

Lobbying Reform in the United States and the European Union: Progress on Two Continents

by Craig Holman¹

It was only a few years ago when I wrote an article bemoaning the stalled status of lobbying reform in the United States and the European Union, entitled in part “Failure on Two Continents” (Spencer and McGrath, 2006). Much has changed since then.

In the United States, the 2006 congressional elections ousted the Republican majority in both chambers of Congress, which had derailed lobbying reform legislation. Exit polls indicated that “corruption and scandal in government” was the single most important issue in affecting ballot choices among voters, even more so than terrorism.² The election swept in more than 50 new members of the House, giving Democrats 32 new seats and a majority for the first time in 12 years. In the Senate, 10 new members were elected, giving Democrats six new seats and a slim 51-49 majority (including two Independents who usually caucus with the Democrats). The shift in party fortunes brought lobbying and ethics reform back to the front burner, introduced as the first order of business as congressional ethics rule changes in the House and a legislative package in the Senate. The “Honest Leadership and Open Government Act” (HLOGA) – comprising the most sweeping lobbying and ethics reforms in decades – was signed into law on September 14, 2007.

In the European Union, the European Commission had been debating the issue of lobbying reform at least since 2005. In November of that year, Estonian Commissioner Siim Kallas launched the “European Transparency Initiative (ETI),” which in part proposed a system of registration and financial disclosure for those who lobby the Commission. On May 3, 2006, the Commission issued its Green Paper on ETI, seeking public comment. The consultation period lasted four months. After considerable delays, the Commission finally adopted a voluntary system of lobbyist registration on 23 June 2008, with an ambiguous and yet-to-be defined disclosure of some financial activities.

At the same time the European Commission adopted a voluntary lobbyist registration system, the European Parliament began deliberations on more sweeping lobbying reforms, including a mandatory system of lobbyist registration and full financial disclosure. The European Parliament’s Committee on Constitutional Affairs conducted extensive hearings on lobbying reform and on 1 April 2008, proposed a mandatory “one-stop-shop” register for lobbyists working to influence EU policies through the European Parliament, the European Commission and the European Council. The committee’s proposal was ratified by Parliament on 8 May 2008, which called for the three institutions to set up a joint working group and to prepare a proposal on the common register by the end of 2008. The final results of this inter-institutional working group have yet to be

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² According to exit polls, important issues affecting vote choices were: corruption and scandal (42%), terrorism (40%), economy (39%), Iraq war (37%), moral issues (36%) and illegal immigration (29%). National Election Pool, United States General Exit Poll (Nov. 8, 2006).

seen, but the prospects for significant reforms emerging for the governmental institutions of the European Union cannot be understated.

This is an entirely new regulatory environment for the profession of lobbying in the United States and the European Union. The new environment does not come without some trepidation within the lobbying community, and concern among regulators as to how best to achieve the stated goals of “lobbying reform.”

This research is a descriptive study of the lobbying reform movements in the United States and the European Union, focusing on the legal framework of lobbying regulations. The study begins with the premise that public disclosure of lobbying activities intended to influence governmental policies is crucial in preventing corruption. The study provides a historical analysis of the extent to which lobbying regulations have succeeded or failed to meet this objective in the United States, which has been grappling with such regulations at least since World War II. It also analyzes how the governing institutions of the European Union – namely, the European Council, European Commission and European Parliament – have begun to tackle the issue and are exploring various regulatory models for governing lobbying activity.

The study offers the best and worst features of lobbying regulations in the United States and their implications for lobbying reform in the European Union. The first section describes the historical evolution of lobbying regulations in the United States and its culmination in today’s “Honest Leadership and Open Government Act.” The second section describes the emergence and nature of lobbying regulation in the European Union, which so far has produced the “European Transparency Initiative.” Finally, a survey of attitudes among American and European lobbyists is examined for implications for the new regulatory environments.

A. Methodology

1. Historical and Legal Analysis

The first two parts of this study are based upon historical research and legal analysis of lobbying regulations in the United States and the European Union. A description of the evolution of the lobbying reform movements on both continents is provided, along with an analysis of the successes and failures of the regulatory regimes and how they have been adapted to meet their objectives.

Several interviews by e-mail, phone and in-person of key players in the reform movements, both in the United States and in Europe, have been conducted for this analysis. Interviews have been conducted with elected officials and governmental staff in the United States, which helped served as the cornerstone of my efforts to promote the lobbying reform legislation most recently adopted in the United States. Interviews have also been conducted with elected officials in the European Union, such as European Commission Vice President Siim Kallas, and other governmental staff and activists involved in the reform debate.

Additionally, a legal analysis is provided of the legislation finally adopted in the United States and the European Union. A detailed synopsis of HLOGA is provided on Public Citizen’s web site at: www.CleanUpWashington.org.

2. Survey Methodology

This research also seeks to provide a comparative attitudinal analysis among lobbyists in the United States and the institutions of the European Union toward a system of registration of lobbyists and disclosure of lobbying activities. Both the US and EU have very different lobbying reform legislation currently taking effect – with the US lobbying reform package extending to the regulation of lobbying behavior as well as disclosure, and the EU reform package covering just registration and disclosure.

The current absence of a comprehensive registration system in the EU makes it impossible to identify the universe of the lobbying community in Brussels. However, a substantial pool of EU lobbyists can be identified for polling purposes from the ranks of self-declared lobbyists as indicated by membership in one of two professional lobbying associations. The European Public Affairs Consultancies' Association (EPACA) and the Society of European Affairs Professionals (SEAP) are the two leading professional associations representing those who lobby the EU institutions. Together, they provide a significant pool of lobbyists from which to survey.

