO report, 2011, p.16, based on email correspondence with ING on May 1 2012.

¹⁸⁰ Centre for Responsive Politics, “What is a PAC?”, available at <http://www.opensecrets.org/pacs/pacfaq.php>

¹⁸¹ Senate Office of Public Records, “Lobbying Contribution Report Mid-Year 2012”, <http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=1f3c5999-4f24-4f59-a9a6-f5e708201650&filingTypeID=87> (accessed 10 June 2013) and “Lobbying Contribution Report Year-End 2012”, <http://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=b80670a2-4ba6-4141-ab4f-122f5258cb7c&filingTypeID=89> (accessed 10 June 2013).

¹⁸² The New York Times, “A Champion of Wall Street Reaps Benefits”, 13 December 2008, available at http://www.nytimes.com/2008/12/14/business/14schumer.html?_r=0 (accessed 30 September 2013).

¹⁸³ Center for Responsive Politics, “Senators Who Opposed Financial Reform Got More Cash on Average from Wall Street Interests”, 24 May 2010, available at <http://www.opensecrets.org/news/2010/05/senators-who-opposed-financial-refo.html> (accessed 30 September 2013).

ING states that this does not need to be included, as the money consists of individual contributions from its committee members (who are ING employees). Although that is correct, it is not clear whether the PAC's activities are really independent of ING as a company as:

- Top executives of ING Insurance US (and its principal lobbyist) donate to the PAC¹⁸⁴ and are active in the PAC.¹⁸⁵
- In general in the US the distinction between a company and its PAC is not commonly made. In 2000, researchers concluded: "Our findings point to potentially strong connections between lobbying and (PAC, red) campaign contributing".¹⁸⁶

5.2.4. Findings by bank

By bank, our findings are the following:

- **ING** provides a relatively high degree of transparency regarding its lobbying activities and its role in public policy development. More importantly, ING expresses the position it takes regarding each issue. More transparency could be given on which policy-makers and supervisors the bank engages with and which specific topics were discussed. With regard to political contributions SOMO recommends ING should mention the existence of the waiver for ING Insurance US and the PAC. Concerning the PAC, ING should explain why it does not consider this to be a 'contribution' of the company to 'political parties, politicians and related institutions' as required by SO 6 of GRI. Questions that ING could address are: what are the links between the employees' role within ING US on the one hand, and the time and money these employees spend on political action on behalf of ING US? A comparison of the donation policy of the ING US PAC and ING's policy views would help to determine whether the PAC really does follow an independent course.
- **Rabobank** gives insights into its positions on a few topics and is partially transparent about its stakeholder engagement. However, much information is still lacking. Rabobank would benefit from collecting all expressions of public policy positions and publishing them together on a section of the website dedicated to lobbying transparency.¹⁸⁷ Here also more transparency could be given on which policy-makers and supervisors the bank engages with and which specific topics were discussed.
- **ABN AMRO** scores 'none' on most indicators according to SOMO, rather than the aspired level of 'full' reporting. Both in its stakeholder engagement and the public policy positions, there is ample room for improvement.
- **SNS REAAL** is transparent regarding its stakeholder engagement: which groups of stakeholders are important and why, and which key issues are identified. However, there is still room for improvement when it comes to transparency regarding SNS REAAL's position and involvement in public policy development.

¹⁸⁴ Documents that were filed with the Federal Election Commission (FEC) (the Commission that administers and enforces the Federal Election Campaign Act (FECA) – the statute that governs the financing of federal elections) show which employees donate money and which candidates received money. Employees that donated large amounts of money were, among others Jeffrey Becker, CEO of ING US Investment Management (\$1,110); Elizabeth Byrne, Executive at ING America Life Corporation and Treasurer of the PAC (\$1,250); Shaun Matthews, Head of ING US Investment Management's Client Group (\$1,250); Michael Smith, Chief Risk Officer for ING US (\$1,200); and Sean Cassidy, the same Vice President, Federal Government Affairs of ING US that also lobbies on behalf of ING US (\$600). These figures are based on a recent file, reporting donations from 11 April-30 June 2013. Source: <http://images.nictusa.com/cgi-bin/fecimg/?C00184028>

¹⁸⁵ Treasurer of the PAC is Elizabeth Byrne, who is Vice President and Counsel of ING Americas.

