Lobbying and transparency: A comparative analysis of regulatory reform

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Executive Summary As citizens grow increasingly wary of whose interests are being represented in the public policy arena, especially in light of recent sensational scandals showing a cozy relationship between professional lobbyists and lawmakers, a crisis of confidence is engulfing many democratic societies across the European and North American continents. Public perceptions of undue influence peddling, in which special interest groups exercise too much sway over government for self-serving purposes, have led to growing demands for the regulation of lobbyists and transparency of the policymaking process. The United States and Canada have been struggling for decades to refine their systems of lobbyist regulation. Of all the shortcomings of the North American model of lobbyist regulation – and there are many – transparency is not, for the most part, one of them. Many European countries have also been experimenting with systems of lobbyist regulation. Until recently, however, the European national experiments have produced very different results among themselves and in comparison with the North American counterparts. Surprisingly, some of the earliest efforts to regulate lobbying occurred among new democratic countries in Eastern Europe rather than the more advanced industrial democracies of Western Europe. This observation stands in stark contrast to the North American experience, where lobbyist regulation emerged as an effort to manage a highly developed class of professional lobbyists within the strictures of long-standing democratic principles. The authors find that the answer to this anomaly lies in the fact that early European lobbyist regulations focused not on *transparency* as a means to regain public confidence in government, but on providing business interests with *access* to lawmakers as a means to bolster fledgling economies. This focus on access is quickly giving way to demands for transparency as many European governments, racked by scandal, are striving to salvage the public's trust. Propelled largely by example from a reluctant

European Parliament and Commission, which are themselves attempting to convince Europe that a regional government is in its own interest, several European countries are beginning to make a transition from weak systems of lobbyist regulation, which emphasize business access, to strong systems of lobbyist regulation, which emphasize public transparency. In order to discern 'best' practices for achieving transparency through lobbying regulation, the authors first chart the regulatory systems of the United States and Canada. That is followed by an analysis of all of the European lobbying regimes. The oft-expressed objection to this new trend toward transparency in Europe – that professional lobbyists view such regulations as overly burdensome – is undercut by research on European and American lobbyists' attitudes toward regulation, which are generally quite favorable. Like everyone else, lobbyists realize that they have an image problem and that the best way to address that problem is by operating in the broad daylight of public transparency. Finally, the authors offer recommendations on how to enhance transparency in policymaking, drawing from detailed comparisons of the North American and European models of lobbyist regulation.
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The United States has struggled for more than half a century to develop an effective system of regulating the profession of lobbying that does not overly burden the constitutional right to petition the government. Canada has also experimented for decades in this field. These are ongoing works-in-progress.

It was only in the late 1980s and early 1990s that Canada and the United States learned from mistakes made in the past and finally began to institute effective transparency regimes. What has evolved thus far in both nations is often seen as setting the standard for transparency with regard to influence peddling by professional lobbyists. Of all the shortcomings of the North American systems of lobbying regulation – and there are many – lack of transparency is not, for the most part, one of them, at least when it comes to the basic contours of lobbying campaigns.

Since the more comprehensive forms of lobbying regulation began in the United States and Canada, it is a common misperception that lobbying regulation is a North American phenomenon. It is not.

Some European countries have grappled with lobbying regulation for years. Germany first implemented its lobbyist registry in 1951. Georgia adopted a lobbyist registry in the mid-1990s, as did the European Parliament (EP). The movement toward developing lobbyist registration systems in Europe has increased dramatically in more recent years. Registries have been implemented in Lithuania (2001), Poland (2005), Hungary (2006, repealed in 2011), the

European Commission (2008), Macedonia (2008), France (2010), Slovenia (2010) and Austria (2011). Several other countries are expected to adopt a regime of lobbying regulation in the very near future, including Croatia, Ireland and the United Kingdom. And many more countries are studying the issue, including Bosnia, Bulgaria, the Czech Republic, Latvia, Norway, Romania, Switzerland, Turkey and Ukraine. Indeed, the regulation and transparency of lobbying has become one of Europe's most catching reform drives in recent years.

At first glance, this seems like an odd collection of nations adopting lobbyist registration systems – crisscrossing the globe from North America to Western Europe and into Eastern Europe and, beyond that, to the Pacific nation of Australia, which has a highly developed lobbyist registry,[1] to a few Middle Eastern nations, like Israel, as well as a miscellany of Asian countries, like Taiwan. For example, why would a nation such as Georgia, emerging from communist rule and slowly developing its economy, choose to implement a lobbyist transparency regime? And why do so many of the European lobbyist registries rely heavily on what could aptly be described as 'hall passes' for lobbyists, in which registration entitles them to special entry to the halls of government when other forms of lobbying regulation, typified by the United States and Canadian models, aim not at facilitating special access but, rather, leveling the playing field among those seeking to influence the government?

The answers lie in the underlying purpose of the lobbyist registration systems. Lobbying regulation from the North American perspective is designed largely to enhance transparency, reduce corruption in the policymaking process and promote public accountability of decision makers. While the desire for transparency is now the driving force behind most of today's regulatory campaigns in Europe, especially the newer models, it was not always so. Many of the European lobbying laws were designed to facilitate the interaction between business leaders and lawmakers in an effort to boost economic development, not to strengthen transparency and reduce corruption. As a result, lobbyist registration often vested corporate leaders with special rights and privileged access to lawmakers – hence, the system of 'hall passes' – and lobbyist registration records were not readily available to the public.

Nevertheless, the purpose and concept of lobbying regulation across Europe is rapidly undergoing a transformation – driven in no small part by the lobbying reform movement now taking place in Brussels. Especially among the wealthier European economies that have been racked by government scandal and public cynicism in recent years, there is a concerted effort by governmental authorities to win back the public's confidence through renewed transparency in the policymaking process. Interestingly, across the Atlantic, scandal has often been the moving force behind reform efforts, as occurred in the United States in the late 1980s and during the first decade of the twenty-first century. When transparency is the ultimate goal of

lobbying regulation, much can be learned from the successes and failures of the North American experience.

In order to discern 'best' practices for achieving transparency through lobbying regulation, the authors will first chart the regulatory systems of the United States and Canada. That will be followed by a description of some of the European lobbying regimes. Finally, we offer recommendations on how to enhance transparency in policymaking, bolstered by survey data on European lobbyists' attitudes toward regulation.

Lobbying and Representative Government: Walking the Tightrope

From at least a contemporary perspective, lobbying is absolutely essential to the success of representative government. Without information, perspectives and proposals flowing from those who are governed, elected and appointed officials can often only dimly guess at what policies will advance the interests of those whom they are duty-bound to serve. Protection and facilitation of lobbying is, therefore, a matter of vast significance, achieved in varying ways in different legal systems. For example, in the United States, the right to petition for the redress of grievances is enshrined as a right protected by the First Amendment to the Constitution; in various European countries, lobbyists receive passes allowing them to communicate directly with lawmakers in the places where they gather to make decisions.

However, along with its potential for good, lobbying can also significantly impair the operation and undercut the perceived legitimacy of a governmental system, producing monetary enrichment or other private benefits for public office holders and skewing governmental decision making in ways that undercut attempts to serve the perceived broader public interests at stake in lawmaking and administration. Grappling with such dangers has provoked a variety of legal responses, including, in particular, regimes seeking to insure transparency. As famously remarked by United States Supreme Court Justice Louis D. Brandeis (1913), '[p]ublicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman'.