EPACA is the representative trade body for public affairs consultancies working with EU institutions. It was launched at a general assembly in 2005, following a process of consultation among all signatories of a professional Code of Conduct. This Code had been informally maintained by these consultancies for 12 years, and EPACA claims is the basis for all such codes in the EU affairs marketplace. The association establishes formal self-regulatory arrangements, including a professional practices panel for disciplinary hearings. It currently consists of 35 companies with over 600 staff, and represents a high proportion of the professional public affairs services providers in the EU market place.

SEAP was established in 1997 to represent individuals active in European affairs, including trade associations, corporate representatives, consultants, lawyers, non-governmental organizations, and regional representatives and others. Its purpose is to encourage high standards of professionalism for European affairs lobbying activity. SEAP has over 260 individual members each of whom are signatories to the SEAP Code of Conduct.

Given that the EU survey pool is limited to a class of self-recognized professional lobbyists, the survey pool chosen for American lobbyists is similarly selective. Originally, I had attempted to survey the membership of the American League of Lobbyists (ALL), which boasts of nearly 900 individual members and which played a role in the 2007 lobbying reform debate. However, its membership is not public record and the association declined to facilitate surveying its members.

Alternatively, I chose a survey pool of American lobbyists from the 2007 and 2008 lists of “top lobbyists” identified by The Hill, a professional newspaper that caters to governmental officials, lobbyists and others involved in governmental matters “inside the Beltway” of Washington, D.C. Each year, The Hill recognizes a long list of leading lobbyists involved in the federal government, with a heavy emphasis on corporate lobbyists and lobbying firms. Lobbyists from non-governmental organizations are also included.

The total survey sample consisted of 475 professional lobbyists. Of these, 320 lobbyists in the survey sample lobbied one or more institutions of the European Union,

primarily in Brussels, and 155 were American registered lobbyists based in Washington, D.C.

The questionnaires contained seven common questions for both the US and EU lobbyists, with five additional questions tailored specifically to each jurisdiction regarding unique aspects of the American versus European experience. Questionnaires were distributed via e-mail in both the United States and Europe between July 21 to July 30, 2008. Follow-up calls in the United States and e-mails in Europe were then made to encourage responses.

Of the 475 questionnaires distributed, 74 were returned – 27 American responses and 47 European responses. This represents an overall response rate of 15.6 percent. There was a great deal of reluctance within both lobbying communities to participate in the study, Lobbyists from both the US and EU expressed reasonable concern that they were the subject of “reform” movements, and it was reflected in the low response rates. The European response rate was 14.7 percent. The American response rate was 17.4 percent. Some of the European lobbyists took the time to call and discuss the matter further.

B. Early Lobbying Reform in the United States

Regulating the profession of lobbying in the United States first came in 1938 with the Foreign Agents Registration Act (FARA). The primary purpose of FARA was not to restrict lobbying practices, but to open the books on who is paying for lobbying campaigns.

President Franklin Delano Roosevelt believed that Adolf Hitler was helping foot the bill for a Nazi movement in the United States to prevent the country from entering the pending war in Europe against Germany. In the course of hearings of “un-American activities” by a special committee of Congress (known as the “McCormack committee”), Roosevelt and congressional leaders developed FARA as a lobbying disclosure law. It required in part that any literature paid for by foreign interests carry a notice to that effect. The words “foreign propaganda” in the Act that was subject to regulation originally read “Nazi propaganda” (Spak, 1990: 242-243). But it was later expanded to include any foreign interests financing lobbying campaigns.

FARA has since been modified, but it essentially remains a disclosure law. Today, the law requires lobbyists who work on behalf of foreign principals keep detailed records of their finances and lobbying contacts, and that these records be made publicly available on the Internet.

Shortly after World War II, Congress also approved the nation’s first comprehensive lobbying disclosure law for domestic lobbyists: the Federal Regulation of Lobbying Act of 1946.

This law, too, was purely a disclosure law that made no effort to restrict the behavior or conduct of lobbying.³ It recognized that “full realization of the American

³ Section 308 of the Act provides:

“(a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business

ideal of government by elected representatives depends to no small extent on [members of Congress] ability to properly evaluate” the political pressures to which they are regularly subjected.⁴ Without this public information, “the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal.”⁵

The 1946 Act required anyone whose “principal purpose” was to influence the passage or defeat of legislation in Congress to register with the Clerk of the House and the Secretary of the Senate and file quarterly financial reports. The financial reports required that the lobbyist be identified along with all paying clients; the amount that particular clients paid the lobbyist; itemized expenditures of the lobbying effort; disclosure of any publications that the lobbyist caused to be printed; and the particular legislation the lobbyist was attempting to influence. Violations could be punishable by a fine or imprisonment and a three-year prohibition on lobbying.

Even though the early lobbying laws seemed quite explicit as to who should register as a lobbyist and what information lobbyists must disclose, these laws failed miserably at their mission. The most obvious failure was in their definitions, especially the definition of what constitutes reportable lobbying activity. Anyone whose principal purpose was to influence legislation had to register. But it was not at all clear what constituted “principal purpose.” It was entirely at the discretion of each lobbyist to determine whether their primary business function was lobbying. Most decided it was not. Lawyers, businessmen and other professionals who lobbied Congress tended to view their principal purpose as something other than lobbying. Registration and disclosure under the early lobbying laws was essentially voluntary.

A study by the U.S. General Accounting Office (GAO) in 1991 uncovered just how poorly the early lobbying laws fared at their disclosure mission.⁶ The study compared the list of 13,500 individuals and organizations who publicized themselves as key influence peddlers on Capitol Hill in a book entitled, *Directory of Washington Representatives*, with those who actually registered as lobbyists. It found that 10,000 of those individuals and organizations were not registered. Of those who did bother to register, 60 percent reported no financial activity at all; 90 percent reported no expenditures for salaries, wages, fees or commissions; 95 percent reported no public relations or advertising expenditures; and only 32 percent of registrants reported a specific title or bill number of legislation lobbied.

