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## LOBBYING THE LOBBYISTS: A COMPARATIVE ANALYSIS OF THE LOBBYING REGULATORY AND DISCLOSURE MODELS OF THE UNITED STATES AND EUROPEAN UNION

*Jarica B. Nipper\**

### I. INTRODUCTION

“I keep six honest serving-men  
(They taught me all I knew);  
Their names are What and Why and When  
And How and Where and Who.”

—*Rudyard Kipling*<sup>1</sup>

In January 2006, Washington D.C.’s once-powerful lobbyist, Jack Abramoff, pled guilty to three felony counts of fraud, tax evasion, and conspiracy to bribe public officials.<sup>2</sup> The result was a political windfall that has caused some United States Senate candidates to call for a clean up of a “broken

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1. RUDYARD KIPLING, *The Elephant’s Child*, in JUST SO STORIES 57 (1991).

2. Susan Schmidt & James V. Grimaldi, *Abramoff Pleads to Guilty to 3 Counts*, WASH. POST, Jan. 4, 2006, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/01/03/AR20060103000474.html>.

system.”<sup>3</sup> The scandal inspired the United States Senate to pass a new ethics bill for lobbyists,<sup>4</sup> resulting in the Legislative Transparency and Accountability Act of 2006 (“LTAA”).<sup>5</sup> This act is a regulatory measure placed on lobbyists to restrict their activities with members in the United States Congress.<sup>6</sup> Regulatory measures are not new to American lobbyists,<sup>7</sup> but for a vast majority of the European Union, statute-based regulatory schemes are just now beginning to surface at the supranational level.<sup>8</sup>

Shortly after the Abramoff scandal, a similar measure was undertaken in Brussels to re-open discussion of a transparency policy that would essentially mimic the United States lobbying registration system.<sup>9</sup> Most European Union member states have no specific rules regarding the regulation of their lobbyists or their activities.<sup>10</sup> The main exceptions to these member states are Germany and the United Kingdom.<sup>11</sup>

Unlike baseball, lobbying is not something that Americans can claim as unique to themselves.<sup>12</sup> Lobbying has been solidly practiced on both the North American and European continents, with France being one of the first countries to do so.<sup>13</sup> However, the primary difference among the continents is the level of regulation.<sup>14</sup>

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3. See Jeffery H. Birnbaum, *Washington's Once and Future Lobby*, WASH. POST, Sept. 10, 2006, at B01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/09/AR2006090900829.html>.

4. See Douglas Waller, Editorial, *Lobbying Limits?*, TIME, Apr. 3, 2006, at 20, available at <http://www.time.com/time/magazine/article/0,9171,1179385,00.html>.

5. See generally Legislative Transparency and Accountability Act of 2006, S. 2349, 109th Cong. (2d Sess. 2006) (stating new regulations regarding lobbyist activity) [hereinafter LTAA].

6. See *id.*; see also Foreign Agents' Registration Act, 22 U.S.C. §§ 611-621 (2006) [hereinafter FARA].

7. See generally Lobbying Disclosure Act of 1995, 2 U.S.C. §§ 1601-1612 (2006) (showing the length of time that the United States has had lobbying regulations) [hereinafter LDA].

8. See generally Wilhelm Lehmann, *Lobbying in the European Union: Current Rules and Practices* (Eur. Parliament's Comm. On Indus., External Trade, Research, and Energy, AFCE 104 EN, 2003), available at [http://www.europarl.europa.eu/internet/workingpapers/afco/pdf/104\\_en.pdf](http://www.europarl.europa.eu/internet/workingpapers/afco/pdf/104_en.pdf) (showing the date that the European Union began implementing lobbying regulations) (last visited Apr. 28, 2007).

9. *Abramoff Scandal Reignites Brussels Lobbying Debate*, Euractiv.com, Jan. 18, 2006, available at <http://www.euractiv.com/en/pa/abramoff-scandal-reignites-brussels-lobbying-debate-151717> [hereinafter *Brussels Lobbying Debate*].

10. See Lehmann, *supra* note 8, at 43.

11. See *id.*

12. Odile Prevolt, *A New Concern in Europe: Lobbyists, The Merchants of Influence*, 5 TRANSNAT'L LAW 305, 306 (1992).

13. *Id.* at 306.

14. *Id.*

In the American political system, lobbying has deep roots and has largely been statutorily regulated.<sup>15</sup> By contrast, most of the member states in the European Union do not have a similar regulatory scheme.<sup>16</sup> The system imposed on European Union lobbyists is largely one of self-regulation and self-reporting.<sup>17</sup> Countries with a regulation system identical to the United States' lobbying regulatory scheme include Australia, Canada, and Germany.<sup>18</sup>

This comment compares and analyzes the United States' lobbying regulatory measures with similar measures and regulations employed in the European Union. It will address the United States' long history of lobbying regulation and compare it to the European Union's recent proposals. Section II will offer a general overview of the United States' lobbying regulations, both from a historical perspective and the current trend of making a more transparent regulatory scheme. Section III will provide a brief political and legislative framework of the European Union and an illustration of its structure. Section IV will discuss the historical background of lobbying culture and efforts in the European Union, with particular emphasis on current rules and practices.

Section V will compare and contrast the regulations of the United States with the self-imposed regulatory scheme of the European Union. Also, this section will focus on how United States policy has affected efforts to regulate European Union practices with regard to recent scandals. Section VI will discuss the institutional and cultural problems that hinder a unified regulatory system. Section VII will conclude by proposing that the European Union does not currently have the proper climate to impose a similar regulatory system like the United States for three primary reasons: the institutional issues that affect the European Union at large; the cultural differences between United States lobbyists and European Union lobbyists; and the strong reliance on lobbyists by members of the European Union parliament to provide them with information necessary to conduct parliamentary business. Further, this comment proposes that any regulatory system that the European Union produces will be instituted as a direct result of professional lobbying organizations acquiescing to the European Union's need for transparency among the member states.

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15. *Id.* at 311.

16. See Lehmann, *supra* note 8, at 43.

17. See *Brussels Lobbying Debate*, *supra* note 9.

18. Prevolt, *supra* note 12, at 310.

## II. LOBBYING IN THE UNITED STATES: A BRIEF REGULATORY HISTORY

### A. History of Lobbying

Lobbyists have always played an integral role in influencing legislation, even in the earliest days of Congress.<sup>19</sup> Once described as an evil monster winding through the halls of congress influencing the votes of politicians, lobbyists today play an important role in the legislative process.<sup>20</sup> Historically, a lobbyist was defined as “a man whom everybody suspects . . . and whose employment by those who have bills before a legislature is only resorted to as disagreeable necessity.”<sup>21</sup>

As the issues in Congress grew more complex and the pressures on the members steadily increased,<sup>22</sup> it became readily apparent that members of Congress needed lobbyists to help them prioritize their duties and interests.<sup>23</sup> Lobbyists helped bridge the communication gap between constituents and the federal government.<sup>24</sup> The Continental Army hired William Hull to lobby for more money for its war services.<sup>25</sup> At the end of the eighteenth century, it became apparent that “well-financed interests” were receiving favorable treatment from the government.<sup>26</sup> The First Bank of the United States harbored much disfavor when critics pointed out that many sitting United States Senators also served as charter members of the bank, which clearly created a conflict of interest.<sup>27</sup> Shortly before the United States Civil War, Samuel Colt lobbied to have the patent on his Colt pistol extended for another seven-year period by having his agents give away Colt pistols to members of Congress.<sup>28</sup>

In the late nineteenth and early twentieth centuries, tariff legislation was a great source of controversy, thus stimulating the largest amount of lobbying.<sup>29</sup> Early news correspondents hired by merchants and shippers were, in a sense,

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19. ROBERT C. BYRD, *Addresses to the United State Senate*, in 2 THE SENATE 1789-1989 ADDRESSES ON THE HISTORY OF THE UNITED STATES SENATE 492 (1991).

20. *Id.*

21. MARGARET SUSAN THOMPSON, THE “SPIDER WEB”: CONGRESS AND LOBBYING IN THE AGE OF GRANT 53-54 (1985); *see also* BYRD, *supra* note 19, at 497.

22. BYRD, *supra* note 19, at 497.

23. *Id.* at 499.

24. *Id.*; *see also* THOMPSON, *supra* note 21, at 140 (“Lobbyists fill roles that in many ways are comparable to those of legislators: helping to transmit and obtain satisfaction for demands upon the government, thereby advancing the substantive interests of those whom they have taken it upon themselves to serve.”).

25. BYRD, *supra* note 19, at 492.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 493.

tariff lobbyists.<sup>30</sup> They were sent to Congress to keep their respective merchants apprised of the progress made in the session.<sup>31</sup> These correspondents were also expected to assist their representatives in passing favorable legislation.<sup>32</sup> It was not long afterward that friends of the press were able to obtain special seating in the House of Representatives, close to the members themselves.<sup>33</sup>

In the 1850s, businesses began to hire lobbyists in hope of getting legislators to turn a sympathetic ear to their needs.<sup>34</sup> Businesses were forced to take chances in hiring lobbyists, mainly because they were fearful that by not hiring lobbyists, their views would not be heard in Congress.<sup>35</sup> However, even with a large number of lobbyists, and money to pay the lobbyists' extraordinary costs, the results were uncertain.<sup>36</sup>

In the second half of the nineteenth century, lobbying became a more complex profession.<sup>37</sup> Issues in government required a higher level of sophistication.<sup>38</sup> Lobbyists analyzed bills, drafted speeches, contacted committee members, and prepared arguments in favor of their clients.<sup>39</sup> Periodically, lobbying scandals caught the public eye and further sullied the reputation of the lobbying industry as a whole.<sup>40</sup> For example, in the Credit Mobilier scandal of 1872, a Congressman, acting as a lobbyist, distributed railroad stocks to members of both chambers in exchange for support for railroad legislation.<sup>41</sup> Later, under the Federal Regulation of Lobbying Act of 1946,<sup>42</sup> two lobbyists were convicted of giving campaign contributions to Senators in order to influence their votes.<sup>43</sup>

Washington lobbying began to develop into its current structure during the late 1920s.<sup>44</sup> The scope broadened to include both financial and commercial

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30. *Id.* at 492.