More specifically, transparency in the lobbying context can, at least theoretically, yield a variety of benefits, including the following:

- preventing corruption of officials and the governmental processes in which they participate (see, for example, Warren and Cordis (2011) who offer an empirical study suggesting that disclosure can discourage corruption);
- preventing the appearance of corruption that might otherwise erode public confidence in the integrity of governmental decision making;

- improving the accountability of governmental officials whose actions and the possible reasons for those, once revealed, may mean they are forced to leave office or, at a minimum, change their positions in ways deemed to be more consistent with the public interest as a whole (for instance, Tovar (2011) argues, among other things, that access and disclosure of public information is an important dimension of all accountabilities (vertical, horizontal, social and transversal));
- allowing public officials to know who is trying to influence them or others in authority, thereby allowing them to take action to counter influences they deem inappropriate or otherwise oppose; and
- 'leveling the playing field' among groups attempting to influence governmental decision making by permitting responses (that is, counter-lobbying) to counteract the efforts of those who might otherwise be able to achieve their aims more effectively 'behind closed doors'.

Transparency is not always, unfortunately, a good thing. Achieving it can impose considerable economic costs on both the public and private sectors and those costs can deter appropriate attempts to influence governmental decision making. Moreover, depending upon how and where it applies, disclosure can be equally effective in banishing the candor needed for full and frank communications in search of optimal public policy, as well as in preventing, or at least disclosing, corrupt bargains. It can also undercut claims to confidentiality and protection of information (for example, trade secrets) whose legitimacy may be broadly acknowledged.

Accordingly, reasonable people can easily disagree in their respective judgments regarding the appropriate uses of transparency and, even when goals are shared, how much transparency is too much. Not surprisingly, in those legal systems where public disclosure has been adopted as the primary means to control what are conceived to be the primary threats posed by lobbying the government, such disagreements are common and the resulting regulatory systems represent, in large degree, compromises between the extreme proponents of transparency and those who see the need to limit its applicability.

But even where there is agreement that transparency applied to lobbying is an unmitigated good thing and the more the better, implementation issues abound. For example, how much information is in fact usable by the public (or highly motivated sectors thereof) in ways relevant to the purposes of the disclosure regime? (Piotrowski and Liao, 2011, for instance, identify and apply a set of usability criteria, including accuracy, accessibility, completeness, understandability, timeliness and low cost). At some point, the amount of information can mount to the point that it operates more as a burden rather than an aid to understanding. Internet accessibility of databases eliminates the burdens of having to physically search for relevant information; what remain,

however, are the challenges of arranging the contents of databases and designing search engines in such a way as to maximize the ability to conduct carefully tailored comprehensive, comparative and specially targeted searches (for example, the political contributions of a particular lobbyist or lobbying entity to a particular politician or political committees that expend money on his or her behalf). Even in legal systems having intricate systems for registration and reporting of lobbying, the data collected may be significantly underutilized or indeed effectively unusable for the purposes for which they are collected.

Lobbying Disclosure: The North American Experience

History and legislative goals

The current national laws governing lobbying in Canada and the United States were enacted within several years of each other: in 1988, the *Lobbyist Registration Act* (now the *Lobbying Act*, LA) became law in Canada, and in 1995, after more than 40 years of failed attempts to reform an unsuccessful 1946 statute, the United States Congress adopted the *Lobbying Disclosure Act of 1995* (LDA).[2] Amendments to both have followed, sometimes prompted by political scandals involving lobbyists and lawmakers. These statutes are primarily, though not exclusively, concerned with disclosure through registration and reporting regimes that display significant similarities in approach, though there are important distinctions.

Both statutes are premised in part on the value of public knowledge of the nature and scope of lobbying activities brought to bear on governmental decision making. Official accountability and public confidence in the integrity of the government are assumed to follow from disclosure. The LA, though not the LDA, also emphasizes the need for public office holders to know who is seeking to influence them, a purpose that, interestingly, had been emphasized by the United States Supreme Court in 1954 in upholding the constitutionality of the 1946 predecessor to the LDA but does not appear among the explicit findings supporting the current federal statute. At the same time, both statutes acknowledge the importance of open access to government by those who may be affected by its actions, though they do so in different ways. The LA forthrightly acknowledges that lobbying is a legitimate activity, that free and open access to government is important, and that the system of registration should not impede that access. The LDA makes the same point, though less pointedly, through its direction that it not be construed to limit the rights to petition (and lobby), speak, and associate as protected by the First Amendment to the United States Constitution.[3]

Scope of registration obligation

Under both the LA and LDA, lobbying either the federal legislature or federal administrative agencies can trigger registration. This was not always the case in the United States; before 1995, only legislative lobbying imposed a registration obligation. As most governmental activity today is performed outside legislative chambers, no lobbying disclosure system can be considered truly effective if it only applies to communications with elected representatives and their staff. Moreover, under both the Canadian and United States' regimes, lobbyist activities are covered whether they are directed at policymaking or implementation, at regulation or distribution of monetary benefits.

At the same time, the level of the public official contacted by the lobbyist may be crucial in terms of registration and reporting obligations. In Canada, communications with any employee of 'Her Majesty in right of Canada' can attract a registration obligation, though meetings with certain 'designated public office holders' (officials holding positions of high rank in the government) impose an added reporting burden. In the United States, only communications with 'covered officials' trigger registration and some reporting obligations; those officials basically include all persons in the legislative branch, but is limited to officials holding policymaking or other significant authority in the administrative bureaucracy.

In designing a registration system, the issue immediately arises with regard to what types of activity should be covered. As it turns out, both the Canadian and United States laws exempt activities that are already, as a general matter, conducted in public view (for example, legislative hearings) or involve administrative proceedings that focus on individual cases where there are already elaborate procedural constraints to control official discretion and the influences brought to bear thereon. On the other hand, Canadian law covers both direct and grassroots lobbying (efforts to encourage public pressures on officials to take particular action). Owing to strong opposition based both on constitutional concerns and political calculation, under the LDA grassroots lobbying triggers neither registration nor any reporting obligation (with very limited exceptions).

Registration can, of course, impose significant burdens, as both Canadian and United States law acknowledge by creating various other exemptions in recognition of the need to protect the right to petition and open access to government. Accordingly, persons who lobby on their own behalf do not have to register nor do persons who volunteer their services (a circumstance that generally occurs when the client cannot afford representation).

Beyond these exemptions, other thresholds for registration are imposed, though there are significant differences between the LA and LDA in that regard. Under both the LA and LDA, registrants are basically divided into two groups: persons that lobby on behalf of other persons or entities (in Canada,

known as 'consultant' lobbyists; in the United States, 'lobbying firms') and entities (corporations and organizations) that lobby on their own behalf. In the United States, monetary thresholds apply in both cases: a lobbying firm need not register for a client if its income for lobbying on behalf of that client amounts to US$3000 or less during a 3-month period; organizations lobbying on their own behalf must expend more than $11 500 during a 3-month period in order to incur a registration obligation. In all events, at least one employee of the firm or other entity must expend 20 per cent or more of their efforts over a 3-month period providing lobbying services for the client and, in addition, make certain non-exempt communications with covered officials over their course of representation of the client. (The 20 per cent test has come in for considerable criticism in the last few years as a device allowing manipulated avoidance of registration and disclosure obligations.)