C. Enhanced Disclosure Under the Lobbying Disclosure Act of 1995

After decades of failing to meet the objectives of lobbying disclosure, Congress finally stepped up to the plate at the end of 1995 and approved the fairly sweeping Lobbying Disclosure Act (LDA) of 1995. LDA represents a comprehensive reform when compared

address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included”

⁴ United States v. Harriss, 347 U.S. 612 (1954) at 625.

⁵ Id.

⁶ General Accounting Office, “Federal Lobbying: Federal Regulation of Lobbying Act of 1946 is Ineffective,” (July 1991). In the study, GAO interviewed a sample of those identified in *Washington Representatives* and found that 75% had contacted both members of Congress and their staffs, dealt with federal legislation, and sought to influence Congress or the Executive Branch.

to the earlier regulatory efforts,⁷ though it certainly was seen as falling short of a complete success by its biggest sponsors.⁸

First and foremost, LDA dealt directly with the definitional problems of the early lobbying laws. Definitions of lobbyist and reportable lobbying activity were made as quantifiable as possible, reducing the subjectivity and discretion of determining whether lobbying constitutes a “principal purpose.” The most important new definitions are as follows:

“Lobbyist” means any individual who (i) is employed or retained by a client for financial or other compensation, (ii) for services that include more than one lobbying contact, and (iii) whose lobbying activities constitute 20 percent or more of the time engaged in the services provided by such individual to that client over a three-month period.

“Lobbying activities” means lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

The definition of reportable lobbying activity requires that any preparation and supervisory activity for a lobbying contact be disclosed. The more refined definition of lobbyist remedies the “principal purpose” loophole of the 1946 law, without becoming over-bearing, by requiring that individuals who spend 20 percent or more of their time on lobbying activity *for any particular client* be subject to the reporting requirements.

The qualifier “for any particular client” is important in that it resolves what is known as the “lawyer problem.” Lawyers comprise a large proportion of lobbyists, yet they also conduct privileged legal work for some clients unrelated to lobbying. Under a principal purposes test, they would be exempt from registering. But under a sweeping registration requirement capturing all who lobby, they would be compelled to betray their oath of confidentiality to clients in their private practice. Under the 20 percent threshold for any particular client, lawyers who are hired to lobby on behalf of specific client register and disclose that lobbying business, but do not disclose their non-lobbying activity on behalf of other clients.

LDA remains essentially a disclosure law. But it failed to set up a system of electronic reporting of lobbying records, which encompasses a dualistic system of *electronic filing* for filers, and *electronic disclosure* of these records to the public.

Due primarily to the efforts of a single individual in the Secretary of the Senate’s office, Pam Gavin, lobbyists reports eventually were made available on the Internet in .pdf format. The Senate Office of Public Records (SOPR) received a voluminous amount of paper reports each filing period that stacked about 36 feet high. Staffers

⁷ One of the lead sponsors of the Lobbying Disclosure Act of 1995, Sen. Carl Levin (D-Mich.), testified before the House Committee on the Judiciary that “decade after decade, Congress has tried to close the loopholes in the lobbying registration laws, and decade after decade, those efforts have failed. This Congress has a chance to be different.” Hearing before the House Committee on the Judiciary, Overhauling the Lobbying Disclosure Law, Testimony of Sen. Carl Levin (September 7, 1995).

⁸ Rep. Christopher Shays (R-Conn.), a major proponent of the Lobbying Disclosure Act of 1995, commented during congressional hearings: “It is possible to write a better bill ... I’m not sure we would pass it...” Hearing before the Subcommittee on the Constitution, House Committee on the Judiciary, Lobbying Reform Proposals (September 7, 1995).

uploaded .pdf pictures of the reports onto the Senate's Web page.⁹ This tedious task was particularly ironic given that most organizations and lobbyists prepared their disclosure reports via electronic software, printed out the reports in paper format, and then submitted their filings to the House Clerk and the Senate Secretary in paper – and the Senate Secretary then had to revert the paper reports back into an electronic format.

In 2005, proponents of an electronic reporting system for the European Union, ALTER-EU, once wanted to demonstrate to members of the European Parliament how well the system in the United States functioned. They typed in the name of one of America's largest lobbying firms in the SOPR Internet system, the NRA, and found no record in the lobbying disclosure database. When they called the author to find out what was wrong, it was explained that they had to type in the name exactly as filed by the NRA for the records to show up – "Natl Rifle Association."

D. The 2007 "Honest Leadership and Open Government Act" (HLOGA)

The Lobbying Disclosure Act of 1995 was intended primarily as a disclosure regime, to uncover potential corruption between lobbyists, money and lawmakers. By 2005, it became evident that the disclosure regime of LDA was also falling short in fulfilling its purpose and had to be improved. Lobbyist scandals that rocked Capitol Hill made it apparent that the conduct of lobbying also needed some regulation. Congress responded with passage of the "Honest Leadership and Open Government Act of 2007."

The new law enhances the *disclosure* of lobbying activities, but also regulates some of the *conduct* of lobbying and lawmaking. Some of the most important components of the new lobbying and ethics reforms include:

- **Requiring electronic *filing* of lobbyist reports.**

It was absolutely ridiculous that professional lobbyists, who keep records of their financial activity in electronic format on their personal computers, printed out those same records and filed them in paper format with the disclosure agencies. The new lobbying reforms mandate that all lobbyists file their reports electronically.

- **Establishing a fully searchable, sortable and downloadable electronic *disclosure* database on the Internet**

With electronic filing of lobbying activity reports, the Clerk of the House and Secretary of the Senate now are able to develop an Internet disclosure system of these records that is searchable, sortable and downloadable. Disclosure is no longer based on the fixed .pdf format. It is now not necessary to type in the exact name of a lobbyist to search for the lobbyist records. "NRA" will work just as fine as "Natl Rife Association" to find the filing of the National Rifle Association.