31. BYRD, *supra* note 19.

32. *Id.*

33. *Id.*

34. *Id.* at 494.

35. *Id.*

36. *Id.* (explaining that costs included railroad passes, entertainment, hotel rooms, cigars, and champagne).

37. BYRD, *supra* note 19, at 501.

38. *Id.*

39. *Id.*

40. *Id.* at 494-95.

41. *Id.* at 494.

42. Federal Regulation of Lobbying Act, 2 U.S.C. §§ 261-270 (repealed Pub. L. 104-65, § 11(a), Dec. 19, 1995, 109 Stat. 701) [hereinafter FRLA].

43. BYRD, *supra* note 19, at 505.

44. *Id.* at 503-04.

interests and individual lobbyists were replaced with membership associations.<sup>45</sup> With the introduction of new inventions such as the telephone, the telegram, and the radio, lobbying techniques changed drastically.<sup>46</sup> Modern technology allows interest group members to stay in continuous contact with the group's representatives in Washington.<sup>47</sup> Ironically, these new channels of communication later brought about the beginnings of the lobbyists' regulation.<sup>48</sup>

Senator Hugo Black was a vocal advocate for a registry of lobbyists,<sup>49</sup> as he had been a persistent and professional congressional investigator for a number of years.<sup>50</sup> It was largely due to Senator Black's investigative techniques and hearings that Congress demonstrated a willingness to regulate lobbying industry-by-industry, rather than passing general lobbying legislation.<sup>51</sup> This led directly to the addition of lobbyist registration provisions in the Merchant Marine Act of 1936,<sup>52</sup> and the Foreign Agent Registration Act of 1938.<sup>53</sup> About the same time, many states started enacting similar lobbyist registration laws.<sup>54</sup>

Today, the practice of lobbying is highly regulated, with numerous acts of legislation that have been in force since the commencement of the Second World War.<sup>55</sup> Although lobbyists tend to have a nefarious reputation,<sup>56</sup> most members of Congress agree that legislative issues are so complex that it would be impossible to fully explore the myriad of issues to which they are subjected regularly.<sup>57</sup> The presence of lobbyists helps members of Congress to thoroughly evaluate these issues, which in turn provides more effective legislation.<sup>58</sup>

In the past fifteen years, the emergence of Political Action Committees ("PACs") has served as both the cause of many problems and solutions to

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45. *Id.* at 504.

46. *Id.* (explaining that lobbyists could use the new forms of mass communication to improve grassroots lobbying techniques).

47. *Id.* at 506.

48. *Id.* 504-05 (explaining that new inventions allowed for highly organized and orchestrated grassroots campaigns that often shielded the identity of lobbyists).

49. *See* BYRD, *supra* note 19, at 504.

50. *Id.* at 504.

51. *Id.* at 505.

52. 46 App. U.S.C. § 1225 (repealed 1989), Act of June 29, 1936, ch. 858, 49 Stat. 2014-2015, Pub. L. No. 74-835.

53. *Id.* at 505; *see also* FARA, *supra* note 6.

54. *Id.*

55. *See generally* FARA, *supra* note 6; *see also* LDA, *supra* note 7.

56. *See* BYRD, *supra* note 19, at 491.

57. *Id.* at 505 (quoting *U.S. v. Harriss*, 347 U.S. 612, 625 (1954)).

58. *See id.* at 492.

interest representation and lobbying.<sup>59</sup> “PACs are formed by special interest groups for the purpose of funneling [campaign contributions to Congressional candidates].”<sup>60</sup> The emergence of PACs has opened up the door for abuse, intensifying the need for stricter regulation.<sup>61</sup>

### *B. Regulatory Measures*

The Federal Regulation of Lobbying Act was the first lobbying law passed.<sup>62</sup> Although it is no longer valid, this act required lobbyists to be registered with the State Department.<sup>63</sup> In order to be considered a lobbyist and thus be required to register, four elements had to be satisfied.<sup>64</sup> They were: “(1) legislative activity, (2) intention to influence the legislative process, (3) intention to influence Congressional members or their staff, and (4) direct communication with . . . Congress or their staff.”<sup>65</sup> An activity was not considered lobbying if it lacked one of these elements.<sup>66</sup>

The next piece of regulatory action was the Foreign Agents’ Registration Act.<sup>67</sup> “Enacted in 1938, FARA sought to deter the spread of propaganda by foreign propagandists . . . .”<sup>68</sup> Another principle function of FARA was for the “protect[ion of] the national defense, internal security, and foreign relations of the United States . . . .”<sup>69</sup> “FARA required an ‘agent of a foreign principal’<sup>70</sup> to

59. See *id.* at 506 (PACs represent a sophisticated form of lobbying. They were intended to provide candidates with money to finance their campaign; primarily because many candidates could not, unless they were independently wealthy, fund their own. However, candidates and incumbents have become increasingly dependant upon PACs for money contributions. The use of PACs has exponentially increased the cost of running a winning political campaign.).

60. *Id.* at 506.

61. See generally DAN CLAWSON, ALAN NEUSTADTL & MARK WELLER, DOLLARS AND VOTES: HOW BUSINESS CAMPAIGN CONTRIBUTIONS SUBVERT DEMOCRACY 207-33 (1998).

62. Prevolt, *supra* note 12, at 311; see also FRLA, *supra* note 42.

63. See generally FRLA, *supra* note 42.

64. Prevolt, *supra* note 12, at 312.

65. *Id.*

66. *Id.*

67. See generally FARA, *supra* note 6.

68. Charles Lawson, *Shining the ‘Spotlight of Pitiless Publicity’ on Foreign Lobbyists? Evaluating the Impact of the Lobbying Disclosure Act of 1995 on the Foreign Registration Act*, 29 VAND. J. TRANSNAT’L L. 1151, 1155 (1996).

69. 22 U.S.C. § 611 (2000).

70. 22 U.S.C. § 612(a); see also § 611(b) (“The term “foreign principal” includes – (1) a government of a foreign country and a foreign political party; (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and (3) a partnership,



register with the Secretary of State.”<sup>71</sup> It also required foreign agents to file and label any “political propaganda”<sup>72</sup> with the Secretary.<sup>73</sup> Failing to properly do so could result in criminal sanctions.<sup>74</sup>

Since its inception, FARA has been amended eight times;<sup>75</sup> the last of which coincides with the Lobbying Disclosure Act of 1995 (“LDA”).<sup>76</sup> FARA had long been criticized as having too many loopholes.<sup>77</sup> These loopholes fell into the three general areas: 1) non-compliance because of practical difficulties; 2) disincentives for non-compliance; and, 3) the absence of clearly defined rules.<sup>78</sup>

The first category is that of non-compliance with specific regard “to the practical difficulties of enforcing [the] [A]ct . . . .”<sup>79</sup> The large number of agents lobbying for foreign governments, coupled with inadequate government staffing, made it extremely difficult to monitor all the agents, and raised a presumption that many were operating anonymously.<sup>80</sup> The second problem that FARA faced was directed toward foreign agents.<sup>81</sup> There was a strong negative connotation that foreign lobbyists engaged in subversive and illegal activities, when in fact many did not.<sup>82</sup> Thus, many did not register.<sup>83</sup> For this reason, a number of agents took advantage of the many exemptions under the act.<sup>84</sup> The third category of problems was a direct result of the many agents who used one

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association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”).

71. Lawson, *supra* note 68, at 1157.

72. 22 U.S.C. § 611(j) (1994) (repealed 1995) (defining political propaganda as: [A]ny oral, visual, graphic, written, pictorial, or other communication or expression . . . which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States, racial, religious, or social dissensions. . . .).

73. Lawson, *supra* note 68, at 1157.

74. *Id.* at 1157-58.

75. *Id.*

76. *Id.* at 1161; *see also* 22 U.S.C. §§ 1602-1613 (2006).

77. Lawson, *supra* note 68, at 1161.

78. Philip J. Perry, *Recently Proposed Reforms to the Foreign Agents Registration Act*, 23 CORNELL INT'L L.J. 133, 144 (1990); *see also* LAWSON, *supra* note 68, at 1163.

79. Lawson, *supra* note 68, at 1164.

80. *Id.*

81. *Id.* at 1165.

82. *Id.*

83. *Id.* at 1164.