On the other hand, for consultant lobbyists in Canada, any agreement to represent another for pay in communicating with a public office holder with regard to covered governmental decisions or arranging a meeting with a public office holder triggers registration. When it comes to organizations and corporations that lobby on their own behalf, however, the lobbying efforts (including preparation for communications with public office holders) of one its employees or the efforts of all considered together must amount to a 'significant part' of the work performed for the employer (indeed a 20 per cent rule is applied as a baseline, though differently from the United States).

Content of registration

When it comes to the content of the registration, the basic information required is largely the same under both US and Canadian law, though there are some differences. Under each regime, the registrant must: (i) identify himself/herself/itself and their address, the client for whom they work, individual lobbyists employed by the registrant and various affiliated entities; (ii) list former public offices held by lobbyists identified on the registration; and (iii) specify the areas where lobbying has occurred or is expected. In the latter regard, both the LA and the LDA require the registrant to list the general subject matter areas for lobbying activity, as well as specific issues (for example, bills) (to be) addressed; the LA, however, goes further and requires identification of the government entity (to be) contacted and the communication techniques (to be) employed (for example, grassroots communications). Moreover, the LA, but not the LDA, requires a certification that the lobbying undertaking does not provide for payment that is contingent on the success or failure of the lobbying effort. (Such a contingency lobbying arrangement is unlawful in Canada; some, but not all, violate federal law in the United States.)

Disclosure of the individual members of lobbying organizations, associations and coalitions inevitably raises concerns regarding impairment of the freedom of association. Under the LA, lobbying organizations must describe their membership (though not including individual persons who are members) and provide other information to identify membership as may be prescribed by regulation. Under the LDA, membership of the client coalition or association is not an element of required disclosure except where the coalition or association member contributes more than $5000 to the lobbying activities of the coalition or association in a 3-month period and, in addition, 'actively' participates in the planning, supervision and control of those lobbying activities.

Content of periodic reports

The Canadian and United States' regimes differ significantly in terms of the reporting obligations of registrants. In neither case, however, is there any requirement to disclose a detailed description of communications made to public office holders, though it can be forcefully argued that such disclosure is the only effective way to discourage improper behavior by lobbyists (and officials) and to fully inform the public of the nature of lobbying efforts. Of course, such disclosure, if required, could impose significant cost burdens on registrants, deter appropriate lobbying efforts and/or discourage public officials from speaking to some groups.

Under the LA, monthly reports by consultant lobbyists, and lobbying corporations and organizations must identify oral (but not written) communications (whether face-to-face, over the telephone or in videoconferences) regarding registerable subject matters that have been 'pre-arranged' with 'designated public office holders'. These reports must include the names of the office holders involved, their titles and the names of the governmental entities employing them or where they serve, and the subject matter(s) discussed; the names of the lobbyists involved are disclosed if the reports are filed by consultant lobbyists, but not if filed by entities that lobby on their own behalf. If the subject matter of the report was not covered by the registration form, the registration must be amended to reflect it. Written communications are purportedly not covered because they (or at least some of them) may be accessed through the government's freedom of information regime.

Under the LDA, reporting is quarterly and must include income earned by lobbying firms for lobbying activities on behalf of the client and expenses incurred by an organization that lobbies on its own behalf for its lobbying activities (including fees paid to lobbying firms and other third parties). For each general issue area in which the registrant engaged in lobbying activities during the quarter, the report must list the lobbyists active in that area, the

specific issues (for example, a named bill) for which there was lobbying activity, which House of Congress or federal agency was contacted by a lobbyist, and any affiliated foreign entity interested in the issues lobbied. The usefulness of this information is significantly impaired, however, by the failure to require that lobbyists be specifically identified with the particular issues they lobbied and the specific governmental entity or person they contacted. The same type of problem is found in the Canadian system in the case of corporations and organizations where this type of information is contained on the registration form as amended periodically, though the monthly reports supply a more focused picture of lobbying efforts. In the case of consultant lobbyists, such reports specifically link specific lobbyists with the issues and officials lobbied on a particular date.

Since 2007, under the LDA, registrants and the lobbyists listed in registration statements and quarterly reports must also file semiannual reports of their political contributions to candidates and political committees, and their contributions and disbursements to entities controlled by or for events held in the name of or to honor covered executive and legislative branch officials. Such reports must contain a certification that such contributions and disbursements did not result in a violation of the gift and travel rules applicable to Members of Congress and their staffs; this certification requirement is matched by a legal prohibition enforceable against the filer for violations of those rules.

Administration and enforcement

In Canada, administration and enforcement authority for the LA is vested in an 'independent' officer of Parliament, the Commissioner of Lobbying. Similarly, in the United States, administration of the LDA is vested in two legislative officers, the Secretary of the Senate and the Clerk of the House of Representatives. In a parliamentary system like Canada's, there is no apparent incongruity in allowing a legislative official to oversee lobbying, whether that lobbying is directed at the legislature or the administrative bureaucracy. In the United States, however, with its constitutionally mandated separation of powers, a lobbying registration system run by officials appointed by the legislative branch covering efforts aimed at executive branch officials is anomalous at best, and comes close to the line separating permissible from impermissible comingling of functions. For much the same reason, the 'enforcement' authority vested in the Secretary and Clerk is minimal to avoid constitutional challenge.

The Commissioner of Lobbying, like the Secretary and Clerk, has the authority to issue non-binding interpretations and guidance documents to assist registrants (and prospective registrants) in determining their registration and reporting responsibilities. Each of these officials is responsible for receiving

the filings required under the applicable law; in both countries, electronic filing is basically mandatory.

The Secretary's and Clerk's power to investigate potential non-compliance with the LDA is modestly provided, merely 'to review, and, where necessary, verify and inquire to ensure the accuracy, completeness and timeliness of registration and reports'. The LDA is explicit in its refusal to grant these officials 'general audit or investigative authority'. In contrast, the Canadian Commissioner of Lobbying has the same powers as a court to compel persons to give oral or written evidence under oath, and to produce documents and other things of relevance to his or her investigation.

If apparent violations of the LDA are discovered, the Secretary's and Clerk's enforcement authority amounts to nothing more than issuing notices to persons (including registrants) that they may be in non-compliance with the law and then notifying the United States Attorney for the District of Columbia of potential violations. The United States Attorney has the sole power to seek court sanctions for violations. The Commissioner of Lobbying can, however, not only notify the Royal Canadian Mounted Police of suspected violations for possible prosecution, but also advise Parliament of violations discovered during his or her investigations, with any resulting adverse publicity serving as at least a partial sanction and deterrent to others. Legal sanctions for violations of the LA and LDA (including the provision of false or misleading information) are fines and, in appropriate cases, imprisonment. In Canada, but not the United States, violations can result in prohibiting the lobbyist from engaging in registerable communications with public office holders for up to 2 years. A similar sanction was available under the 1946 federal lobbying law in the United States, but constitutional concerns warned Congress away from maintaining that type of sanction when it adopted the LDA in 1995.

It should be noted that, in terms of official sanctions imposed on violators of both the LDA and LA, there have been few to date. That situation has prompted reform proposals of various types, including (in the United States) transferal of administrative authority away from a legislative branch official and (in Canada) vesting the Commissioner of Lobbying with formal power to impose administrative sanctions.