- **Requiring that campaign fundraising by lobbyists be disclosed to the public and posted on the Internet.**

The most important tool for lobbyists to peddle their wares on Capitol Hill is to make campaign contributions, solicit bundled contributions from others, and host fundraising

⁹ Personal interview with Pamela Gavin, Superintendent of Records, Secretary of the Senate (Dec. 2003).

events for lawmakers whom they are attempting to influence. While such fundraising is still allowed, all fundraising by each lobbyist for a candidate, political committee, party committee, and even presidential library committee must now be disclosed to the public on the Internet every six months.

- **Prohibiting gifts and travel by lobbyists and lobbying organizations for lawmakers.**

A common tool for influence peddling of which Jack Abramoff made extensive use was giving gifts, meals and free travel to lawmakers and their staff, including the infamous golf junkets to Scotland and priceless box seats at the Super Bowl. Former lobbyist Jack Abramoff plied his trade with a special table in his restaurant for free wining and dining of lawmakers. Some congressional staffers even used to hand their Capitol Grille lunch checks to the closest available lobbyist, whom willingly obliged.

Free trips often included free airfare on a corporate jet, in which the company lobbyist got special one-on-one time with the lawmaker. In all, organizations provided some \$50 million worth of free travel across the globe for lawmakers and their staff since 1989.

Under the new law, lobbyists, and even companies and organizations that employ lobbyists (such as Boeing Corp. as well as Public Citizen), are now banned from giving gifts of any value to lawmakers and congressional staff. The primary exceptions are gifts of *de minimis* value, such as “finger food” at an event, or meals of the same value provided to everyone at an event that is “widely attended” – in other words, a large segment of the public is invited to the event and the event is primarily educational or legislative in function (such as a conference of a trade association).

Free travel is also severely restricted. Lobbying organizations may pay only for one-day trips for lawmakers, just long enough to fly a lawmaker to a conference to make a speech. (Two days trips are permissible if distance requires.) These trips must be pre-approved by the congressional ethics committee, and the sponsors, cost and itineraries posted on the Internet. Travel on corporate jets is effectively banned. Registered lobbyists are not allowed to organize or sponsor such trips; they are not even allowed to tag along.

E. Lobbying Reform in the European Union

The champion of lobbying reform for the governing institutions of the European Union is Estonian Commissioner, now Vice President, Siim Kallas. Though some advocates of lobbying reform challenge the measures that Kallas has finally produced – namely, the European Transparency Initiative (ETI) – none challenge that Kallas put the issue of lobbying transparency front and center on EU’s political agenda.

Many leaders of the European Union have been seeking a fundamental restructuring of its authority and the relations between member nations. In order to move from essentially a trade organization into a more formal governmental organization, a new constitution has been proposed to strengthen the governing institutions of the European Union. But some member countries are reluctant to relinquish authority to a regional authority, culminating in rejection of the new constitution by France in 2005. Rejection of the new constitution was seen partly a result of the European public not knowing what is going on in Brussels and how EU decisions are made. Immediately

following this rejection, calls for transparency in Brussels gained momentum, including registration and disclosure of lobby activity (Kallas, 2005).

In November, 2005, the European Commission, under the prodding of Kallas, approved a motion to formulate the European Transparency Initiative. After a series of internal debates, on 3 May 2006, the Green Paper for ETI was finally adopted, beginning four months of public consultation. Reflecting the objective of ETI, the consultation process was publicly displayed on the Commission's web site and all comments welcomed.¹⁰

On 21 March 2007, the European Commission published its findings and conclusions from the consultations.¹¹ In regard to lobbying activity, the transparency initiative would begin very cautiously, as a voluntary system of registration. After one year, if the Commission determined that the voluntary system was not performing well, then it would consider establishing a mandatory register. ETI was finally approved by the Commission on 23 June 2008.

In brief, the European Transparency Initiative calls for:

- **Voluntary registration.** No entity or individual is required to register as a lobbying organization or lobbyist. As an incentive, registrants would receive automatic alerts of pending government business. Additionally, any written submissions to the Commission intended to influence public policy will be considered submissions from the individuals who authored the submissions, instead of from the organization or company they represent, if the organization or company is not registered.
- **Registry of “interest representatives.”** The Commission was unable to define “lobbyist” clearly, and so chose to broaden the concept to “interest representatives.” As such, individuals, organizations, companies, labor unions and even think tanks are eligible to join the registry. Lawyers are also eligible, in the sense of declaring lobbying activity rather than normal legal work.
- **Definition of “lobbying.”** Lobbying activity that should be reported is ambiguously defined as “*activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions*”. There are no quantifiable thresholds to help refine the definition. The ambiguity, however, conceivably could include grassroots lobbying activity, if the registrant felt so inclined.
- **Individual lobbyists not named.** The registry does not include names of individual lobbyists, but only of the company or organizations that they represent.
- **Limited financial disclosure.** Corporations, trade associations and “in-house” lobbyists for corporations and trade associations are to disclose their estimated expenditures on lobbying activity per year in broad ranges of 50,000 euros. Lobbying firms are expected to list their clients in priority of contracts and to

¹⁰ The web site of the European Transparency Initiative consultation is at: ec.europa.eu/transparency/eti/index_en.htm. The author submitted comments during the consultation period. Craig Holman, “European Transparency Initiative: Transparency Cannot Be Optional,” (Aug. 17, 2006).

¹¹ The European Commission's conclusion from the consultation period on ETI is entitled, “Follow-Up to the Green Paper ‘European Transparency Initiative’” (Mar. 21, 2007).

disclose aggregate income from all clients in the broad ranges of 50,000 euros. Alternatively, financial activity may be reported instead according to “percentage bands” (e.g., 0 percent to 10 percent) of the firm’s total income. Instead of reporting their lobbying expenditures, non-governmental organizations and think tanks are to disclose their total budgets and identify the major sources of their funding.