84. *Id.* at 1165.

of the exemptions from registering.<sup>85</sup> The absence of strict definitions, or in the alternative, the loosely constructed language of the definitions allowed for many agents to operate anonymously.<sup>86</sup> All of the problems created a vicious cycle<sup>87</sup> in that agents would rely on an exemption in the Act, but in some form or fashion their activity would attract the notice of the State Department, in which case the agents would be sanctioned for violating the act.<sup>88</sup>

The Lobbying Disclosure Act of 1995 provided some relief to critics of FARA by streamlining the registration requirements of lobbyists under a single uniform statute, and also by providing more effective language to those who would claim an exemption.<sup>89</sup> One of the more significant exemptions that were eliminated was the lawyer exemption.<sup>90</sup> Lawyers, who also lobbied, were effectively able to avoid the registration process by characterizing their work for clients as legal representation.<sup>91</sup> The net effect of the LDA is that it provides a strict definition of lobbyist, which is paramount to mending the compliance issues.<sup>92</sup> If there is no question about who can be considered a lobbyist, then there is likewise no question about who is required to register and follow the rules.<sup>93</sup> Arguably, by providing a strict definition and offering examples of the kind of work that is categorized as lobbying activities, there will be fewer violations of the law.<sup>94</sup>

In March 2006, the United States Senate approved by a 90-to-8 vote the first revision of the rules since the LDA was enacted in 1995.<sup>95</sup> The Legislative Transparency and Accountability Act of 2006 ("LTAA") coincidentally was

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85. Lawson, *supra* note 68, at 1166.

86. *Id.*

87. *Id.*

88. *See id.* at 1165.

89. *See id.* at 1174; *see also* LDA, *supra* note 7.

90. *See* Lawson, *supra* note 68, at 1176-77 (Explaining that the elimination of the lawyer exemption was in response to critics' calls for reform. The exemption essentially allowed lawyers from foreign nations to lobby for their companies and subsidiaries, while at the same time classifying their work as legal representation. Before its elimination, the exemption was seen as "a sham and a shamble" and left more professional lobbyists unregistered than registered. The elimination of the exemption permitted a more thorough trafficking of lawyers who were representing foreign interests.); *see also* Adam Clymer, *Senators agree to increase lobbyist reporting: Battle remains on gifts issue*, COM. APPEAL, Jul. 25, 1995, at A1.

91. *See* Lawson, *supra* note 68, at 1177.

92. *See* LDA, *supra* note 7, at § 1602(10); *see also*, Lawson, *supra* note 68, at 1177.

93. *See* Lawson, *supra* note 68, at 1177.

94. *Id.*

95. Michael Forsythe & Jonathan D. Salant, *Senate Overhauls Lobby Laws for First Time Since 1995*, Bloomberg, Mar. 29, 2006, available at <http://www.bloomberg.com/apps/news?pid=10000101&sid=aFJwMCPILU2o&refer=us>.

passed shortly after the Jack Abramoff scandal.<sup>96</sup> The act “ban[s] all gifts and meals from lobbyists, forc[es] greater disclosure, and doubl[es] to two years the time that departing lawmakers must wait before lobbying former colleagues.”<sup>97</sup> Additionally, the monetary fines for violating the Act were increased from \$50,000 to \$100,000.<sup>98</sup> Although the legislation provides for more disclosure, and bars certain activities, it still leaves some problems unresolved.<sup>99</sup> One issue is that individual lobbyists are barred from certain activities, but organizations that lobbyists represent are not barred from those same activities.<sup>100</sup> Firms and other organizations are permitted to continue giving gifts and meals that would otherwise not be permitted by individual lobbyists.<sup>101</sup> Other rules that were proposed, but ultimately stricken, were more caps on the money that lobbyists give to campaigns each year.<sup>102</sup>

### III. THE EUROPEAN UNION: A HISTORICAL AND POLITICAL FRAMEWORK

The European Union, in its earliest form, began as a marriage between two major industries: steel and coal.<sup>103</sup> French Foreign Minister Robert Schuman first proposed the merger in 1950.<sup>104</sup> The European Coal and Steel Community (“ECSC”)<sup>105</sup> was developed initially and largely as an effort to stop another devastating war between France and Germany.<sup>106</sup> By uniting the countries economically and politically, many leaders were idealistically convinced that lasting peace would be secured.<sup>107</sup> The first member states were Belgium, West Germany, Luxembourg, France, Italy, and the Netherlands.<sup>108</sup> Seeing the merger as a success, the member states integrated other sectors of their economy, and in 1957 they signed the Treaties of Rome,<sup>109</sup> creating two more

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96. *Id.*

97. *Id.*

98. *See* LTAA, *supra* note 5.

99. *See* Waller, *supra* note 4.

100. *Id.*

101. *Id.*

102. *Id.*

103. *See* THE EUROPEAN UNION 6 (Norris Smith ed., 2005).

104. *Id.* at 6.

105. *Id.* at 153 (The ECSC was created by the 1951 Paris Treaty and the EEC Merger Treaty. It was proposed by Jean Monnet, a “French economic consultant and . . . advocate of international cooperation.” He became the first president of the ECSC.).

106. *See* Pascal Fontaine, *Europe in 12 Lessons*, EURO. COMM’N (Oct. 2003), available at [http://ec.europa.eu/publications/booklets/eu\\_glance/22/en.pdf](http://ec.europa.eu/publications/booklets/eu_glance/22/en.pdf) (last visited Apr. 28, 2007).

107. EUROPEAN UNION, *supra* note 103, at 6.

108. Fontaine, *supra* note 106, at 8.

109. EUROPEAN UNION, *supra* note 103, at 7.

communities.<sup>110</sup> In trying to establish a common market, the member states set out to remove economic trade barriers that formed between them.<sup>111</sup> By 1967, the European Commission, the Council of Ministers, and the European Parliament were permanent institutions.<sup>112</sup> In 1995, the total number of member states was fifteen.<sup>113</sup> It was not until 2004 that the European Union brought in additional member states.<sup>114</sup> Today the European Union member states number twenty-five<sup>115</sup> with Bulgaria and Romania set to become the newest members in 2007.<sup>116</sup>

The European Union comprises five major institutional bodies: the European Commission, the European Parliament, the Council of the European Union, the Court of Justice, and the Court of Auditors.<sup>117</sup> The Council of the European Union, formerly known as the Council of Ministers, coupled with the European Parliament, forms the legislative body of the European Union.<sup>118</sup> The European Commission functions as the executive body of the European Union.<sup>119</sup>

It is worth noting that the European Union political composition and that of the United States is markedly different despite its apparent similarities.<sup>120</sup> The Commission, as the executive arm of the European Union, is answerable to Parliament—a glaring contrast between the United States Executive Branch and Congress.<sup>121</sup> The Council of the European Union, the European Commission,

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110. *Id.* (The two communities created were the European Atomic Energy Community (“EURATOM”) and the European Economic Community (“EEC”).).

111. *Id.*

112. *Id.* at 153.

113. *Id.* at 155.

114. *Id.*

115. See Fontaine, *supra* note 106, at 68, 79 (The current member states of the European Union are Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, the Netherlands, and the United Kingdom.).

116. *Id.*

117. See EUROPEAN UNION, *supra* note 103, at 7.

118. *Id.*

119. Fontaine, *supra* note 106, at 20 (explaining that the Commission is a wholly independent political arm designed to maintain and uphold all of the European Union’s interests collectively).

120. See Fontaine, *supra* note 106, at 13; see generally U.S. CONST. art. 1-3 (Illustrating that in the United States, the Executive branch does not answer to Congress in the same fashion that the Commission answers to Parliament in the European Union. In comparing the institutions, the Council and Parliament may be equated to the United States Congress. The Parliament functions much like the House of Representatives and the Council similar to the Senate, but note that each form of government shares its powers among the other branches.).

121. See EUROPEAN UNION, *supra* note 103; see also U.S. CONST. arts. 1-3.

and the European Parliament are the three major institutions that address lobbying regulation.<sup>122</sup>

#### *A. The Move Toward European Integration*

One of the European Union's most important goals is to move toward political and economic integration of the member states.<sup>123</sup> At the outset, a need for common agricultural, coal, and steel policies was the main focus.<sup>124</sup> However, as the European Union's relationships with the rest of the world become more important, and as it negotiates major trade and aid agreements, a shift toward common security and foreign policy is also underway.<sup>125</sup> Some examples of the European Union's current unified policies were the creation of a single market<sup>126</sup> and a single currency.<sup>127</sup>

The process toward integration of the European Union has encountered many problems, crippling its institutional architecture.<sup>128</sup> Nationalism, economic recession, increasing Euro-skepticism, the growing importance of the Council of Ministers, and gradual enlargement of the European Union are problems that have hindered complete integration.<sup>129</sup> However, the process of integration is multi-faceted.<sup>130</sup> Harmonization of national laws and technical standards, as well as educational and cultural exchanges, are elements of integration that need to be met before the European Union can become a single, unified nation.<sup>131</sup>

#### *B. Discussion of the Council, the Parliament, and the Commission*

In order to illustrate how the current lobbying structure is designed, it is important to first discuss how the European Union's major institutions work together. Simply known as "the Council," the Council of the European Union is

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122. See JEREMY RICHARDSON, *EUROPEAN UNION: POWER AND POLICY-MAKING* 30 (2d ed. 2001).

123. See *EUROPEAN UNION*, *supra* note 103, at 7.

124. *Id.*

125. *Id.*

126. *Id.* at 8 (Noting that as part of its integration scheme, the European Union wanted a single common market for "which goods, services, people and [money] could move [about] freely" among the member states. Although formally completed at in 1992, there is still a need to for a single common market of financial services.).

127. *Id.* (On January 1, 2002, the Euro officially became the currency in the European Union. It replaced paper notes and coins in twelve of the fifteen member states.).

128. RICHARDSON, *supra* note 122, at 28.

129. *Id.* at 29.