¹⁸⁶ S. Ansolabehere, J.M. Snyder Jr & Micky Tripathi, "Are PAC Contributions and Lobbying Linked? New Evidence from the 1995 Lobby Disclosure Act" in *Business and Politics*, Vol. 4, No. 2, 2002, p. 131-155.

¹⁸⁷ During the process of writing this paper, Rabobank already put a preliminary page on its website. The website can be found at https://www.rabobank.com/nl/group/About_Rabobank_group/Profile/position_papers.html

- **ASN Bank** stated in our discussions that it is not involved in lobbying on financial regulation. This could be stated explicitly and publicly.
- **Triodos** also stated it is not involved in lobbying on financial regulation. This could be stated explicitly and publicly. Triodos is involved in public policy-making through associations like the Dutch Banking Association (NVB), VBDO, the Global Alliance for Banking on Values, and the Federation of Green Employers (de GroeneZaak). According to Triodos, these organisations publish their positions on their website.

5.2.5. Discussion of the outcomes with banks

SOMO discussed the outcomes of the research individually with all the banks involved in this research. These discussions illustrated that the reporting on lobbying, despite the fierce public discussion on the topic, is still very much at an early stage for banks. Although all banks claimed to see the value of transparency in this field, fundamental questions were raised as to what activities should be seen as lobbying and how far exactly the reporting should go. Is it lobbying when you share your expertise? Should you be transparent about all contacts you have with, for example, the Ministry of Finance, including phone calls, emails and meetings?

Whereas close reading of current GRI guidelines provides clarity on this to a large extent, banks indicated they needed more guidance. Some banks also indicated that the GRI guidelines had changed over the years. When confronted with our research results, and the discrepancies between their own claims on reporting and SOMO's analysis, the question often arose "What does SOMO expect from us?" This led SOMO to formulate ten recommendations that cover all aspects of lobbying transparency. SOMO's recommendations to the banks are presented in the final chapter, where we also report on the promises made by the banks to improve their reporting.

6. Conclusions and recommendations

“Shameless lobby. Will it never stop? Can the banking lobby really not tone it down?” Dutch financial journalist Martin Visser, 2013.¹⁸⁸

This last chapter summarises the main findings of SOMO’s research and concludes where the main gaps are when it comes to the lobby transparency of the six Dutch banks included in the analysis. Lessons are also drawn for the GRI and Dutch government. Recommendations for increasing banks’ lobby transparency are then given to banks, the GRI and Dutch government. The relevant recommendations have been communicated with the banks beforehand so that we can also include their reactions, as well as the specific steps they are willing to take.

6.1. Conclusions

The risk of regulatory capture...

The theoretical Chapter 2 showed that although lobbying – the influencing of policy-makers – is a legitimate activity for banks, there is the danger that this contributes to the ‘capture’ of policy-makers and supervisors, serving the private interests of the companies they are meant to regulate and supervise rather than that of the public.

As we have seen above, the literature on regulatory capture identifies several mechanisms through which this can work: the home bias, the revolving door between the public and private sector and through cultural capture.

Based on this, we identified the factors that characterise sectors that are particularly vulnerable for regulatory capture:

- ▣ high level of government involvement
- ▣ high level of complexity
- ▣ high profitability
- ▣ high concentration of the market
- ▣ low level of public scrutiny

...is highly present in the banking sector.

Chapter 3 looked at lobbying and regulatory capture in practice. It showed how the financial sector in general, and the Dutch banking sector in particular, have a high risk profile for regulatory capture. We saw that, in the period leading up to the financial crisis, the banks did wield significant influence in creating the regulatory environment that was the precursor to the largest financial crisis for at least 80 years. Banks often initiated policy changes and were able to strongly influence the outcome.

Since 2008, there has been much more public debate about financial reform. However, due to the increased attention of public policy-makers, banks have also increased their lobbying efforts. According to many commentators, five year after the financial crisis, banks have been able to effectively block many fundamental reforms. However, there is a severe lack of publicly available

¹⁸⁸ Martin Visser, ‘Onbeschaamde lobby’, in *Telegraaf*, 19 November 2013, an editorial in the biggest Dutch newspaper following a letter of the Dutch employers federation to the Dutch Parliament arguing that more equity financing of banks would harm the economy.

information to research the influence of lobbying. This illustrates the need for transparency, which is the main focus of our research.