- **Code of conduct.** Registration requires compliance to an ethics code, an ethics code of either the organization itself or recommended by the Commission.
- **Inter-institutional cooperation.** ETI recommends that the Commission establish a study group with the European Parliament and European Council to explore creating a common registry.
- **Re-evaluation after one year.** In 2009, the Commission will reevaluate whether the voluntary registry is working as intended.

As of this writing, 270 entities have registered under ETI with the European Commission. The program was launched in the summer of 2008 when many are on vacation, and so many more of the estimated 15,000 lobbyists in Brussels are expected to register within the coming months. The Commission is planning on stimulating registration in its staff interactions with lobbyists.¹²

As the European Commission began finalizing ETI, the European Parliament decided to take up the issue as well. By an overwhelming vote, the European Parliament adopted a report on May 8, 2008, recommending a mandatory registry of lobbyists common to all three institutions of the European Union. The report calls for the identification of individual lobbyists as well as lobbying firms and their clients, and extensive financial disclosure (Stubb, 2008).

Prodded by the more ambitious goals of the European Parliament, an inter-institutional working group is in the process of being created. EU President Barroso has appointed Kallas to the working group, but as of this writing it has yet to be fully staffed or hold a meeting. A key player in the lobbying reform debate, the civic organization ALTER-EU, continues to apply political pressure for the working group to meet and produce strong lobbying regulations beyond the voluntary system of ETI.

F. Lobbyists’ Attitudes on Reform: Survey Results

While there are some similarities in attitudes toward lobbying regulation among professional lobbyists in the United States and the European Union, the differences are more striking. Attitudes on lobbying regulation between American and European lobbyists are consistently and statistically significantly in opposition.

Both lobbying communities tended to be suspicious and reluctant to talk about regulation of their profession. But EU lobbyists were somewhat more willing to discuss these issues, and some did so at length. This is likely the result of the difference in recent political environments. The European Commission has slowly proceeded to implement a fairly unobtrusive voluntary lobbyist registry, which has just gone into effect this year. In

¹² Personal interview with Kristian Schmidt, senior advisor to Vice President Siim Kalla (Aug. 22, 2008).

the United States, on the other hand, lobbyist scandals have reeled partisan fortunes in Congress and led to implementation of a sweeping lobbying and ethics reform legislation that not only enhances disclosure but regulates some lobbying behavior as well. Many American lobbyists feel they have become a political scapegoat for low congressional approval ratings.¹³ The intensity of the environments for lobbyists between the continents would account for a difference in willingness to participate in this study.

However, while American lobbyists showed greater reluctance to talk about lobbying reform, the US attitude toward the regulation of lobbying is far more pro-regulatory than in Europe. Mandatory registration and full financial disclosure are simply accepted as part of the business in the United States. Not so in Europe.

1. Lobbyist Registration

Overall, the professional lobbyists surveyed expressed general comfort with the concept of a lobbyist registry, in which lobbyists must register with a governmental agency and the registration lists are made public. Only 8.1 percent of all lobbyists surveyed indicated that there should be no type of public registry for lobbyists. More than a quarter of respondents (25.7 percent) would prefer a voluntary system of lobbyist registration, in which a lobbyist would receive some benefit, such as early notices of pending legislative actions, in exchange for registering. A substantial majority (66.2 percent) of all lobbyists favored a system of mandatory registration for lobbyists and lobbying firms that meet some threshold of lobbying activity, similar to the American system of mandatory lobbyist registration.

As shown in Figure 1, when broken down by jurisdiction, all respondents who expressed a preference for a voluntary system of registration are European. Nearly all American lobbyists expressed support for a mandatory system of lobbyist registration. Small minorities in both jurisdictions preferred no registry at all.

Figure 1 about here

Another finding that is notable in Figure 1: more European lobbyists expressed preference for a mandatory system of registration than a voluntary system. ETI has proceeded as a voluntary system largely out of concern that a wave of opposition to a mandatory registry will come from the lobbying community. The finding here suggests that such a wave of opposition to a mandatory registry may be less than expected.

2. Disclosure of Paying Clients

An identical breakdown in jurisdictional attitudes for a registry is found for attitudes on lobbyist disclosure of their paying clients. As shown in Figure 2, most lobbyists surveyed in the US and EU believe there should be some form of disclosure of the paying clients to the public. In response to the question: "Should registered lobbyists be required to disclose the identities of clients who pay them for lobbying activity?", 42.6 percent of European lobbyists responded "yes, but only if the clients voluntarily agree." A larger

¹³ See, for example, Gabor Steingart, "The Three Biggest Myths of the US Elections," *Der Spiegel* (Jan. 29, 2008).

plurality of European lobbyists (48.9 percent), and nearly all American lobbyists (96.3 percent), believed disclosure of paying clients should be mandatory.

Figure 2 about here

3. Disclosure of Income

When it comes to financial disclosure, much sharper differences in attitudes emerge between American and European lobbyists. A notable minority of US respondents (22 percent) opposed the current American system that requires lobbyist to disclose the amount of compensation they receive from clients for lobbying activity. Almost twice as many EU respondents (43 percent) – a plurality among European lobbyists – felt the same way.

Figure 3 about here

A significant percentage of European lobbyists (34 percent) would be willing to disclose aggregate income from all sources for lobbying activity, while a small percentage (19 percent) believe that lobbyists should disclose the amount of compensation received from each client individually. More than two-thirds (67 percent) of the American lobbyists who responded to the questionnaire supported full client-specific income disclosure.

4. Disclosure of Expenditures

Unlike disclosure of income, European respondents are much more amenable to the idea of disclosing aggregate lobbying expenditures. As shown in Figure 4, more than 53 percent of EU respondents favored disclosure of a “reasonable estimate of aggregate expenditures on all issues lobbied.” About 32 percent opposed any disclosure of lobbying expenditures, while a small 15 percent favored disclosure of lobbying expenditures on each issue lobbied.