130. *Id.*

131. *Id.*

constructed of representatives from the member states.<sup>132</sup> The Council is the highest-level policymaking body in the European Union.<sup>133</sup> The presidents and prime ministers of all the member states, along with the president of the European Commission, meet to discuss different policy areas.<sup>134</sup> Under the Maastricht Treaty,<sup>135</sup> the Council serves to coordinate the general economic policies of the member states, make legislative decisions, and confer and implement rules in legislative acts that are set out by the Commission and adopted by the Council.<sup>136</sup>

The European Parliament is directly elected by citizens of each member state, but it represents all of the European Union's citizens.<sup>137</sup> In its original form, members were chosen by their respective national parliaments.<sup>138</sup> However, today, members of the European Parliament ("MEPs") are elected every five years.<sup>139</sup> As new members states are added, Parliament's numbers increase proportionately, with the current number reaching more than 600 MEPs.<sup>140</sup>

The European Parliament wields considerable influence in European politics.<sup>141</sup> Notwithstanding this, its role is "largely consultative except for its ability to control, within limits, certain types of EC budgetary expenditures."<sup>142</sup> It is the forum in which all member states can meet and discuss national viewpoints.<sup>143</sup> The European Parliament and the Council are on par with each other when legislating important issues.<sup>144</sup> This "co-decision procedure" was

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132. See Fontaine, *supra* note 106, at 16.

133. *Id.*

134. *Id.* at 17.

135. See Consolidated Version of the Treaty on European Union, Feb. 12, 1992, available at [http://europa.eu/eur-lex/en/treaties/dat/EU\\_consol.pdf](http://europa.eu/eur-lex/en/treaties/dat/EU_consol.pdf) [hereinafter Maastricht Treaty]; see also Fontaine, *supra* note 106.

136. See Maastricht Treaty, *supra* note 135; see also Fontaine, *supra* note 106, at 16.

137. Fontaine, *supra* note 106, at 18.

138. EUROPEAN UNION, *supra* note 103, at 7.

139. Fontaine, *supra* note 106, at 18.

140. *Id.*

141. *Id.* at 19.

142. Prevolt, *supra* note 12, at 316.

143. Fontaine, *supra* note 106, at 19.

144. *Id.*

established under the Maastricht Treaty of 1992.<sup>145</sup> The Parliament's powers were further strengthened by the 1986 Single European Act.<sup>146</sup>

The European Commission is wholly independent from the Parliament and the Council.<sup>147</sup> It is currently composed of 20 members, with two members from each of the larger member states.<sup>148</sup> When Bulgaria and Romania enter in 2007, the makeup will change to one member from each country.<sup>149</sup>

The Commission is labeled the "Guardian of the Treaties," in which its main task is to ensure that the policies the Council and Parliament initiate are put into force.<sup>150</sup> Further, the purpose of the Commission rests in advocating the European Union's interest as a whole.<sup>151</sup> Its main duties in enforcing the decisions promulgated by the Council and Parliament include managing the European Union's common policies, such as research, development aid, and regional policy.<sup>152</sup> It is worth considering that the European Union political branches should not be readily compared to the United States.<sup>153</sup> Even though the European Commission functions as an independent body, it is answerable to the European Parliament.<sup>154</sup> The European Parliament has the power to force all of the Commission members to resign by using a vote of no confidence, which lies within its discretion.<sup>155</sup> In 1999, the European Parliament threatened to use this power against the Santer<sup>156</sup> Commission.<sup>157</sup> The Commission failed in its duties to execute the budget.<sup>158</sup> After much wavering on the Commission's part,

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145. See EUROPEAN UNION, *supra* note 103, at 154. (The Maastricht Treaty amended the Treaties of Rome. The amendment established, in addition to the current areas intergovernmental cooperation areas of trade and finance, defense and justice. It was also under this treaty the European Community became the European Union.).

146. Prevolt, *supra* note 12, at 316; see also EUROPEAN UNION, *supra* note 103, at 154 (The Single European Act ("SEA") paved the way for a single market and greater institutional efficiency. It enlarged European Union commitments to scientific research, environmental policies, and aid for the poorer regions of the Union, and set up initial procedures for a cooperative foreign policy.).

147. Fontaine, *supra* note 106, at 15.

148. *Id.* at 16.

149. *Id.* at 20.

150. *Id.*

151. *Id.*

152. *Id.*

153. See generally EUROPEAN UNION, *supra* note 103.

154. See *id.* at 13.

155. See Fontaine, *supra* note 106, at 20.

156. Angelina Topan, *The Resignation of the Santer-Commission: the impact of 'trust' and 'reputation,'* EUROPEAN INTEGRATION ONLINE PAPERS, Vol. 6 (2002) available at <http://eiop.or.at/eiop/texte/2002-014.htm> (last visited Apr. 28, 2007).

157. *Id.*

158. See *id.*

including an extension by the European Parliament, the Commission again failed to execute the budget.<sup>159</sup> A special investigation and report was submitted to the Council of Auditors.<sup>160</sup> Initially, the European Parliament called for the resignation of only one member, Edith Cresson.<sup>161</sup> After she refused to step down, the European Parliament called for a vote to discharge all the members.<sup>162</sup> Once it was clear that a majority vote was unattainable, the European Parliament set up a special investigative committee. After submission of its first report regarding the Commission members, the Commission collectively resigned.<sup>163</sup> A Commission's resignation can be paralleled to a United States presidential impeachment.<sup>164</sup>

#### IV. LOBBYING IN THE EUROPEAN UNION

The European lobbying landscape is fragmented.<sup>165</sup> This fragmented landscape results from the European Union's movement toward integration of the member states.<sup>166</sup> Integration efforts have been hindered mainly because the European Union remains in a constant state of flux.<sup>167</sup> The instability and the constant deepening and widening of the European Union are a result of piecemeal enlargement, combined with treaty reforms and a number of intergovernmental conferences.<sup>168</sup>

The European Union's lobbying nerve center is located in Brussels, Belgium—the European Union's equivalent to Washington, D.C.<sup>169</sup> This location results from the presence of the European Union's main institutional lobbying targets: Parliament, the Council, and the Commission.<sup>170</sup> Unlike in the United States, where the number of registered lobbyists can be readily determined, the European Union does not have such a luxury.<sup>171</sup> The exact

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159. *See id.*

160. *See id.*

161. *See id.*

162. *See* Topan, *supra* note 156.

163. *Id.*

164. *See generally* U.S. CONST. art. 2, § 4.

165. *See* Lehmann, *supra* note 8, at 5.

166. RICHARDSON, *supra* note 122, at 39.

167. *Id.*

168. *Id.*

169. Sophie Evans, *Washington, D.C.: Playing the Lobbying Game*, LEGAL WEEK, Oct. 16, 2003, available at <http://www.legalweek.com/Articles/116821/Washington%20+DC+Playing+the+lobbying+game.html>.

170. *See* Lehmann, *supra* note 8; *see also* Evans, *supra* note 169.

171. RICHARDSON, *supra* note 122, at 31.



number of European lobbyists operating in Brussels is unknown.<sup>172</sup> Many member states attempt to build a complex lobbying strategy at the national and European Union level.<sup>173</sup> The purpose behind this is to create a stronger lobbying presence that aids in passing favorable legislation.<sup>174</sup> British firms have a long history of direct lobbying in the European Union.<sup>175</sup> Other Member States lack such a history and often create strategies that are only complementary.<sup>176</sup> Because of the characteristics of European lobbyists, the number of alternatives that decision-makers have tends to be accentuated, with lobbyists presenting a menu of choices for different interests from which decision-makers can choose.<sup>177</sup> Euro-lobbyists have a tendency to function as information gatherers and disseminators, rather than presenting a unified position to law makers.<sup>178</sup>

Most governments in the member states have no specific rules governing the activity of interests groups or of their representatives.<sup>179</sup> Of course, the exceptions include Germany and the UK.<sup>180</sup>

#### A. *The German Bundestag*

The German Bundestag, or parliament, creates a list of all the groups wishing to advance or defend their positions.<sup>181</sup> Pressure groups, mainly members of trade unions or employers' associations, must register on the list before they can be heard in the parliamentary procedures.<sup>182</sup> The purpose of the list is to make the groups clearly visible not to the public, but rather to the parliament.<sup>183</sup> The presence of a group's name on the list does not constitute any special treatment, nor does it entitle parliament to hear the group's position.<sup>184</sup>

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172. *Id.* (In 1992, there were at least 3,000 interest groups which included more than 500 European associations. In total, about 10,000 people were employed at lobbyists. By 2000, the numbers grew to about 800 different types of groups.).

173. *See* Lehmann, *supra* note 8.

174. *Id.*

175. *Id.* at 32.

176. *Id.* (Although all members have direct access to the decision makers at the institutional levels, many member states choose to lobby through their own national governments.).

177. RICHARDSON, *supra* note 122, at 81.

178. *Id.*

179. *See* Lehmann, *supra* note 8, at 43.

180. *Id.*

181. *Id.* at 47.