Finally, the advent of the Internet has meant that the shared statutory goal of the Canadian and United States registration regimes in terms of *public information* is more realistically achievable now than ever before. The Commissioner, Secretary and Clerk each maintain for public use Internet-accessible and searchable databases of information provided on registrations and periodic reports. In light of electronic filing of required documents, the time lag between filing and posting on the Internet can be minimized and searchability can be maximized (assuming appropriate hardware and software is utilized by the government to power the search engines).

A lobbyist code of conduct

One of the principal distinctions between Canadian and the United States national laws on lobbying is the existence in Canada of a lobbyist code of conduct that has legal effect, though the sanction for violations consists entirely of adverse publicity and the practical consequences resulting therefrom. This code, developed by the Commissioner of Lobbying, came into effect in 1997. It consists of various principles (integrity, honesty, openness and professionalism) and rules, with guidance provided by the Commissioner who has the authority to investigate potential violations and to issue public reports where transgressions of the code have been identified. Recently, the code has been construed to prohibit certain political activities undertaken by lobbyists that have been viewed as placing in a conflict of interest public office holders who receive the benefits of the lobbyists' efforts.

Although the United States has no code of conduct for lobbyists, the 2007 amendments to the LDA – which came in response to the Jack Abramoff lobbying scandal (see *Washington Post*, 2005) – makes lobbyists and lobbying organizations potentially liable for facilitating or encouraging violations of the congressional ethics rules by Members of Congress. Lobbyists are required to certify in writing on a special semiannual report that they have read the rules of the Senate and House of Representatives relating to restrictions on gifts and travel, and certify that they have not knowingly caused a violation of these rules. Furthermore, any organization sponsoring travel for a member or staff of Congress must also sign an oath that financing of the travel conforms to congressional ethics rules. In the first case of its kind, the head of one such organization, the NEW YORK CARIB NEWS, pleaded guilty in court to violating that oath when he falsely claimed that no corporations or lobbying associations were helping pay for a trip he sponsored to the Caribbean for Members of Congress (Barrett, 2011).

The following Table 1 contains a general comparison of United States and Canadian disclosure regimes for lobbying activities.

Weak Regulatory Regimes in Europe

Reviewing lobbyist regulatory regimes in Europe, it is evident that some of these systems value transparency only secondarily, if at all. Germany, Georgia, Lithuania and Poland maintain lobbyist registration systems in which few lobbyists bother to register. The systems are either voluntary or capture only a small part of the lobbying community. The information required of registered lobbyists tends to be limited in scope, usually avoiding any disclosures of financial activity, and is not easily accessible to the public.

Table 1: The basic features of the lobbying regimes of the United States and Canada

Elements of lobbying regime	*United States*	*Canada*
Specifies the type of activity that attracts a registration obligation[a] *in terms of*:		
a. Oral and written communications (subject to certain exceptions for various public and/or closely regulated proceedings and in the case of persons lobbying on their own behalf or as volunteers)	Yes	Yes
b. Directed to both administrative and legislative branch officials	Yes	Yes
c. As long as the communications deal with governmental policymaking or its implementation	Yes	Yes
d. Though the level of official in the governmental hierarchy contacted may be relevant to determining coverage	Yes	No
Entities that must register are divided into two classes: persons or entities that lobby on their own behalf and those that lobby for third parties, where registration turns in part on	Yes	Yes
a. The amount of time spent on lobbying	Yes	Yes
b. The fees earned from or funds expended for lobbying activities	Yes	No
Registration form requires the disclosure of basic information about the registrant (for example, name, address, client) and the expected areas/issues of to be lobbied plus	Yes	Yes
a. The techniques of lobbying to be used (for example, grass-roots)	No	Yes
b. Governmental positions formerly held by lobbyists covered by the registration	Yes	Yes
c. Names of lobbying coalition members	Yes[b]	Yes
d. Monetary contributions to the lobbying efforts from third parties (for example, where the registrant is a lobbying coalition)	Yes	No
e. The names of the lobbyist employees of the registrant	Yes	Yes
Periodic reports required of lobbying and related activity covering	Yes	Yes
a. The general and specific subject matter(s) of lobbying activities	Yes	Yes
b. The names of active lobbyists	Yes	Yes
c. Amount of money paid for or spent on lobbying activities	Yes	No

Table 1 *continued*

Elements of lobbying regime	*United States*	*Canada*
d. The names of the specific officials contacted as part of the lobbying efforts and the subject matter(s) discussed	No	Yes
e. The specific content of communications with contacted officials or entities or a summary thereof	No	No
f. Political contributions and other disbursements to or for the benefit of covered officials	Yes	No
Administration of disclosure regime by		
a. An official affiliated with the legislative branch of government	Yes	Yes
b. Who may issue guidance documents clarifying the requirements of the disclosure regime for those who may be subject to it	Yes	Yes
c. With powers of investigation of potential violations	Yes	Yes
d. Powers to sanction violators themselves	No	No
e. Relying on other governmental officials to prosecute violations	Yes	Yes
f. With possible sanctions to include fines and imprisonment	Yes	Yes
Internet-accessible and searchable databases of information provided on registrations and periodic reports (maintained by the administrator of the lobbying regime)	Yes	Yes
A lobbyist code of conduct	No	Yes

[a]The LA, unlike the LDA, does not define or use the term 'lobbyist' for coverage purposes.
[b]This disclosure applies where the contribution to lobbying activities exceeds $5000 in a quarterly period.

In Germany, the registry is voluntary and is not designed as a lobbyist registry *per se*. Instead, it is primarily a registration system for issuing passes to enter the parliamentary buildings. The registry is only of organizations rather than individuals; it does not include any financial information, disclose who is participating in lobbying on behalf of an entity or specify on what issues the organization lobbies. Germany's lobbying law was originally envisioned as a means to institutionalize the involvement of powerful trade associations and labor unions in governmental policymaking.

Georgia has had a lobbyist registration system since 1998. The law itself reads like a comprehensive registry. Registered lobbyists, for example, must disclose their names, occupational titles, work residences, compensation and expenditures for lobbying activity, as well as issues lobbied. However, very few people have ever bothered to register as lobbyists. In fact, the authors are unable to pinpoint a specific number of registrants. Indirect evidence suggests that the number may well be less than a dozen. That assessment was made by at least one observer monitoring transparency in Georgia, who then filed a freedom of information request with the government for a definitive response; no response to that inquiry has been received as of this writing.[4] One commercial lobbying firm – Policy and Management Consulting Group (2010) – even went so far as to tout its progressive credentials by noting in a brochure that, while almost no one registers in Georgia, it had indeed done so.

Lithuania is not much more impressive when it comes to transparency of lobbying activities. It began a registry in 2001. Lithuania's registration system only includes contract lobbyists who attempt to influence the legislative branch of government, specifically excluding both in-house lobbyists, who are considered part of a corporation's permanent staff, and non-profit lobbying organizations. Lobbyists in Lithuania submit an annual report of their lobbying activities to the registry. In addition to name, address, phone number and certificate number, a registered lobbyist must also record his or her income from and expenditures for lobbying activities, and the title(s) of legislation influenced by the lobbyist. The reports are published in the *Official Gazette* of Lithuania. In 2007, there were 13 registered lobbyists in Lithuania, of whom 11 were active (Piasecka, 2007).