Figure 4 about here

Interestingly, a substantial plurality of American lobbyists (44 percent) favored disclosure of lobbying expenditures on each issue lobbied. The U.S. Lobbying Disclosure Act does not currently require such extensive disclosure of expenditures. The LDA does not contain any special record keeping provisions, but requires, in the case of an outside lobbying firm (including self-employed individuals), a good faith estimate of all income received from a client, other than payments for matters unrelated to lobbying activities. In the case of an organization employing in-house lobbyists, the LDA requires a good faith estimate of the total expenses of its lobbying activities.

Proposals to require lobbyists and lobbying organizations to report lobbying expenditures for each specific legislative issue have been offered by some reformers, but such proposals have largely been viewed by others as overly burdensome on filers and not offering even benefit to off-set the additional burden. But the American responses on

this questionnaire suggest that a substantial portion of the lobbying community may be open to the additional filing burden.

5. Disclosure of Issues Lobbied

There seems to be considerable dissension within the ranks of the European respondents whether lobbyists should disclose which legislative or regulatory issues they lobby. As shown in Figure 5, a plurality of EU lobbyists (40 percent) opposed any disclosure of legislative or regulatory issues lobbied. Nearly as many EU lobbyists (36 percent) supporting disclosure of all issues lobbied in the aggregate, while 23 percent favored disclosure of issues lobbied for each client.

A large majority (78 percent) of American respondents supported disclosure of specific issues lobbied on behalf of each client, conforming with current practice mandated under LDA.

Figure 5 about here

6. Disclosure of Grassroots Lobbying

“Grassroots lobbying” is distinct from “direct lobbying” in that it constitutes a public relations campaign by a sponsor designed to encourage the general public to contact governmental officials in support or opposition to a legislative proposal. Instead of the sponsor of the campaign directly lobbying the government, the sponsor attempts to get the public to do so on its behalf.

This type of lobbying used to be fairly uncommon because of the expense of waging a large public relations campaign, complete with television advertising. But since the successful 1993 “Harry and Louise” campaign, in which the health care industry was able to frighten the American public into believing that a national health care proposal would take away their choices in health care providers, grassroots lobbying has mushroomed into an entire industry of its own in the United States.

Neither LDA nor ETI at this point include disclosure of grassroots lobbying activity. Efforts to include coverage of expenditures for grassroots lobbying under LDA in the United States have failed both in 1996 and again in 2007.

The attitudes of American and European respondents on this issue are quite similar. As shown in Figure 6, a majority of professional lobbyists in both jurisdictions favor disclosure of grassroots lobbying, while a significant minority oppose it.

Figure 6 about here

7. Comparative Means

Though the sample pool is small, an analysis of the mean responses between the United States and the European Union proves statistically significant. The responses within each jurisdiction’s lobbying community are sufficiently consistent to fall within .01 level of significance on each of the survey questions, except the grassroots disclosure issue.

As shown in Figure 7, the mean and median responses between jurisdictions reflect a consistently stronger pro-regulatory position of American lobbyists versus their

European counterparts. The higher the mean and median, the more conducive the attitude toward regulation on each of the issues queried.

Figure 7 about here

8. American Lobbyist Perspectives on HLOGA of 2007

American lobbyists must deal with one of the most comprehensive reporting and disclosure regimes anywhere in the world. Yet, the total time spent on recordkeeping and filling out disclosure forms is less than 30 hours a year for most lobbyists. Nearly a quarter of lobbyists said it was less than 10 hours per year.

While respondents were equally divided (44.4 percent) on whether the new lobbying and ethics law is too restrictive on the conduct of lobbying, most respondents (81.5 percent) also said the law has not had much impact on their lobbying activities.

Similarly, 70.4 percent of American respondents said that they have hosted fundraisers or bundled contributions for candidates at some point in time. Yet just as many American lobbyists indicated the new law requiring disclosure of all such fundraising activity by lobbyists will have no effect on their campaign fundraising activities.

9. European Lobbyist Perspectives on ETI of 2008

A substantial majority (57.4 percent) of European respondents said they intended to participate in the new voluntary registry of ETI. Only 27.7 percent of respondents expressed no interest in registering at this time. Nevertheless, most European lobbyists (61.7 percent) felt that the incentive program to register – that of receiving automatic alerts of pending government business – is not much of an incentive. About 21.3 percent of European respondents said the automatic alerts are a slight incentive, while 14.9 percent believed it is a significant incentive to register.

The European Commission is planning on revisiting the voluntary registration program of ETI in one year and to assess whether most lobbyists are indeed participating. If not, the Commission is prepared to consider implementing a mandatory registry. When European lobbyists were asked if they would oppose a move to a mandatory system of registration, 72.3 percent said they would not oppose it. Only 21.3 percent indicated they would actively oppose such a move.

G. Conclusion: Toward a More Responsible Lobbyist Registry

The United States has experienced decades of failure when it comes to transparency of those who are financing lobbying efforts to influence public policy. But substantial progress has been made in recent years. The Lobbying Disclosure Act of 1995 embodied a sea change in transparency, by carefully defining who is a lobbyist and what constitutes reportable lobbying activity.

Nevertheless, LDA of 1995 fell short. Not enough information was given to the public in a timely fashion on the funding sources behind lobbying drives. Just as

importantly, the ethical conduct of the relationship between lobbyists and lawmakers was entirely overlooked.

HLOGA has changed much of that, though its implementation is still in process. Lobbyists in the United States must now file disclosure reports on their financial activity a quarterly basis; file disclosure reports on any fundraising activity they have done for a federal candidate, committee, or even a presidential library fund; and restrict their behavior when it comes to wining and dining lawmakers.

American lobbyists have come to accept much of the regulatory environment. As the survey results show, rarely a lobbyist in the United States would ever suggest that lobbying activity should not be public record. American lobbyists overwhelming support mandatory registration, disclosure of their paying clients and full disclosure of their expenditures.