182. *Id.*

183. *Id.*

184. *Id.*

*B. The United Kingdom*

By contrast, the United Kingdom has set up a more elaborate registration system.<sup>185</sup> The regulatory measures are different for members in the House of Lords and the House of Commons.<sup>186</sup> First established in 1994, the current regulatory practice's purpose was: "examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of probity in public life."<sup>187</sup>

In 1990, the House of Commons proposed to create a register of lobbyists along with an associated code of conduct.<sup>188</sup> Unfortunately, this recommendation was not accepted, and it was not until three years later that the issue came up again.<sup>189</sup> In 1994, the Committee on Standards in Public Life, or the Nolan Committee, was established.<sup>190</sup> The committee's 1995 report did not directly call for a registry of lobbyists, but it did propose that House Members be prohibited from entering into any agreements on behalf of organizations, private or public.<sup>191</sup> The House Select committee that was appointed to review the recommendations of the Nolan committee could not reach an agreement on the definition of "lobbyist" as it was distinct from other outside forms of employment.<sup>192</sup> The committee's solution to the problem was to "recommend a greater degree of disclosure by Members of all outside sources of remuneration which involved 'the provision of services in their capacity as Members of Parliament.'"<sup>193</sup>

There is no specific registry or a public list of lobbyists who seek entry into the House of Lords to have their positions defended, or heard.<sup>194</sup> However, the House of Lords agreed voluntarily to assemble a registry for itself so that the public would know which interests it represents when in Parliament.<sup>195</sup> The registry is divided into three categories: 1) Members with paid parliamentary consultancies, 2) Lords with financial interests in lobbying companies, and 3) other interests to which Lords have chosen to register.<sup>196</sup> Generally, Lords are

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185. See Lehmann, *supra* note 8, at 50.

186. *Id.*

187. *Id.*

188. *Id.* at 43.

189. See *id.*

190. See *id.* at 43.

191. Lehmann, *supra* note 8, at 43.

192. *Id.*

193. *Id.*

194. *Id.* at 50.

195. *Id.*

196. *Id.*

not supposed to speak for outside interests, and should confine to their own beliefs.<sup>197</sup> Any allegations of violations of these rules would result in an investigation by the committee that oversees the enforcement of the rules.<sup>198</sup>

### *C. The Fragmented Framework of the European Union Lobbying System*

In order to properly discuss how the framework is fragmented, it is important to illustrate the perceptions of lobbying between European Union institutions and lobbyists. The European Commission has laid out six components of lobbying in its Green Paper on the European Transparency Initiative<sup>199</sup> that it views as essential to how European Union institutions and lobbyists function.<sup>200</sup> The first component recognizes that lobbying is an essential part of the democratic system, regardless of who carries out the activities.<sup>201</sup> The second component is that lobbyists create awareness of important issues to European institutions.<sup>202</sup> The third component recognizes that lobbyists should not improperly perform their activities in order to exert undue influence over an institution.<sup>203</sup> The fourth component notes that it is imperative that the public is made aware of who acts as a lobbyist, whom they represent, and the issues for which they are lobbying.<sup>204</sup> The fifth component recognizes European institutions as having the right to hold internal discussions without outside interference.<sup>205</sup> The final component is the commission's awareness that any transparency measures promulgated must be both effective and proportionate.<sup>206</sup> Despite the openness that the European Union wants to

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197. Lehmann, *supra* note 8, at 50.

198. *Id.*

199. *Commission Green Paper on European Transparency Initiative*, at 2, COM (2006) 194 final (Nov. 26, 2006) [hereinafter *Green Paper*], available at [http://ec.europa.eu/transparency/eti/docs/gp\\_en.pdf](http://ec.europa.eu/transparency/eti/docs/gp_en.pdf) (Explaining that the Initiative is designed to build on other transparency measures already created by the Commission. The initiative was first launched on November 9, 2005.); see also EUROPA-Glossary, [http://europa.eu/scadplus/glossary/green\\_paper\\_en.htm](http://europa.eu/scadplus/glossary/green_paper_en.htm) (last visited Apr. 28, 2007) (Explaining that Green Papers are publications of the European Commission put out to encourage discussion about various topics. Green Papers sometimes precede White Papers which are documents that contain proposals on a specific area of government.).

200. *Green Paper*, *supra* note 199, at 5.

201. *Id.* (Explaining that it is of no concern if activities are carried out by individuals, companies, civil organizations, or other groups working for third parties, e.g., think tanks or lawyers.).

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Green Paper*, *supra* note 199, at 5.

present, it recognizes many problem areas in lobbying.<sup>207</sup> Complaints by media, academic, and other interest representatives about lobbying activities and practices often arise in discussion of transparency initiatives.<sup>208</sup> These lobbying practices do not necessarily apply only to the unlawful practices of fraud or corruption, but also to other areas that go beyond the permissible scope of interest representation.<sup>209</sup> These problems include the wide availability of modern communications to affect a mass campaign;<sup>210</sup> the uneven playing field between non-governmental organizations and the corporate sector;<sup>211</sup> and of paramount importance, the distorted information that lobbyists could provide to European Union institutions about the economy, or matters relating to social or environmental change.<sup>212</sup> Largely in response to these problems, the European Commission has a marked motivation for change and transparency on an institutional level.<sup>213</sup>

#### *D. Transparency Initiatives*

The beginnings of the transparency process in the European Union were first asserted in a Green paper communication by the European Commission (“EC”),<sup>214</sup> although the discussion of regulation has been ongoing for more than ten years.<sup>215</sup> The European Transparency Initiative focuses on four areas, the first of which concentrates on improving lobbying transparency.<sup>216</sup> The other areas of discussion are 1) improving data about the beneficiaries of European Union funds, 2) combating fraud, and 3) improving accountability and raising ethical standards of European Union law makers.<sup>217</sup> The European Commission’s intended purpose of the transparency process was “[t]o encourage more involvement of interested parties through a more transparent consultation

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207. *Id.* at 6.

208. *Id.* at 5.

209. *Id.*

210. *Id.* at 6.

211. *Id.*

212. *Green Paper*, *supra* note 199, at 46.

213. *See generally id.*

214. *EU and US Approaches to Lobbying*, EurActiv.com, Aug. 29, 2005, available at <http://www.euractiv.com/en/pa/eu-us-approaches-lobbying/article-135509> [hereinafter *EU and US Approaches*].

215. Andrew McLaughlin & Justin Greenwood, *Regulating Lobbying: the tip of an administrative iceberg?*, 5 EUROPEAN ACCESS 9, 10 (1993) (discussing the history of European regulation of lobbying).

216. *Commission Trusts EU Lobbyists to self-regulate*, Euractiv.com, Oct. 3, 2006, available at <http://www.euractiv.com/en/pa/commission-trusts-eu-lobbyists-self-regulate/article-154962> [hereinafter *Self-Regulate*].

217. *Id.*

process . . . .”<sup>218</sup> Although the transparency initiative appears to have some teeth, it only provides for basic principles and guidelines to be considered.<sup>219</sup>

The Green Paper on European Transparency supports the continuing concept of self-regulating measures in lobbying transparency.<sup>220</sup> The paper explicitly rules out regulatory measures on lobbyists and their activities.<sup>221</sup> In imposing a tighter system of self-regulation, the paper proposes:

a voluntary registration system, with . . . clear incentives for lobbyists to register;” a common code of conduct for all lobbyists, which would be developed by the lobbying profession itself and would consolidate and update any existing codes; and a system of monitoring and sanctions, which could occur in the case of incorrect registration or a breach of the code.<sup>222</sup>

Despite the paper’s articulate proposals, the biggest problems that have arisen are largely how to define lobbying, and defining who should be considered a lobbyist.<sup>223</sup>

The initiative has been criticized by at least one organization<sup>224</sup> as not credible.<sup>225</sup> A European Union government watchdog group, Corporate Europe Observatory (“CEO”) denounced the European Union’s lobbying rules and called on the Commission to follow the United States’ model of transparency as laid out in the Lobbying Disclosure Act of 1995.<sup>226</sup> The CEO argues the big lobbying organizations should publish a list of who they represent so that politicians who are encouraged to support changes in draft legislation will know exactly for whom the lobbyists are working, and who is paying the lobbyist’s

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218. *Commission of European Communities: Communication from the Commission, Towards a Reinforced Culture of Consultation and Dialogue-General Principles and Minimum Standards for Consultation of Interested Parties by the Commission*, at 3, COM (2002) 704 Final (Nov. 12, 2002), available at [http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002\\_0704en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002_0704en01.pdf) [hereinafter *General Principles and Minimum Standards*].

219. *Id.*

220. *Green Paper*, *supra* note 199, at 10.

221. *Id.*

222. *Id.*

223. *Self-Regulate*, *supra* note 216.

224. *See generally* Corporate Europe Observatory, <http://www.corporateeurope.org/index.html> (last visited Apr. 28, 2007).

225. *Id.* (noting that the Corporate Europe Observatory disagrees with the current self-regulatory system).

226. Press Release, Society of European Affairs Professionals, SEAP Rejects NGOs Request for Registration and Reporting Requirements (Oct. 26, 2004), available at <http://www.corporateeurope.org/docs/SEAPreacts.pdf> [hereinafter SEAP Press Release].

bills.<sup>227</sup> Even though there are only about 5,000 lobbyists who are registered on the European Parliament's web site,<sup>228</sup> the "CEO believes around 25,000 or even 30,000 earn their living from wheeling and dealing in the corridors and dining rooms of Brussels."<sup>229</sup>

Along the same lines, another organization, the Alliance for Lobbying Transparency and Ethics Regulation ("Alter-EU") has used the Jack Abramoff scandal as evidence to support its position for stricter transparency rules for lobbyists in Brussels.<sup>230</sup> In an Alter-EU statement, it said, "the [Abramoff] scandal has led parties from all sides in Washington to call for a tightening of existing U.S. lobbying disclosure and ethics rules . . . [i]n Brussels, not even basic rules presently exist."<sup>231</sup>

Although some groups criticize the initiative as too weak, others denounce its intentions altogether.<sup>232</sup> The Society of European Affairs Professional ("SEAP")<sup>233</sup> flatly rejected the EC's attempt to regulate the industry.<sup>234</sup> In a press statement, the SEAP reaffirmed the self-regulating nature of the European lobbyists:

[Lobbyists] perform a vital function in the modern democratic process. [They] play an essential and recognized role in informing the European policy makers on the views held by business and other interests concerning proposed E.U. legislation. Self-regulation is the best way to promote ethical behavior with lobbyists, whether they represent business or other civil society group interests.<sup>235</sup>

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227. Barbara Gunnell, Editorial, *In Brussels, The Lobbyocracy Rules*, NEW STATESMAN, Feb. 7, 2005 available at <http://www.newstatesman.com/200502070020>.