Hungary set up a voluntary lobbyist registry in 2006. Like many of the other programs in effect in Europe, the registry entitled registrants to a lobbying license for easy access in the halls of government. It also required registrants to file quarterly reports on their lobbying activities, including the number of lobbying contacts, any gifts given to public officials and the identities of those officials, as well as the legislation or executive policies lobbied. It did not, however, require registrants to identify their clients. The lobbyist reports were made available to the public on the Web page of

the Central Office of Justice. Hungarian authorities made some effort to encourage registration; this was reflected in the fact that in March 2010 there were 248 individual lobbyists and 44 lobbying organizations registered.

Nevertheless, the recently elected FIDESZ government quietly repealed Hungary's lobbyist registration system in 2011. The voluntary Hungarian Lobby Law was perceived neither as an effective method of facilitating a partnership between business and government nor as a means of enhancing public confidence in government (Kanins, 2011).

Poland implemented what is described as a mandatory lobbyist registry in 2005. Similar to Lithuania, however, it applies only to contract lobbyists. The registry is public information, accessible through the *Public Information Bulletin* of the Minister of Interior and Administration. Disclosure records include the identities of lobbyists, as well as their employers and issues lobbied. One unique feature of the Polish system is that government officials are required to maintain records of lobbying contacts, which are then published annually. In the first year of operation, 75 entities registered.

Although it is still too early to assess the impact of the new lobbying registration system in France, the lobby law bears many of the same weak regulatory characteristics of the regimes of the European nations discussed above. The lobbyist registry is voluntary for both the National Assembly and the Senate. Registration entitles the lobbyist to a pass system that grants easy access to the Palais Bourbon (National Assembly) and the Palais du Luxembourg (Senate). Registered lobbyists in France do not disclose their financial activity, though clients are identified. This limited information, however, is not made readily available to the public on the Internet.

The situation in Macedonia is almost inexplicable. Even though Macedonia adopted a lobbyist registration law in 2008, also based on the hall pass system, the government has yet to implement the law. There appears to be considerable confusion and disdain over what constitutes lobbying – prompting not a single registration to date – and apparently no sense of urgency among governmental officials to clarify and implement the law in any meaningful fashion (European Commission, 2011).

For the most part, these regulatory regimes focus more on providing business interests with access to lawmakers than on reducing the potential for corruption. Lobbyist registration tends to be a matter of convenience, which means that it is widely ignored when the lobbyists and business interests believe that they have sufficient access without registration. Most of the disclosure reports contain inadequate information and, with few exceptions among the weaker regulatory regimes, public access to the reports is limited to hard-to-find print records.

Europe's New Wave of Strong Lobbying Regulation

At present, the scope and nature of the regulation of lobbying across much of Europe is rapidly changing. Brussels is perhaps the single greatest, yet clearly reluctant, driving force behind transforming the focus of lobbying regulation from facilitating influence peddling to strengthening the transparency of the legislative process.

At the very time in 2005 when the European Union (EU) sought to expand and strengthen its role in transnational European governance, public trust in the institutions of the EU was reaching a low point. Among all EU citizens, those expressing distrust in the EU (43 per cent) nearly matched those who expressed trust (44 per cent). An overwhelming 59 per cent of those surveyed said that they 'tend to disagree' that their voice counts in the affairs of the EU. Even more alarming, only 24 per cent of respondents said they knew 'quite a lot' or 'a great deal' about the EU and its institutions, whereas 76 per cent said they knew 'a bit' or 'nothing at all' (European Commission, 2006).

The low level of citizen trust in the EU and the general absence of public knowledge about its institutions in 2005 bode poorly for the campaign to strengthen its role in European policymaking. The campaign to more firmly establish the EU's role suffered another major setback when both France and the Netherlands rejected the proposed new constitution for the EU that year.

Thus began another effort, this time from inside the European Commission (EC): the European Transparency Initiative (ETI), designed primarily to enhance transparency in EU policymaking and boost public knowledge and confidence in the decision-making processes in Brussels. Commissioner Siim Kallas from Estonia championed the transparency campaign. Suddenly, a new style of lobbyist regulation was thrust front and center on the European stage.

The EP had in place a lobbyist registration system ever since 1996, but the Parliament's registry was largely modeled on the weaker regulatory regimes of some European countries. It provided registrants with annual passes for entry into the Parliament. Although names of registered lobbyists were made available to the public on the EP Website, other relevant information (such as the nature of the lobbying work, the interests for which lobbyists were acting and any legislation lobbied) was not disclosed. The lobbyist registry for the EP at that time was primarily for the benefit of lobbyists and lawmakers, not primarily for the purpose of public transparency.

Kallas originally envisioned a very different system of lobbyist regulation for the EC, primarily geared toward transparency. ETI was initially proposed as a mandatory registration system. The identities of lobbyists, their clients, financial activities and issues lobbied all would be instantly available to the public through a Web-based registry (EurActiv, 2005).

However, the final result of the ETI has turned out to be less ambitious. After years of negotiations between lobbyists, Kallas and members of the EC, the eventual product, which was launched in June 2008 and is still largely in place today, has created a voluntary registry for 'interest representatives'. Organizations and individuals register as 'interest representatives' (thereby avoiding the presumed derogatory label of 'lobbyist') and disclose a moderate amount of information, specifically whom they represent, what their missions are and their 'turnover' of overall funding for lobbying purposes. Turnover is the total revenue from all clients for lobbying. Registrants also disclose a rank order of clients in decreasing order of contract value, based on ranges in value of every €50 000 or 10 per cent of total revenues. The names of individual lobbyists are not disclosed.

While ETI provides for a voluntary approach, it encourages participation in its registry through a different incentive than entry passes. ETI rewards registrants with 'automatic alerts' of pending official actions on legislation and matters of concern to the registered interest representatives. Although this unique form of incentive to register was rolled out with considerable fanfare, it has little practical impact. After all, it is the job of lobbyists to be on top of what is happening in the legislature, preferably even prompting legislative activity. That is why only about 15 per cent of EU lobbyists in Brussels indicated in a survey that the system of automatic alerts is a significant incentive for registration (Holman, 2009). As of June 2010, only 1068 organizations with a Brussels office are registered. This figure compares to the EP's estimate of 2600 lobby groups with offices in Brussels in 2000, and suggests that well under half of Brussels-based lobby organizations and firms have signed up after 2 years. Key sectors, such as lobbying consultancies and corporate EU affairs offices, are underrepresented. Out of a group of 328 consultancies identified as providing EU lobbying services, 163 are listed on the Commission's register (50 per cent). Another report by Friends of the Earth Europe showed that 20 of the 50 largest EU companies (40 per cent) are not registered (ALTER-EU, 2010).

Nevertheless, the ETI campaign fundamentally transformed the objective of lobbyist registration systems to focus on transparency and bolstering public confidence in the EU. ETI at the very least has produced a state-of-the-art electronic filing and disclosure system for those who do register.

The debate in Brussels regarding the appropriate form of lobbyist regulation rages to this day (see Dinan, 2011 for an overview and analysis of the ETI). The small number of participants in the registry, as well as the limited information on lobbying activity offered by the registry, has forced the EC periodically to reevaluate and redesign the program.

This reevaluation of the lobbying transparency program came to a head most recently with a new lobbying scandal, known as the 'cash-for-amendments'

scandal. Testing the accuracy of hearsay that members of the EP may be easily bought, journalists for the *Sunday Times* posed as lobbyists and offered bribes to Member of the European Parliaments (MEPs) in exchange for official favors. At least four MEPs complied, while being secretly videotaped.