Many American lobbyists are quite angry with the new ethics restrictions on their behavior when it comes to providing travel and gifts to lawmakers, but they are willing to adjust. “We will adapt to the changing environment, as we have adapted before” (Doyle, 2008).

The European Transparency Initiative marks a monumental change in the otherwise regulation-free zone of the European Union. Until ETI, there has essentially been no registration of lobbyists and no public disclosure of who is paying to influence EU policies. The European Commission has estimated 15,000 lobbyists in Brussels, but no one really knows how many lobbyists are attempting to shape EU policies or win EU government contracts – or who is paying them. It is a black hole.

Though ETI is a first step toward transparency, the experience in the United States suggests it is inadequate. When definitions are fuzzy, leaving the lobbyist to decide whether s/he meets the lobbying reporting requirements, the lobbyist rarely will register and disclose funding sources.

It is said that the compliance rate to ETI’s voluntary registry has yet to be determined until the summer holidays are over. Quite frankly, it can never be determined until reportable lobbying activity is defined in quantifiable terms. The definition of reportable lobbying activity under ETI harks of the failed definition under America’s early Federal Regulation of Lobbying Act of 1946.

On the positive side, the survey shows that many European lobbyists are indeed planning on joining the registry in the coming months. At this point 270 registrants of a possible pool of 15,000 lobbyists is not an impressive compliance rate. But even if this registration rate were boosted by assertive voluntary efforts ten-fold, it would still be woefully inadequate. More to the point, a real system of transparency means that someone who wants to hide in the shadows, cannot. If disclosure is optional, transparency is lost.

Though there are sharp differences in attitudes between American and European lobbyists on lobbying regulation, the survey shows that opposition to transparency within the European lobbying community is not nearly as deep as the European Commission feared. More importantly, the survey shows that professional lobbyists can learn and adapt to a new regulatory environment. After a decade of LDA, the public value of mandatory lobbyist registration and full financial disclosure is widely accepted in the American lobbying community, and not even viewed as much of a burden.

Speaking as a lobbyist, the lobbying community needs to rebuild the image of our profession – and it can only do so through genuine transparency.

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Figure 1.
Should Government Maintain a Publicly Disclosed
Registry of Lobbyists?

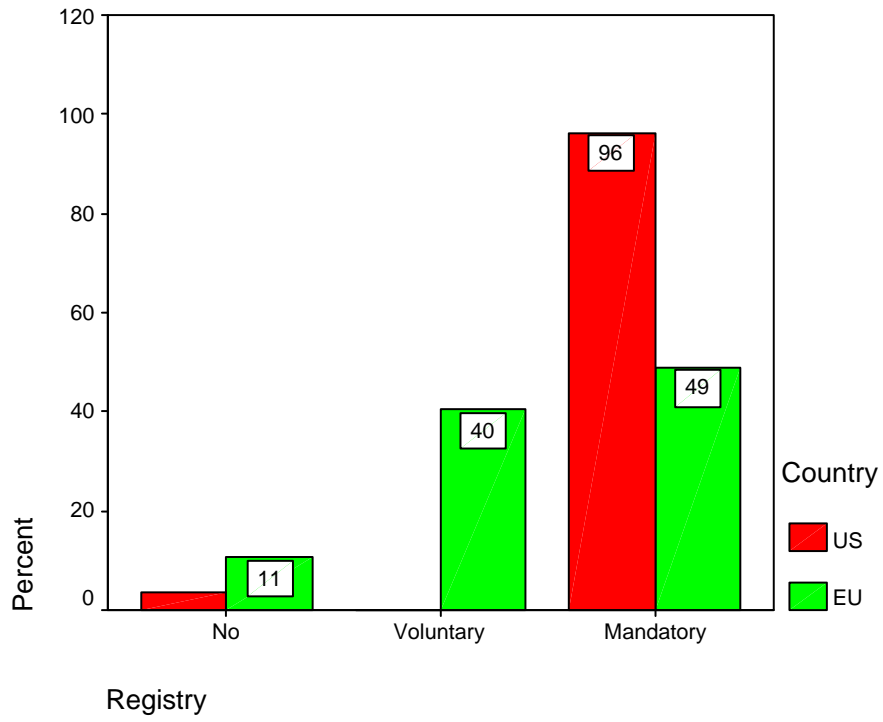


Figure 2.
Should Registered Lobbyists Disclose Their Clientele?