This is reflected by numerous codes and guidelines...

Chapter 4 showed how numerous codes of conduct and guidelines for responsible lobbying have emerged in response to the potentially harmful impact that lobbying can have on the public interest. These range from specific voluntary private sector codes of conduct to obligatory registers for lobbyists and rules on job switching between the private and public sector. In the US, supervisors publish online information about external meetings; the organisations and specific people spoken to and the content of the meeting. Canada has a 'Commissioner for Lobbying' who oversees compliance with the code of conduct for lobbyists and reports to parliament. Voluntary initiatives, most notably the Global Reporting Initiative, provide guidelines for reporting on lobby activities.

...but the Netherlands in this respect lags behind

In the Netherlands no such measures exist, except for a lobbying register that was introduced in 2012 and a voluntary code of conduct from the Dutch Association for Public Affairs (BVPA). A proposal for a mandatory legislative footprint has been announced, but this has not yet been put forward in the Dutch parliament.

Most Dutch banks hardly report on their lobbying efforts

Our research also reveals that, despite claiming to report to the highest degree on lobbying, according to the GRI norms not one of the six banks analysed is sufficiently transparent about its role in public policy development. Therefore, based on the publicly available information, it is not possible to analyse the influence banks have on public policies.

The research shows that different degrees of transparency exist among the banks. ING is the most open about its public policy positions. SNS REAAL is the most open about its stakeholder engagement and ASN Bank is best at explaining how it carries out its lobbying activities.

Banks are willing to increase the transparency of their lobbying activities

Based on our conversations, we conclude that the banks are open to suggestions about how to improve the transparency of their lobby. We have therefore formulated 10 steps that SOMO recommends banks should take in order to become more transparent in their lobbying activities.

The Global Reporting Initiative should better guard the quality of reporting and broaden its scope

Like other researchers before us, we found significant discrepancies between the GRI reporting level organisations are claiming to achieve (and external controllers have underwritten) and what they actually report. This undermines the credibility of the GRI guidelines.

The GRI does not provide a list of preferred external controllers, nor does it sufficiently control the reporting itself. What is more, by providing a very limited 'GRI application level check', it creates the appearance of a GRI-approved report. One bank even reacted to our research by pointing to the (again, explicitly limited) GRI application level-check.

More broadly we observed low awareness among most banks about the fact that full reporting requires effectively reporting on all compilation points. This is despite the fact that, according to the GRI, most of them had been explicitly trained on this matter.

Finally, with the new GRI 4 guidelines in place from the requirements will become less strict with regard to the issues of public policy and lobbying.¹⁸⁹ Reporting levels therefore may even decrease. Lobbying strategies such as revolving doors and networking (informal, as well as formal – for example by participating in expert groups) are still not part of the GRI guidelines. And specific information that would increase the transparency of lobbying, such as information about personal meetings that took place, is not required either.

Governments should increase their own transparency as well

Lobbying transparency is too important to be left to self-regulation alone. What is more, banks also indicate that reporting on the frequency and content of their lobbying conversation in particular is not something they feel they can individually take the lead on.

Transparency alone won't solve the problem

The focus of this research is on the transparency of lobbying activities, and that is the focus of our recommendations. However, it is important to stress the limitation of this. To really create a diverse and open policy discussion, more is needed than transparency alone. CSR policy and regulation in the field of lobbying should therefore not be limited to transparency.

Banks and governments could develop a code of conduct that specifies norms for its lobbying activities, the incentives given to lobbyists and how the risk of regulatory capture through job mobility ('revolving door') is limited. A well-informed and diverse debate on financial policy developments also requires the creation of 'proxy advocates' (internal agencies tasked with providing expertise and information from a consumer or broader societal perspective) and non-bank actors that have the capacity to engage in this debate, to challenge policies and to represent the public interest at large in the decision-making process. Following the recent financial crisis, the media and several NGOs have intensified their work in this field. This work could be strengthened further, and more importantly, should be kept up also when memories of the financial crisis begin to fade.