Austrian euro-deputy Ernst Strasser, Slovenian Socialist Zoran Thaler, Romanian Socialist MEP Adrian Severin and Spanish euro-deputy Pablo Zalba were all recorded taking money and delivering on the official actions requested by the undercover journalists. Zalba claimed to be a victim of a 'trap' in which the journalists requested two amendments to draft legislation on consumer protection. Zalba asserted that he agreed to table the second amendment as he believed it would help protect small investors, but the *Sunday Times* team claim that they made it clear to the euro-deputy that he would be paid for his services (Willis, 2011).

The scandal produced a wave of demands for lobbying reform in Brussels. EP President Jerzy Buzek swiftly acquiesced and promised sweeping new reforms with regard to the regulation of lobbying in Brussels, including a mandatory registry sometime in the near future and a strict code of ethics (ALTER-EU, 2011). Buzek set up a working group of 10 MEPs of the EP that proposed a series of new ethics rules for Parliament.

More immediately, the EC and Parliament have set up a common Web page for the two lobbyist databases, called the 'transparency registry'.[5] Although this new EU registry remains a voluntary system, it has somewhat enhanced the quality of the lobbyist disclosure system by combining the two databases and generating further discussion within the EU for the eventual creation of a mandatory system of lobbyist registration and disclosure.

Across Europe, many nations are similarly moving toward a strong model of lobbyist regulation. The most recently enacted lobbyist registrations systems in Slovenia and Austria are both sweeping in scope and clearly geared more toward enhancing transparency and reducing corruption in government than for the purpose of facilitating business access to government officials. However, the true test will be in their implementation.

Slovenia's 'Integrity and Prevention of Corruption Act (ZIntPK)' is an ambitious program boldly stating in the preamble that it is 'aimed at strengthening integrity and transparency, as well as preventing corruption and avoiding and combating conflicts of interest'. The law creates a special Commission for the Prevention of Corruption charged with implementing and enforcing the law. It applies to the legislative and executive branches of the national government, as well as local governmental bodies. Registration is mandatory for all individuals working in a private capacity to influence legislation or public policy and requires information on the names and addresses of lobbyists, their clients or businesses represented, compensation received, as well as any campaign contributions made

to political parties, specific issues lobbied and the offices contacted. Data in the registry is public information.

Perhaps the most unique aspect of the lobbying law in Slovenia is its emphasis on requiring government officials to report lobbying contacts, which are then posted on the Commission's Web page. During the first year of implementation of the law, the Commission has provided the number of lobbying contacts made with each government office and ministry on the Internet, but has also publicly expressed some frustration that government officials may not be reporting all their lobbying contacts. In an effort to encourage compliance, the Commission reports '0' contacts by each office that has not reported any contacts.[6] Slovenia's approach to lobbying regulation will be an interesting and informative experiment.

Austria has also adopted a strong form of lobbying regulation, known as the 'Lobbying and Advocacy Transparency Act – LobbyG', though the law is not scheduled for implementation until 2012. The 'cash-for-amendments' scandal that has prompted substantive lobbying and ethics reforms in Brussels, also directly and personally embarrassed Austria. Ernst Strasser, former Austrian Secretary of Interior and an Austrian MEP, was one of the MEPs caught on video accepting a bribe in exchange for introducing legislation in the EP. He resigned within hours of the video being published. More importantly, the scandal also prompted Austria to impose tough new regulations on its own domestic lobbyists.

The Austrian National Council approved legislation to impose a mandatory lobbyist registry. All professional lobbyists who receive significant compensation to influence legislation and administrative policies, as well as special interest groups employing lobbyists are required to file with the lobbying Register (Register of Interest Representation (IRV)). Disclosure reports must include information on the identities of the lobbyists, clients, issues lobbied, the value of lobbying contracts and initial lobbying contacts with government officials. Most of the IRV data is to be published on the Internet for easy access by the public. Registrants must also pledge to abide by a Code of Conduct established as part of the lobbying law, violations of which may result in a suspension of lobbying activities and lobbying contracts.

Table 2 summarizes the key statutory provisions of the weak and strong lobbying laws across the European continent. This summary, however, must be viewed in proper perspective. Unlike the summary of lobbying laws in Canada and the United States provided above, the foregoing analysis of Europe's lobbying regimes shows that some laws, such as Macedonia's, are not being implemented by the government whereas others, such as in Georgia, are generally not being enforced. Some of Europe's newest lobbying laws, such as in Austria, are pending but not yet legally effective. In other words, Table 2 provides a description of the statutory provisions of each nation's lobbying laws as they exist 'on the books', if not in reality.

Table 2: Statutory provisions of lobbying laws in Europe (2011)

Type of lobbyist regulation	*Weak lobbyist systems*						*Strong lobbyist systems*			
	France	*Georgia*	*Germany*	*Lithuania*	*Macedonia*	*Poland*	*EP*	*EC*	*Austria*	*Slovenia*
Mandatory or voluntary registration	V	V	V	M	V	M	V	V	M	M
Access pass to lawmakers	X	X	X	X	X	X	X	—	—	—
Lobbyist registrants:										
a. Non-profit entities	X	—	X	—	—	—	X	X	X	—
b. For-profit entities	X	—	X	—	—	—	X	X	X	—
c. Contract lobbyists	X	X	—	X	X	X	X	X	X	X
Covered officials:										
a. Legislative	X	X	X	X	X	X	X	X	X	X
b. Executive	—	X	—	—	X	X	—	—	X	X
Registrants disclose:										
a. Lobbyist name	X	X	—	X	X	X	X	—	X	X
b. Lobbyist employer	X	X	X	X	X	X	X	X	X	X
c. Lobbyist client	X	—	—	X	X	X	X	X	X	X
d. General issue lobbied	—	X	—	—	—	—	X	X	X	—
e. Specific measure lobbied	X	X	—	X	X	X	—	—	X	X
f. Aggregate lobbying income	—	—	—	X	—	—	X	X	X	X
g. Lobbying income per client	—	X	—	X	X	—	X	X	X	X
h. Aggregate lobbying spending	—	—	—	X	—	—	—	—	X	—
i. Lobbying spending per issue	—	—	—	—	—	—	—	—	—	—
j. Lobbying contacts	—	—	—	—	X	X	—	—	X	X
k. Political spending/contributions	—	—	—	—	—	—	—	—	—	X
Fines/imprisonment for violations	—	—	—	X	—	X	—	—	X	X
Internet access to lobbying records	X	—	—	X	—	—	X	X	X	X
Code of conduct required for registered lobbyists	X	—	—	—	X	—	X	X	X	—

The United Kingdom, engulfed in its own lobbying scandal, is on the verge of adopting a strong system of lobbying regulation. A select committee of the UK House of Commons produced a study in 2009 that strongly recommended adoption of a mandatory system of lobbyist registration and disclosure (Grice, 2011). The three major professional lobbying associations in the United Kingdom – the Chartered Institute of Public Relations, the Association of Professional Political Consultants and the Public Relations Consultants Association – made a concerted effort to self-regulate the industry as an alternative to mandatory regulation. The professional associations set up the UK Public Affairs Council in which lobbyists are encouraged to register and abide by a lobbyist code of ethics. Some of the associations even post their lobbyist registrations online.