228. RICHARDSON, *supra* note 122, at 31 (Explaining that the number of European lobbyists is not known. However, in 1992, the European Commission surmised there were about 3,000 interest groups, 500 European associations that employed lobbyists numbered over 10,000.).

229. See Gunnell, *supra* note 227.

230. *Brussels Lobbying Debate*, *supra* note 9.

231. *Id.*

232. See SEAP Press Release, *supra* note 226.

233. This author posits that the SEAP is one of the strongest and most influential opponents of regulatory measures. Established in 1997, the SEAP is a not for profit group of European professionals. Membership is voluntary but members must adhere to a strict code of conduct or be subject to sanctions. See Society of European Professionals, <http://www.seap.eu.org> (last visited Apr. 28, 2007).

234. See SEAP Press Release, *supra* note 226.

235. *Id.*

This proposed transparency initiative is in stark contrast to the European Union's current system of self-regulation.<sup>236</sup>

## V. DISCUSSION AND COMPARISON OF REGULATORY EFFORTS

### A. Purpose of Regulation

There are three main arguments for regulating lobbying practices at the European Union level. The basic purpose of regulating lobbying activities within the European Union is to bring it into the open,<sup>237</sup> and to avoid the ethics violations and scandals that have recently plagued the United States.<sup>238</sup> In addition to maintaining public confidence in government, the regulatory measures are aimed at giving legitimacy to European Union institutions.<sup>239</sup> Finally it creates a level playing field between business and non-business interests.<sup>240</sup>

Despite much discussion in the area, the regulation of European Union lobbying plays a subsidiary role in the European Union's quest for transparency, being that it is only one element in the European Union's broad-based policy to make institutional information available to both member states and the general public.<sup>241</sup> Regulating lobbying can aid the ultimate goal of a transparent nation by strengthening integration of the member states and enhancing the credibility of the European institutions.<sup>242</sup> Transparency "clears[s] the fog," and disarms any myths that citizens may perceive, thus reducing the distance between the public and the administration, and restoring confidence in European Union institutions.<sup>243</sup>

Despite the United States' long history of regulation and high degree of industry professionalism, it continues to feel the pressure of a move toward a more transparent government.<sup>244</sup> This pressure has most recently been ignited with the arrest and indictment of Jack Abramoff and the resignation of Senator

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236. See *Brussels Lobbying Debate*, *supra* note 9.

237. See Lehmann, *supra* note 8, at v.

238. See *Brussels Lobbying Debate*, *supra* note 9; see also Schmidt, *supra* note 2.

239. See Lehmann, *supra* note 8, at v.

240. *Id.*

241. See generally *Green Paper*, *supra* note 199.

242. Communication to The Commission From the President, Ms. Wallstrom, Mr. Kallas, Ms. Hubner, and Ms. Fisher Boel, Proposing the Launch of a European Transparency Initiative, Memorandum to the Commission (Nov. 2005) available at [http://ec.europa.eu/commission\\_barroso/kallas/doc/etik-communication\\_en.pdf](http://ec.europa.eu/commission_barroso/kallas/doc/etik-communication_en.pdf) [hereinafter Memorandum].

243. *Id.* at 4.

244. See LTAA, *supra* note 5; see also Birnbaum, *supra* note 3.

Tom Delay.<sup>245</sup> The purpose of continued regulation is to heighten public awareness of the government's activities.<sup>246</sup> More specifically, the purpose is to make the public aware of the organizations that fund politicians or political parties, and show how much they are spending.<sup>247</sup>

*B. The Lobbyist's Role Within Each System*

Within in the European Parliament, the term lobbyist is strictly defined.<sup>248</sup> Lobbyists are defined as "persons who wish to enter Parliaments premises frequently with a view to supplying information to Members in their own interests or those of third parties . . . ."<sup>249</sup> Not only are these persons required to register with the Parliament, but they are also distinguished from others by the special badges that they wear.<sup>250</sup> The Parliament maintains a code of conduct for lobbyists within the Parliament's rules and procedures.<sup>251</sup>

Lobbyists play an important role in the European parliament in that Parliament members rely heavily on the information they receive from the lobbyists.<sup>252</sup> Much of this reliance can be attributed to issues of public funding. Many lobbyists are funded by the European Parliament; thus, their role is more of an "information gatherer" rather than advocate for a client's needs.<sup>253</sup>

One of the key characteristics and credentials for a United States lobbyist is being a lawyer.<sup>254</sup> The best information that legislators receive in the legislative process comes from lobbyists, because these are the same people who are directly involved in the industry, and they represent the same people who will be affected by the legislation.<sup>255</sup>

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245. See Jeffrey Smith and Jonathan Weisman, *Delay Departing on Own Terms*, WASH. POST., Apr. 5, 2006, at A1, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/04/AR2006040400513.html>; see also LTAA, *supra* note 5.

246. See *id.*; see also LDA, *supra* note 7.

247. See Lehmann, *supra* note 8, at iv.

248. *Id.*

249. *Id.*

250. *Id.*

251. Rules of Procedure for the European Parliament, ANNEX IX : Provisions governing the application of Rule 9(2) - Lobbying in Parliament, EURO. PARL. DOC., (16th ed. July 2004), available at <http://www.europarl.europa.eu/omk/sipade3?PUBREF=-//EP//TEXT+RULES-EP+20040720+ANN-09+DOC+XML+V0//EN&HNAV=Y>.

252. See generally Lehmann, *supra* note 8.

253. See Evans, *supra* note 169.

254. *Id.*

255. *Id.*



### C. A Merger of Roles

A growing number of law firms in both the United States and in the European Union are setting up lobbying departments in their firms.<sup>256</sup> Despite this fact, United States legislators<sup>257</sup> have recognized the need for more European law firms to take a more active role in lobbying.<sup>258</sup> One aspect of a sophisticated level of lobbying in the United States is the presence of senior politicians at larger law firms and lobbying firms.<sup>259</sup> It has been argued that the European Union, at the institutional level, would benefit if more politicians worked in European Union lobbying firms.<sup>260</sup> The landscape would gradually reshape and take on a dimension similar to Washington.<sup>261</sup> Law firms in both Washington and in the European Union have a distinct advantage over their non-legal counterparts:<sup>262</sup> built-in regulations because of lawyers' ethical obligations.<sup>263</sup> Considering that lobbyists draft very complex legislation, as well as the advocacy role which law firms offer, there are clear benefits to this built-in integrity.<sup>264</sup>

### D. Problems with Regulating the Activity

The European Parliament first discussed the idea of regulating lobbying at the European Union level,<sup>265</sup> where there was much discussion as to what constituted lobbying.<sup>266</sup> Unlike the United States Federal Regulation of Lobbying Act ("FRLA"), which fully describes the activities and the elements of lobbying in detail,<sup>267</sup> the European Union fails to shadow such a model.<sup>268</sup> Much of lobbying at the European Union level includes information gathering and interest representation rather than the act of influencing legislation.<sup>269</sup>

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256. Fiona Bawdon, *Lawyers and lobbyists – the position of lawyer parliamentaries*, LAW SOCIETY'S GAZETTE, Feb. 1, 1995, available at <http://www.lawgazette.co.uk/news/general/view=newsarticle.law?GAZETTENEWSID=15271>.

257. Jeremy Fleming, *The Lobbyists have Landed*, EUR. LAW., at 9-10 (Dec/Jan 2006) (American Senators Tom Daschle and Bob Dole note the glaring disparities between the United States and the European Union's system of lobbying.).

258. *Id.* at 9.

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. Fleming, *supra* note 257, at 9.

264. *Id.*

265. See McLaughlin, *supra* note 215, at 9.

266. See generally McLaughlin, *supra* note 215.

267. See FRLA, *supra* note 42.

268. See generally McLaughlin, *supra* note 215.

269. See *id.* at 9-10.

Indeed, many individuals who engage in lobbying activities have a commonly agreed notion as to what lobbying requires, yet the industry itself has yet to come to a consensus on the matter.<sup>270</sup> Several definitions in the European Union have been discussed, but none have yet been finalized.<sup>271</sup> Lobbying entails “the advocacy, either by individuals or by groups, of a point of view—the expression of an interest that is affected, actually or potentially, by the affairs of government.”<sup>272</sup> It has been suggested that there is a vast difference between government relations and public affairs.<sup>273</sup> In the true sense of lobbying, government relations practitioners lobbied legislation.<sup>274</sup> They drafted legislation, found people to vote for it, gave speeches to coincide with the legislation, and petitioned public representatives in Parliament.<sup>275</sup>

It has been suggested that many of the problems faced by European officials do not stem from irresponsible lobbyists, of which there are only a few, but instead often from inexperienced lobbyists, who do not follow the self-imposed rules.<sup>276</sup> Lobbying in the European Parliament has increased in recent years, which has led to general problems of volume and quality in interest representation.<sup>277</sup> To alleviate this problem, the European Commission proposed early on that it would work through European professional associations rather than large corporate firms.<sup>278</sup> The purpose behind this proposal was that these associations are representative and authoritative.<sup>279</sup> These professional associations are representative in that they advance issues that the European Parliament finds important.<sup>280</sup> Their authority stems from being able to separate themselves from the corporate image of lavish spending to influence legislation.<sup>281</sup> However, of the groups identified by the association as legitimate,

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270. Conor McGrath, *Comparative Lobbying Practices: Washington, London, Brussels*, at Definitional Issues, available at <http://www.psa.ac.uk/journals/pdf/5/2002/mcgrath2.pdf> (last visited Apr. 28, 2007).