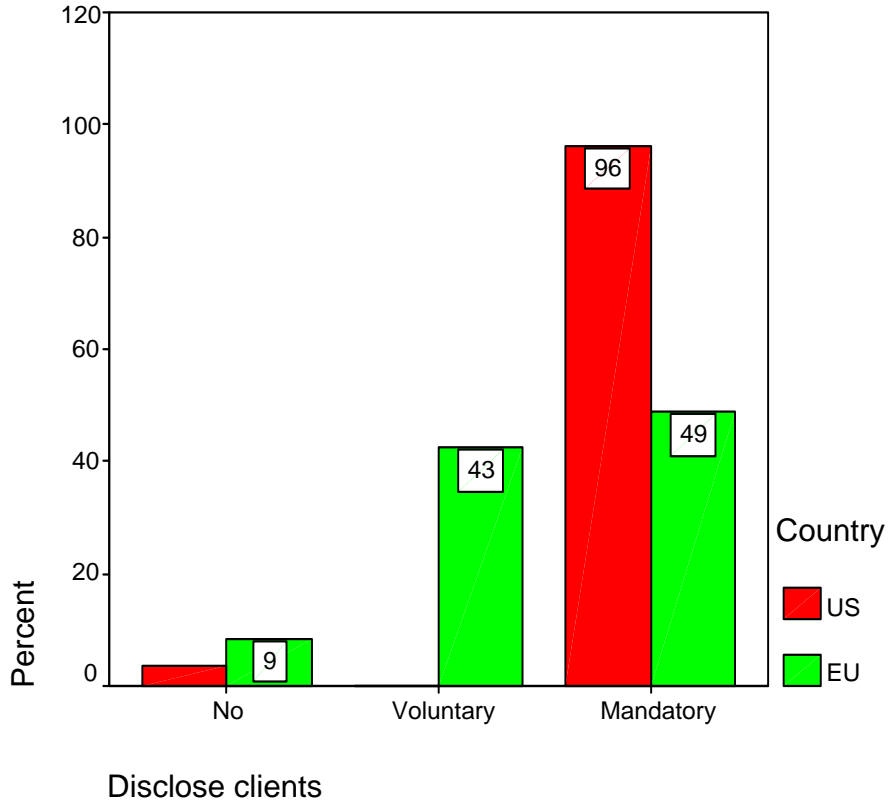


Figure 3.
Should Lobbyists Disclose Compensation Received from Clients?

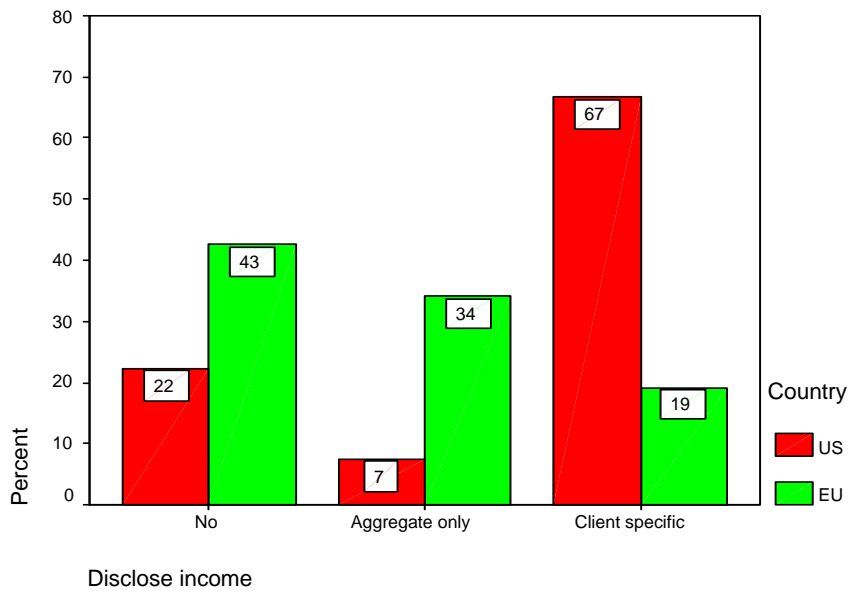


Figure 4.
Should Lobbyists Disclose Their Lobbying Expenditures?

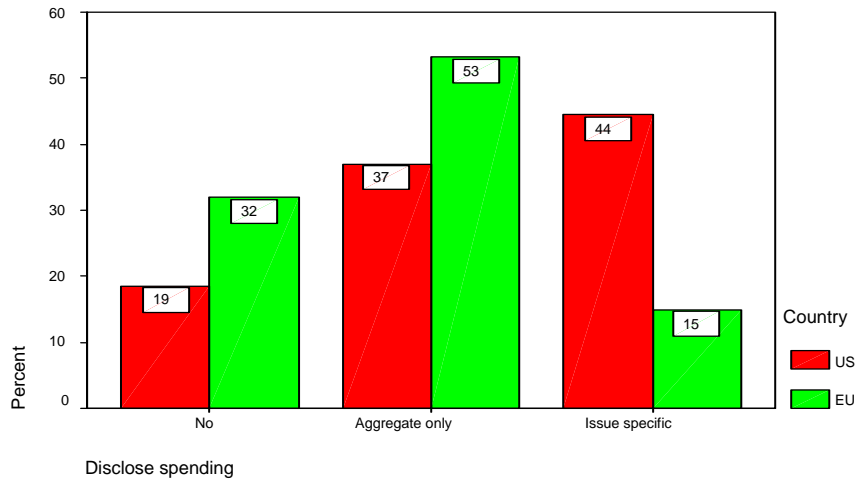


Figure 5.
Should Lobbyists Disclose the Legislative Issues They Lobby?

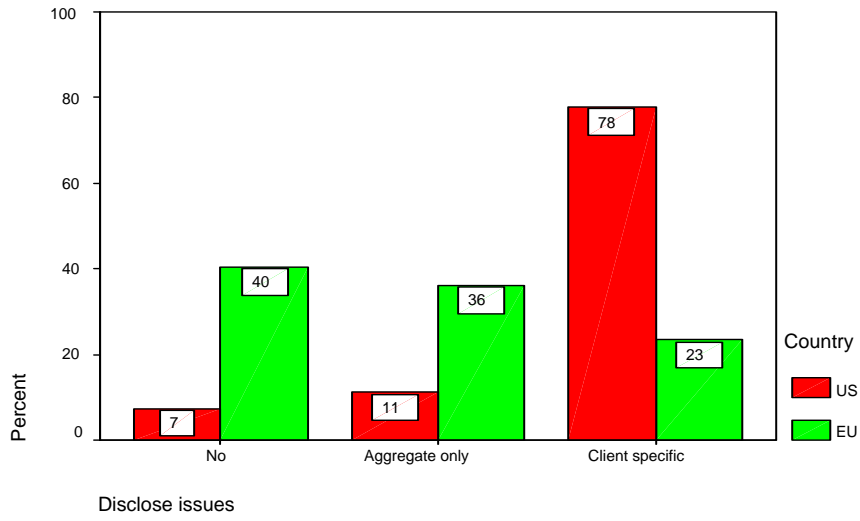


Figure 6.
Should Grassroots Lobbying Campaigns Be Considered Reportable Lobbying Activity?