6.2. Recommendations on lobbying transparency to banks

In order to increase the transparency of their lobbying, SOMO recommends that banks should take the following 10 steps regarding efforts to influence public policy formation. These recommendations have been sent to all six banks, and their response is recorded in Box 6 below.

Step 1: Make lobbying part of the corporate social responsibility (CSR) policy

Acknowledge that lobbying activities can be harmful to the public interest and therefore need to be conducted in a socially responsible way.

Explanation: Just adhering to current law and regulation is not sufficient in this field and therefore lobbying should be part of the CSR policy of the bank where the bank formulates additional rules and guidelines for its behaviour.

Step 2: Make transparency a cornerstone of the CSR effort in the field of lobbying

Acknowledge that being transparent about lobbying activities is an important way to contribute to the democratic legitimacy of financial regulation and to improve the quality of the policy-making process.

¹⁸⁹ See footnote 163.

Explanation: Transparency provides third parties with a chance to participate, thereby increasing the diversity of opinion and broadening and deepening the knowledge base used in formulating new public policies. Transparency is also needed for holding all participants in this process to account.

Step 3: Register all lobby efforts

Register the organisation, the costs that fall within the scope of lobbying activities, and the names of the employees responsible for lobbying. This can be done through existing registries in the Netherlands¹⁹⁰ and the European Union¹⁹¹ that can be referred to on the bank's website.

Explanation: Registering the organisation, names of employees and lobbying budget gives the public insights into the size of the lobby and provides transparency about which people carry out lobbying activities.

Step 4: Develop a list of policy issues that are of material importance

Develop a list of policy issues that are of material importance to the organisation in its communication with policy-makers and supervisors.¹⁹² Make a distinction between the issues that take priority and the topics that do not belong to the selected priorities. Issues that are the subject of most communications with government authorities are defined as priority issues. An issue can also be identified as a priority when it is raised as a key issue through stakeholder engagement.

Describe for all priority issues the possible impact of the bank's position(s) on the public interest.

Explanation: Laws and regulations are issues that affect banks, as well as issues that receive a lot of media attention. It is relevant for the public to be aware of the issues that banks take a position on and which issues take priority above others. Of these priority issues, the main potential conflicts with the public interest should be reported.

Step 5: Publish all submissions for (public) consultation

Publish and archive all written submissions for (public) consultation on a dedicated and accessible place on the website. Use alerts, for example, via email and Twitter, to notify interested parties and the wider public of updates and other changes on this page. Submissions are position papers, questionnaires and other documents drafted for a (public) consultation.

Explanation: Transparency will be improved when all submitted documents for consultations are collected and published in one digital space, where they are then kept unchanged. Public policy positions are available to the public in a structured and accessible manner. The reason for creating a space on the website to collect this information is that the development of positions on key issues is an ongoing process. A website fits best with this process, as opposed to an annual report, which represents a snapshot.

Step 6: Publish all written documents shared with regulators and policy-makers

Publish and archive on the specially designed web page – as far as possible, and give reasons when it is not possible – documents that have been shared with external parties (like regulators and policy-

¹⁹⁰ Lobbyistenregister TweedeKamer, http://www.tweedekamer.nl/over_de_tweede_kamer/lobbyistenregister/

¹⁹¹ EU Transparency Register: <http://europa.eu/transparency-register/>

¹⁹² Regulators are DNB and AFM (at the national level), ECB, EBA, ESMA, EIOPA etc. (at the EU level) and FSB, Basel Committee (at a global level). Policy-makers are both civil servants (at the European Commission and Dutch Ministry of Finance) and politicians (at the national and European parliament, ministers and European Commissioners).

makers) that express the positions of the organisation regarding public policies and other matters referred to in public debate.

Explanation: Documents about the positions of the organisation on certain topics are not always prepared with a view to a public process (e.g. consultation), but serve as preparation for other types of meetings or (lobbying) activities (such as discussions with policy-makers, roundtables and expert groups). These documents are of interest to the public, because they explain the views and interests of the organisation.