271. See *id.*; see also Lehmann, *supra* note 8, at 2 (Lehmann explains that a formal institutional definition has not been created primarily because there is no strict consensus on how the work of lobbying can be best be labeled. Lobbying “describes the direct advocacy of point of view about matter of public policy.” Further, the term “lobbyist” carries with it implicit negative connotations in other cultures. Many organizations tend to characterize lobbying functions as “government relations” or “public affairs,” which tend to be far less recognized than the term “lobbyist.”).

272. See McGrath, *supra* note 270, at Definitional Issues.

273. See generally *id.*

274. See *id.*

275. *Id.*

276. See McLaughlin, *supra* note 215, at 10.

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.*

many were unorganized and failed to represent a number of issues that are decided upon in Parliament.<sup>282</sup> As a consequence, officials began collecting information where available, which opened up the door for large firms and other groups to infiltrate the "political centre," thus influencing legislation.<sup>283</sup>

The second problem facing European Union officials concerns the quality of information.<sup>284</sup> Interest groups often provide conflicting information about a subject, resulting in European Union officials becoming bogged down with increased loads of data.<sup>285</sup> Many officials' major complaints stem from the ill-prepared lobbyist, who gives very low-quality representations.<sup>286</sup> Efforts that are unfocused and prepared poorly can be annoying to many Members of the European Parliament ("MEPs") who rely on this information to help them assess their proposal's impact on the law in the Member States.<sup>287</sup> With inadequate staffing at the parliamentary level, it is difficult to evaluate the quality of the information received.<sup>288</sup> It is only by trial and error that officials learn which interest groups are the key actors in a piece of legislation and which lobbyists have the most reliable information.<sup>289</sup> Both the European Commission and the European Parliament have suggested that a registry identifying interests groups and their declared interests is the ultimate solution to this problem.<sup>290</sup> Despite this, the matter is still far from being resolved.<sup>291</sup>

### 1. Dissension Among the Troops

Although there have been positive reactions to the transparency initiatives undertaken by the European Union, many professional affairs organizations appear to hold differing opinions on regulation.<sup>292</sup> The disposition of regulating lobbying in the European Union seems to be evenly split<sup>293</sup> among the European Union professional affairs organizations, with some favoring legally binding ethics codes on all European Union lobbyists.<sup>294</sup> The legally binding code, of course, incorrectly assumes that there is a compulsory registry of lobbyists upon

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282. See McLaughlin, *supra* note 215, at 10.

283. *Id.*

284. *Id.*

285. *Id.*

286. *Id.*

287. See Lehmann, *supra* note 8, at 3.

288. See McLaughlin, *supra* note 215, at 10.

289. *Id.*

290. *Id.*

291. See *id.*

292. See *EU and US Approaches*, *supra* note 214.

293. See generally Lehmann, *supra* note 8.

294. See Lehmann, *supra* note 8, at v.

whom the government can impose sanctions.<sup>295</sup> Some European professional affairs organizations have taken the position they are prepared to accept compulsory registration and other regulatory measures if the European Union should impose them.<sup>296</sup> However, these organizations will only accept these measures if the registry is imposed on all lobbyists, including law firms, accounting firms, companies, and non-governmental organizations.<sup>297</sup> By contrast, other professional affairs organizations have taken the position that these measures are not needed if the voluntary rules of conduct are frequently and consistently enforced.<sup>298</sup>

Although many professional organizations favor compulsory registration, some groups, particularly the Society of European Affairs Professionals ("SEAP"), oppose disclosing any budget reporting.<sup>299</sup> The SEAP argues that disclosing the allocation of finances to a governing body would be impossible to quantify.<sup>300</sup> Further, the disclosure would be difficult for private consultants who represent many clients and their various interests.<sup>301</sup>

## 2. Problems with Voluntary Registration

It is axiomatic that lobbying is prone to abuse.<sup>302</sup> The Jack Abramoff scandal in January 2006 is evidence of a continuing need to monitor the entire system.<sup>303</sup> Indeed, the Abramoff indictments sparked more debate over self-regulatory measures in the European Union.<sup>304</sup> However, European Union lobbyists recognize the need to have a good reputation and to be free from underhanded and unethical practices.<sup>305</sup> Having a good relationship with the institutions they lobby is paramount to serving their clients' needs and getting their interests heard at the Commission level.<sup>306</sup>

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295. See generally Lehmann, *supra* note 8, at 50; see also McLaughlin, *supra* note 215.

296. *EU Transparency Proposals Delayed until April*, EurActiv.com, Oct. 3, 2006, available at <http://www.euractiv.com/en/pa/eu-transparency-proposals-delayed-april-article-153224> [hereinafter *Delayed Proposals*].

297. *Id.*

298. See Lehmann, *supra* note 8, at v.

299. *EU Lobbyists Okay 'Minimum' Transparency Rules*, EURACTIV.COM, Oct. 3, 2006, available at <http://www.euractiv.com/en/pa/eu-lobbyists-okay-minimum-transparency-rules/article-157675>.

300. *Id.*

301. *Id.*

302. See Lehmann, *supra* note 8, at 31.

303. See generally Schmidt, *supra* note 2.

304. See *Brussels Lobbying Debate*, *supra* note 9.

305. See Lehmann, *supra* note 8, at v.

306. See generally Evans, *supra* note 169.

*E. De Facto Regulatory Measures and Cultural Differences*

In comparing both the European Union and the United States system of regulation, fundamental differences immediately emerge.<sup>307</sup> The European Union's institutional and political framework helps in understanding why a system of self-regulation is currently the way in which lobbyists operate in the European Union.<sup>308</sup> It is this structure that offers the most support for self-regulation. It is also this structure that explains why the European Union will not have a form of lobbying regulation like that of the United States until a number of other institutional issues can be resolved.<sup>309</sup>

There are six major differences between Washington lobbyists and those in the European Union: public funding, the degree of permeability between the executive and lobbying organizations, the system of representation, money, level of transparency, and media influence.<sup>310</sup>

In the United States, there are only a few circumstances in which the government will fund lobbying efforts.<sup>311</sup> Conversely, the European Union has made efforts to even the playing field between corporate lobbying and non-profit organizations by funding non-profit interests.<sup>312</sup> A central element in United States politics is corporate funding, even though funding is heavily regulated and monitored.<sup>313</sup> The opposite is true in the European Union, in which corporate funding is neither regulated nor recognized.<sup>314</sup> The common practice in Europe typically provides public funding to civil and public affairs organizations in the forms of grants and state aids.<sup>315</sup> This practice further suggests that lobbying is seen more as information gathering rather than a profession.<sup>316</sup>

The second major practical difference is the degree of permeability between policy-making and lobbying institutions.<sup>317</sup> It is much less common for former Parliament and Commission officials to transition into the private sector and become part of a lobbying organization than it in the United States.<sup>318</sup> An example of one of the practical differences that affect operation is the people whom lobbyists attempt to influence.<sup>319</sup> Under the current regulatory legislation

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307. See *EU and US Approaches*, *supra* note 214.

308. See generally McGrath, *supra* note 270.

309. See *EU and US Approaches*, *supra* note 214.

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.*

314. *Id.*

315. See *EU and US Approaches*, *supra* note 214.

316. *Id.*

317. *Id.*

318. *Id.*

319. *Id.*

in the United States, former members of Congress are prohibited from registering as a lobbyist, and lobbying their former colleagues, for a period of one year from the time they leave office.<sup>320</sup> If the LTAA is signed into law, this prohibition would be extended to two years.<sup>321</sup> Although there is no measure that would prohibit MEPs or former European commissioners from lobbying their former colleagues immediately after they leave their seats, the practice of doing so is frowned upon by other European Union lobbyists.<sup>322</sup> This practice is only discouraged to the extent that lobbyists may attempt to influence MPs; no similar exceptions are made for MEPs.<sup>323</sup> It is considered inappropriate to lobby Commission members.<sup>324</sup> In the United States, there are many different ways in which lobbyists can gain access to the governmental decision-makers, but these same means of access would be prohibited at the European Union level, largely due the individual lobbyist's accepted norms of practice.<sup>325</sup> Both systems, however, enjoy direct access to their lawmakers.<sup>326</sup>

A final difference is the representative makeup between the two systems.<sup>327</sup> The presence of the two-party system in the United States and the absence of a similar system in the European Union can often create contrasting criteria among their respective constituencies.<sup>328</sup> In the United States system, candidates seeking re-election place a lot of credence into their voters concerns.<sup>329</sup> By contrast, European Union lobbyists tend to strive toward building a broad consensus in order to influence a variety of politicians on a particular outcome.<sup>330</sup>

The European Parliament remains the conduit between lobbyists and the European Commission.<sup>331</sup> The European Parliament is the functional equivalent of the United States House of Representatives, given its legislative makeup and functions.<sup>332</sup> The European Commission on the other hand functions much like the United States Senate.<sup>333</sup>

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320. *See generally* LDA, *supra* note 7.