However, like many of the efforts of self-regulation throughout Europe, the UK self-regulation effort has been crippled by several inherent flaws. First, and most importantly, the registration requirement is only imposed on those who wish to join the professional associations. Those who choose to remain outside the UK Public Affairs Council or the three professional associations avoid the registration and disclosure requirements. Lawyers, law firms, think tanks and others who are often heavily involved in affecting public policy feel no compulsion to register as lobbyists – and they generally do not register. This lack of participation in the voluntary association-run registry deprives the public of a full picture of the influence-peddling business and, of concern to the lobbying profession itself, applies the lobbyist regulations unequally, with those who do not register escaping restrictions on their lobbying conduct.

Second, enforcement for violations of the associations' code of ethics tends to be minimal at best. Where self-regulation prevails, including in the United Kingdom, enforcement actions are limited to reprimands or expulsion from the association (if they occur at all) (Holman and Susman, 2009). As a result, efforts at self-regulation, however noble, tend to fall short of expectations, especially in nations where lobbyist corruption is perceived as a major problem.

The self-regulation effort in the United Kingdom appears to be failing, as one of the three associations recently joined in the calls for government regulation (Wright and Newman, 2011). The House of Commons' committee recommendations for a mandatory registry are widely expected to become law in the United Kingdom within the next few years.

Elsewhere across Europe, Croatia, the Czech Republic, Ireland and several other European nations are also well into legislative deliberations for lobbyist regulation based on goals of reining in corruption and enhancing public confidence in government through full transparency. Much of Europe appears to be turning the tide from weak regulatory regimes into strong systems of lobbying regulation.

Lobbyists' Attitudes on Regulation

Although many European governments grapple with the issue of regulating lobbyists, surveys show that lobbyists themselves are generally supportive of registration and public disclosure of lobbying activities. In the United States and Brussels and across Europe as a whole, lobbyists overwhelmingly favor creation of a lobbyist registry and applaud transparency of their work. The greatest presumed obstacle to the regulation of lobbying – lobbyists themselves fighting tooth-and-nail against such regulation– is largely a myth.

One survey of lobbyist attitudes conducted in 2008 included a wide spectrum of lobbyists in both the United States and Brussels (Holman, 2009). 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 per cent of all American and Brussels lobbyists surveyed indicated that there should be no type of public registry for lobbyists. More than a quarter of respondents (25.7 per cent) would prefer a voluntary system of lobbyist registration, in which a lobbyist would receive some benefit, such as early notices of pending legislative action, in exchange for registering. However, a substantial majority (66.2 per cent) of all American and Brussels lobbyists favored a system of mandatory registration for lobbyists and lobbying firms that meets some threshold of lobbying activity, similar to the American and Canadian systems 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 based in Brussels. Nearly all American lobbyists expressed support for a mandatory

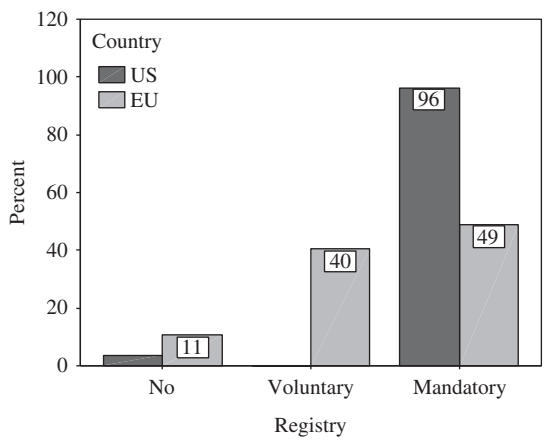

Figure 1: Should government maintain a publicly disclosed registry of lobbyists?

system of lobbyist registration. Small minorities in both jurisdictions preferred no registry at all.

Another finding that is notable in Figure 1: more EU lobbyists expressed preference for a mandatory system of registration than a voluntary system. The ETI of the EC 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 not materialize.

In another survey of lobbyists across Europe, not just in Brussels, a large majority of European professional lobbyists specifically favored a mandatory system of lobbyist registration (Holman and Susman, 2009). Europe-wide, lobbyists seem to agree that registration and disclosure should be mandatory. As shown in Figure 2, more than 61 per cent of all European respondents believed that a lobbyist registration and transparency program should be 'mandatory for all lobbyists'. Approximately 18 per cent of respondents preferred a voluntary system of registration and disclosure, and 15 per cent were 'neutral' on the issue.

This support for a mandatory lobbyist registry again comes from all categories of European lobbyists, with 80.6 per cent of non-profit lobbyists favoring a mandatory system, 57 per cent of contract lobbyists supporting mandatory registration and disclosure, and 56 per cent of corporate lobbyists supporting the same. Mandatory versus voluntary registration and disclosure of lobbying activity is simply not an area of much dispute in either the United States or Europe – at least not within the lobbying community.

There are several reasons why lobbyists support transparency of their profession, but the most often cited reason according to these surveys is to persuade the public that lobbying activity is a legitimate part of the policymaking process, not a behind-the-scenes influence peddling scheme. Although 57 per cent of European

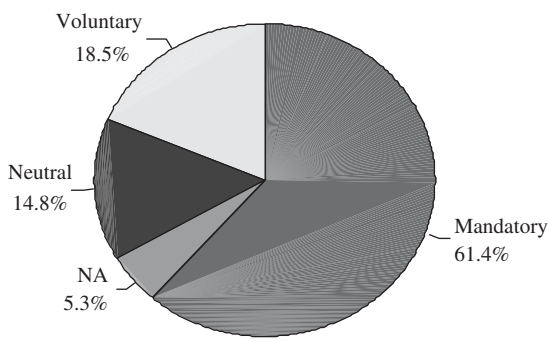

Figure 2: Should transparency of lobbying activity be mandatory or voluntary?

lobbyists believe that ethical transgressions by lobbyists are rarely or never a problem, 90 per cent of those lobbyists admitted that the public perceives there is such a problem (Holman and Susman, 2009). The lobbying profession in both Europe and North America widely recognizes that there is no better way to begin addressing this problem of perception than through transparency.

Conclusion: Achieving Adequate Lobbying Transparency – Lessons Learned

The regulation of lobbying may take a variety of forms and seek differing goals, such as limiting political contributions from or bundled by lobbyists that may contribute to unequal access to decision makers. However, the authors begin with the assumption that, whatever else lobbying regulation seeks to accomplish, enhancing transparency must be a foundational building block for the regulatory effort. Opening the books on lobbying activity and governmental policymaking is essential to reducing the opportunity for corruption, as well as the appearance of corruption. With maximizing transparency in mind, the successes and failures of lobbying regulation both in North America and across Europe highlight several important elements that are necessary elements of an effective lobbying disclosure regime.

First, lobbyist registration must be mandatory. When lobbyists in the United States could effectively determine on their own whether they passed the threshold for registration under the law as it existed between 1946 and 1995, only about 25 per cent of lobbyists bothered to register. Similarly in Europe we see that the voluntary registration programs, even when coupled with incentives for lobbyists to register, fare very poorly in capturing most lobbyists and lobbying organizations in the registry. In light of the high level of support among lobbyists for mandatory registration, the low level of registration might be explained by concerns regarding the competitive disadvantages of registration when others are not required to register.