Step 7: Publish all work commissioned by your organisation and make the funding transparent

Publish all legal opinions, surveys, academic studies and reports by independent institutions that were commissioned and/or funded by your organisation. Be transparent about any academic positions funded by your organisation and the agreements made with the hosting institution.

Step 8: Publish details of meetings with policy-makers

Notify the public regarding existing contacts with regulators and policy-makers. Report on planned personal meetings that take place, who participates in those meetings and which subjects are discussed. Report also on membership of expert groups and panels.

Explanation: The frequency of contact, combined with the topics discussed, gives an indication of which topics require most attention from the organisation. Since it is unrealistic (and perhaps ineffective) to report all details of all moments of contact/communication with decision-makers and policy-makers, it is good to limit the reporting to an overview of planned personal meetings on topics that have been identified by the organisation itself as priorities.

Step 9: Publish lobbying efforts of organisations that represent your organisation

Report about the role of the bank (membership of boards or specific commissions) within the organisation that also lobby on behalf of the bank and the lobby activities of these organisations itself, where relevant for the prioritised policy issues of the bank (see Step 4).

Explanation: Not only the bank's own lobbying should be transparent. The lobbying that takes place on financial policies by organisations that the bank is a member of should be equally transparent. This applies, for example, to the work by the NVB and VNO-NCW in the Netherlands, the European Banking federation (EBF) at the European level and the Institute of International Finance (IIF) at the global level. The lobbying activities that are reported should include meetings with regulators and policy-makers, membership of expert groups and written documents. This should be either published on the bank's website or should be referred to specifically.

Step 10: Report on job mobility between the organisation and the public sector

Be transparent about the 'revolving door' phenomenon. Report annually the number of job changes between the organisation and the public sector (financial policy-makers and supervisors). Specify at what level in the organisation this mobility has taken place.

Explanation: Revolving doors may have harmful effects because knowledge and connections from a previous workplace can be deployed within the same field but from an opposite point of view. More generally, it may lead to an undesirable level of identification between policy-makers, supervisors and the sector.

Box 6: Reaction of banks to these recommendations

The 10 steps were sent to all six banks, which then indicated the steps they are willing to take, and which they are not willing to take (and why). This box presents an overview of their reactions.

Rabobank, ABN AMRO and SNS REAAL indicated that they understand the public demand for more transparency of their lobbying efforts and therefore will increase the transparency of their lobbying.

Rabobank and ABN AMRO explicitly announced that they would implement steps one to five both on their website, and in their next annual (sustainability) report. During the process of writing this paper, Rabobank already put a preliminary page on its website.¹⁹³ ABN AMRO will explore the feasibility of the remaining five steps and will report on the eventual implementation of these steps in due course.

Rabobank and Triodos will look at the possibility of including commissioned work that is relevant for third parties (step 7). Rabobank states that step 6 and 8 better serve as recommendations to the government. Triodos makes the same point for step 6.

Rabobank, SNS REAAL and Triodos state that step 9 is superfluous, as the organisations representing them already publish their public policy positions.

ASN Bank and Triodos both state that steps 1-5 and 8 do not apply to them, as they explicitly state that they are not lobbying on an individual basis.

Step 10 on the revolving door is rejected by all banks, with Rabobank indicating that this information is already publicly available.

ING stated that, although SOMO raises legitimate questions, it sees no opportunity to improve its policies based on the recommendations given. ING's current policy is to act in the domain of public policy-making in a way that balances the interests of ING's different stakeholders. Following earlier SOMO research, ING already implemented steps 1 to 5, which SOMO acknowledges. ING states that step 6 is superfluous, as submissions to public consultations are always published (as prescribed by law) by the authorities themselves. However, SOMO has found this not to be the case.¹⁹⁴ ING also sees practical problems in taking step 10, as there is no obligation for former employees to inform their employer about their subsequent professional whereabouts. Any information provided will thus be incomplete and inaccurate, as a result of which conclusions drawn from such information are subject to an undesirable degree of interpretation, in ING's view. The bureaucracy proposed for step 7 and 8 is prohibitive, according to ING. ING also rejects the suggestion they see in recommendation 7 that ING only donates to academic work to serve the company interest. Triodos rejects recommendation 10 about reporting on job mobility between their organisation and the public sector based on the same argument.