Furthermore, if registration and disclosure are not uniform across all sectors and business interests, the registration records will not reflect the reality of money and influence peddling. A registration system that applies only to contract lobbyists overlooks most of the corporations, unions and other special interests that are attempting to influence public policy. It is a simple matter for a business interest to employ its own lobbyist rather than contract out for services as a means to evade disclosure. Those who have reason to hide will likely do so.

Second, the transparency law must precisely define who must register. Clear definitions are key to the success of lobbying disclosure law. Without that,

those who want to evade disclosure will simply argue that they do not meet the registration threshold. It is not sufficient to declare that those whose 'primary purpose' is to influence legislation must register. That leaves the judgment largely in the hands of the person whose activities should be subject to scrutiny. A lawyer, for example, may argue that his or her primary purpose is client counseling, not lobbying.

The law should cover both 'in-house' lobbyists, who are employed by an entity to lobby on its behalf, and 'outside' lobbyists, who work alone or with others in a lobbying firm to advance the interests of third-party clients for compensation. With regard to both groups, the thresholds for registration should be quantifiable, for example, (i) receiving more than *de minimis* financial compensation for lobbying; (ii) making more than one lobbying contact with 'covered officials'; and/or (iii) engaging in a minimum amount of lobbying work on behalf of any particular client or organization. Time periods applicable to such elements (for example, a semiannual or quarterly period) must also be specified.

Third, mandated registration and periodic reports must contain useful information that can help the public understand who is trying to influence whom and on what issues. Ideally, these records should identify, at a minimum, individual lobbyists, their employers, their clients (including organizations that are members of lobbying coalitions), specific issues lobbied, legislators and executive officials contacted and, most importantly, income earned by lobbying firms and expenditures for lobbying made by self-lobbying entities. Whether disclosures should include a detailed summary of the actual communications with contacted officials is a more difficult issue given the reporting burdens created.

Uncovering corruption or its appearance is almost always a matter of following the money. High lobbying fees or lobbying expenses may suggest the need for further inquiry. The amount of money any particular client or business invests in affecting legislation is the information that the public needs to know in evaluating whether public policies are being made based on merit or on the expenditure of money. The specific identities of the lobbyists handling the money, as well as the identities of lawmakers whom the lobbyists contacted, is valuable information to enforcement authorities in connecting the dots between money and undue influence. In the United States, extraordinarily high fees paid by Indian tribes to lobbyist Jack Abramoff as disclosed under the LDA started investigators down the trail to his ultimate guilty plea and subsequent imprisonment (Schmidt, 2004).

Fourth, lobbyists must file registrations and reports electronically, and the disclosure database must be available to the public on the Internet in a searchable, sortable and downloadable format. An effective transparency program should

be administered by a single agency that collects all registration and periodic reports through instantaneous electronic means and administers a centralized disclosure system on the Internet. In order to make lobbyist activity reports publicly available in a timely fashion and keep the disclosure agency from being overwhelmed with paperwork, lobbyists should be required to file their reports electronically, through a filing program approved by the administrative agency. The database should then be provided on the Internet by the administrative agency in a searchable, sortable and downloadable format, so that the data can be easily searched and organized by the public and even downloaded by independent researchers into preferred data processing programs. The selected search engine should allow search not only by categories of information provided on forms that are filed, but also by words and phrases to maximize accessibility of information contained in the database.

Public examination of these reports is not only critical to building the public's trust in the governmental process, but it also complements enforcement. By placing this information on the Internet for all to see, the public provides critical backup for monitoring compliance with the law.

Fifth, the lobbyist registration system should be enforced by an independent governmental agency, not by lawmakers, lobbyists or those accountable to the lawmakers or lobbyists. The transparency system in the United States, for example, is handicapped by the fact that, or at least suspect because, monitoring compliance is left largely to officers directly employed by Congress whose Members' interest is not always aligned with the goal of transparency. It would also be constructive to fund the enforcement agency by means of permanent (or at least long term) appropriations in order to minimize the possibility of angry lawmakers defunding the agency. One option here would be to create a system financed, at least in part, by fees paid by registrants and their clients.

Of course, despite its foundational nature to effective lobbyist regulation, transparency may not be enough fully to protect the interests threatened by lobbying practices. The additional components of the regime may include a variety of regulatory restrictions, but one is of signal importance. A code of ethics restricting the most egregious patterns of undue influence peddling – generally focused on the potentially corrupting nexus between lobbyists, money and lawmakers – should govern the behavior of lobbyists and governmental officials alike. Canada has taken the lead in this effort by codifying ethical standards for all registered lobbyists designed to prevent worrisome conflicts of interest. The United States, only in response to the recent Abramoff lobbying scandal, has promulgated a series of ethics rules restricting gifts from lobbyists to senior governmental officials and lobbyist-sponsored travel for members of Congress and their staff. Regulating ethical standards is far more controversial than transparency, and not an idea that is

yet as widely accepted in either North America or Europe. Transparency provides the opportunity and incentive for most lobbyists and government officials to steer clear of conflicts of interest. But, where transparency is not sufficient incentive, ethics codes may be necessary.

Notes

1 The lobbyist registration system adopted by Australia deserves special mention because it is fairly well developed, though the Pacific nation is not included in this study. In 2008, Australia adopted the 'Lobbying Code of Conduct', requiring anyone who attempts to influence legislative or administrative policies on behalf of third parties (contract lobbyists) to register their names, contact information and identities of their clients. Lobbyist and client identities are made available to the public online. No financial information is provided nor are the issues lobbied disclosed. The Australian registry is available at lobbyists.pmc.gov.au/conduct_code.cfm.

2 The description of the United States and Canadian lobbying law contained in this section draws on Chapters 3–6 of Luneburg *et al* (2009), and also on Hughes and MacDonald (2011). It should be noted that the lobbying disclosure systems found at the state level in the United States and at the provincial level in Canada may differ in material respects from the descriptions provided in this article for the lobbying regulation regimes operating at the federal (national) level in both countries.

3 Neither the federal disclosure system in the United States nor the one in Canada are, obviously, without flaws. For example, a Task Force on Federal Lobbying Laws (2011), formed by the Administrative Law & Regulatory Practice Section of the American Bar Association, has recommended significant changes to the LDA broadening disclosure. See its report, *Lobbying Law in the Spotlight*: *Challenges and Proposed Improvements*, available at www.americanbar.org/content/dam/aba/migrated/2011_build/administrative_law/lobbying_task_force_report_010311.authcheckdam.pdf. And in March 2011, Canada's Commissioner of Lobbying issued a report recommending a variety of improvements to the disclosure regime administered by her. See Office of the Commissioner of Lobbying (2011) *Administering the Lobbying Act*: *Observations and Recommendation Based on the Experience of the Last Five Years*, available at www.ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/vwapj/Administering_LA-eng.pdf/$FILE/Administering_LA-eng.pdf.

4 E-mail from Mathias Huter, Senior Analyst and Program Manager, Transparency International – Georgia (4 February 2011), on file with the authors.

5 Access to the registries for both the European Commission and the European Parliament is available at europa.eu/lobbyists/interest_representative_registers/index_en.html.

6 Disclosure of lobbying contacts in Slovenia is available on the Web page of the Commission for Prevention of Corruption at www.kpk-rs.si/sl/projekt-transparentnost/lobisticni-stiki.

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