SOMO wants to stress that all recommendations are made because of the risk of regulatory capture, not because we accuse these banks of wilfully trying to harm the public interest. Transparency is a way to diminish this risk, and therefore is also relevant in the case that no wrongdoing is meant or actually taking place.

6.3. Recommendations on lobbying transparency to GRI

The GRI can provide a framework that stimulates companies, including banks, to be transparent about their lobbying efforts. However, for that it will need to broaden and clarify the required compilation points for reporting and improve the monitoring and verification of banks' reporting on the indicators.

SOMO recommends that the GRI should:

1. Either ensure that the current GRI application level check is backed by a serious verification of the accuracy of the reporting, or discontinue the use of the application level check.¹⁹⁵ The current application level check system generates confusion about the quality of the reporting, as incomplete and misleading reports frequently carry positive application levels.
2. The GRI should introduce a degree of quality assessment for external controllers of reporting using the GRI Framework. This could be done with minimal bureaucratic effort by continuing

¹⁹³ The website can be found at https://www.rabobank.com/nl/group/About_Rabobank_group/Profile/position_papers.html

¹⁹⁴ It is optional for all organisations to permit public publishing of their submitted input in reaction to online public consultations. "Uw reactie wordt met uw naam en woonplaats, indien u daar geen bezwaar tegen heeft, openbaar gemaakt op de website. Als u hier wel bezwaar tegen maakt wordt, behoudens de verantwoordelijkheid van de rijksoverheid op grond van de Wet openbaar bestuur, uw reactie niet openbaar gemaakt, maar wel benut voor het eventueel verbeteren van het voorstel." <http://www.internetconsultatie.nl/veelgestelde vragen> (accessed 25 October 2013).

¹⁹⁵ This has changed in the G4 Guidelines of the Global Reporting Initiative. See footnote 149 for more information.

the current practice of allowing anyone to perform this task, but then subsequently ban controllers that have (repeatedly) failed to provide an accurate and honest check of corporate reporting.

3. Make it clearer to reporting organisations that all compilation points for an indicator must be addressed for reporting on that indicator to be considered 'full'.
4. Broaden the scope of the reporting guidelines on issues related to lobbying by developing indicators or compilation points on:
 - a. Meetings that take place between individuals, the names of the individuals participating in those meetings and which subjects are discussed.
 - b. Membership/participation in expert groups and panels.
 - c. The phenomenon of revolving doors, and the number of annual job changes between the company and the public sector (regulators and financial policy-makers).

6.4. Recommendations on lobbying transparency to Dutch government

The Dutch banking sector ticks all the risk boxes for regulatory capture. At the same time, the Netherlands has relatively few policies in place to reduce this risk. As well as the steps taken, announced and considered by the banks themselves (as reported in Box 6), the Dutch government should:

1. Make mandatory the practice of a legislative footprint in Dutch law proposals that specifies which parties have been involved in drafting the proposed law. The legislative footprint should, at a minimum, include all organisations that have been consulted or that have offered their input, and the content of their consultation.
2. Policy-makers and supervisors should report on planned personal meetings with regards to policy-making (who participates in those meetings and which subjects are discussed), as is done by supervisors in the US.
3. The government should introduce a mandatory lobbying register that requires all organisations to register the persons that carry out lobbying activities targeted at Dutch members of parliament, the amount of money spent on lobbying activities and the subjects of their lobbying efforts.

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Taking Lobbying Public

The Transparency of Dutch Banks' Lobbying Activities

A lack of transparency from banks about their lobbying activities prevents an open and balanced debate about financial regulation. This increases the risk of regulatory capture – the process whereby policy-makers and regulators defend the interest of the sector they are meant to regulate and supervise, even at the expense of the public interest. This in turn affects the legitimacy of the policy and decision making process.

This report looks specifically at the transparency of lobbying activities by six Dutch banks in relation to the guidelines of the Global Reporting Initiative. Following the findings, SOMO offers recommendations for the banks, the Dutch government and the Global Reporting Initiative.

Based on SOMO's research and joint discussions, the six banks have pledged to improve lobbying transparency by committing to implement around half of SOMO's recommendations.