321. *Id.*

322. *See* Evans, *supra* note 169; *see also* McLaughlin, *supra* note 215, at 10.

323. *See* Evans, *supra* note 169; *see generally* Lehmann, *supra* note 8.

324. *See* Evans, *supra* note 169.

325. *See* McGrath, *supra* note 270.

326. *Id.*

327. *Id.*

328. *Id.*

329. *Id.*

330. *Id.*

331. *See generally* Lehmann, *supra* note 8.

332. *See generally* Fontaine, *supra* note 106.

333. *Id.*

Likewise, the issue of taking money from an outside organization is strongly regulated in the United States,<sup>334</sup> but there are numerous ways in which MEPs are able to accept income from corporations.<sup>335</sup> The LTAA strictly prohibits United States representatives from receiving certain types of funds.<sup>336</sup> It further restricts representatives from receiving gifts and other items that may exert undue influence on the legislator.<sup>337</sup> MEPs do not have similar laws for these types of funds.<sup>338</sup> The practice of taking money from outside organizations in the United States is not only illegal, but also unethical.<sup>339</sup> However, the same practice in the European Union is neither illegal nor unethical.<sup>340</sup> It is only considered unethical if the European Commission members accept money from these organizations.<sup>341</sup>

## VI. THE EUROPEAN LANDSCAPE: A CLIMATE FOR CHANGE?

As the European Union gradually enlarges and makes its way toward integration, it is possible that a regulation system similar to that in the United States will emerge.<sup>342</sup> However, at the European Union's current stage, a comprehensive system is not yet ripe.<sup>343</sup> At the institutional level, the European Union considers lobbying a legitimate practice and a prime mover in working within the democratic system.<sup>344</sup> Concerns of undue influence over European decision making and practices that exceed the scope of permissible interest representation promote the need for regulation.<sup>345</sup> Aside from the practical aspects of implementing such a system, several philosophical and institutional factors also play a role.<sup>346</sup>

The first of these factors is the resolution of integration and transparency problems.<sup>347</sup> Arguably, a highly professionalized regulation system will aid transparency, but implicit to this idea is the fact that this system cannot exist or

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334. See generally LDA, *supra* note 7.

335. See McGrath, *supra* note 270, at Money.

336. See LTAA, *supra* note 5.

337. *Id.*

338. See generally Lehmann, *supra* note 8.

339. See McGrath, *supra* note 270, at Institutional Frameworks.

340. *Id.*

341. *Id.*

342. *Id.*

343. *Id.*

344. *Id.*

345. See McGrath, *supra* note 270, at Regulatory Frameworks.

346. *Id.*

347. See EUROPEAN UNION, *supra* note 103.

survive without willing participants.<sup>348</sup> Most European lobbying firms and professional organizations recognize a need for greater transparency, but many are unwilling to commit to a comprehensive system like that in the United States.<sup>349</sup> The consensus among many organizations is that a voluntary registration system is the more efficient means of promoting ethical behavior and professionalism among the trade.<sup>350</sup> This belief is even held in member states that currently have a very strict regulatory system.<sup>351</sup> The European Union has attempted to repair some of the problems that hinder complete integration.<sup>352</sup> The continuing ratification of the European Constitution serves as an example.<sup>353</sup> It is worth considering the European Union's efforts to impose a style of lobbying disclosure modeled after the United States is one of the reasons that much of the proposed legislation is met with resistance.<sup>354</sup> The European Union, in effect, is endeavoring to fashion a complete regulatory and legislative framework for lobbyists prematurely without considering the empirical consequences.<sup>355</sup> By comparison, the United States system of regulation was first proposed in the early twentieth century.<sup>356</sup>

Although institutional issues affect a formal regulation system, cultural differences between United States lobbyists and European Union lobbyists surface and pose another hindrance.<sup>357</sup> In the European Union, the purpose of regulating the system is to make the public aware of the activities.<sup>358</sup> European Union lobbyists have long been able to have direct access to many high level government officials without the need for disclosure or a registry of interests they represent.<sup>359</sup>

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348. See generally *Green Paper*, *supra* note 199.

349. *Id.*

350. *Id.*

351. *Id.*

352. *Id.*

353. See A Constitution for Europe: Fact Sheets, [http://europa.eu/scadplus/constitution/index\\_en.htm](http://europa.eu/scadplus/constitution/index_en.htm) (last visited Apr. 28, 2007) (First released in October 2004, the European Constitution has only been ratified by fifteen of the twenty-five member states. Two member states, France and the Netherlands, rejected the Constitution in non-binding referendums.).

354. See generally *Green Paper*, *supra* note 199.

355. *Id.*

356. *Id.*

357. *Id.*

358. *Id.*

359. *Id.*



Further, scandal often signals problems within a system.<sup>360</sup> Most of the professional lobbying organizations and corporations subscribe to a code of ethics.<sup>361</sup> Membership to these organizations is not allowed unless the code is followed.<sup>362</sup> One of the major cultural differences between United States and European Union lobbyists is the presence of a social stigma, as well as the implementation of civil sanctions for disclosure violations.<sup>363</sup> In the United States, violations of lobbying disclosure and regulation requirements can warrant civil penalties.<sup>364</sup> The opposite is true in the European Union, where censure is usually the preferred penalty.<sup>365</sup> Many of the scandals and criminal penalties doled out in the United States often relate to funding.<sup>366</sup> Scandals are a less common issue in the European Union primarily because the funding systems are different.<sup>367</sup>

#### *A. Proposals for Change*

The European Union's current climate for lobbying regulatory reform is stagnant.<sup>368</sup> Although the European Union has not formally unveiled its grand designs to impose a regulatory system on lobbyists, the most convincing evidence points toward a voluntary system of registration, despite the proposals for mandatory registration.<sup>369</sup> Many lobbying groups and organizations have already anticipated the matter and have already disclosed the information the Commission seeks with the registration system. Arguably, this move implicitly signals the organizations' continued reluctance toward a model of full disclosure like that in the United States.<sup>370</sup> Some organizations espouse the view that

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360. See generally Birnbaum, *supra* note 3 (The European Union has suffered from very few scandals involving interest representation and lobbying practices. However, in this author's opinion that it is arguably the absence of regulatory laws that allow this scandal free environment. If there are no laws to violate, then one cannot be sanctioned.); see also *Green Paper*, *supra* note 199.

361. See generally *Green Paper*, *supra* note 199.

362. *Id.*

363. *Id.*

364. *Id.*; see LDA, *supra* note 7; see also H.R. 4975, 109th Cong. § 106(b) (2006) (In the House Bill, the Senate struck down the section regarding criminal penalties for disclosure violations, opting for an augmented civil penalty.).

365. See generally *Green Paper*, *supra* note 199.

366. See Fleming, *supra* note 257, at 9.

367. *Id.*

368. See generally *Green Paper*, *supra* note 199.

369. *Id.*

370. It is this author's opinion that many organizations are preempting a drastic move on the Commission's part of requiring full disclosure by offering information that is not complete, but yet will signal to the Commission that they are making good faith efforts at transparency. Thus, a mandatory system is not needed.

strong incentives are needed to motivate more lobbyists to register voluntarily.<sup>371</sup> Obviously, such incentives would only be given to those who register.<sup>372</sup> Even though many organizations agree with a voluntary system of regulation, or a mandatory system on some level, the consensus among the organizations is to flatly reject the disclosure of any financial activities and disbursements.<sup>373</sup> It is worth considering the organizations' reluctance to release this information, given that many of the United States lobbying scandals, as mentioned above, dealt with money.<sup>374</sup>

### 1. Progression through Integration

Despite the European Union's current lobbying climate, the system is progressing toward a paradigm shift.<sup>375</sup> It is maturing into a more central activity, which will only be aided as the European Union moves toward integration of its social, economic, and foreign security policies.<sup>376</sup> While the European Union is in its integration process, many United States lobbying firms are opening up offices in the European Union.<sup>377</sup> These firms are composed of many American lawyers or otherwise trained individuals.<sup>378</sup> The mixing of these lawyers into the European Union lobbying system will produce a different breed of lobbyist.<sup>379</sup> American lawyers will bring with them the expertise and professional strategies<sup>380</sup> that will inevitably professionalize the industry to a higher degree.<sup>381</sup> Arguably, this evolution will weaken arguments for any formal regulations requiring disclosure.<sup>382</sup>

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371. German Association of Political Consultants, *Response to the Green Paper "European Transparency Initiative"*, available at [http://ec.europa.eu/comm/eti/docs/contributions/110\\_C4\\_Ch1\\_DeGePol.pdf](http://ec.europa.eu/comm/eti/docs/contributions/110_C4_Ch1_DeGePol.pdf) (last visited Apr. 28, 2007).

372. *Id.*

373. *See EU and US Approaches*, *supra* note 214; *see also Self-Regulate*, *supra* note 216; *See Fleming*, *supra* note 257.

374. *Id.*

375. *Id.*

376. Fleming, *supra* note 257, at 9.

377. *Id.*

378. *Id.* at 9-10.

379. *Id.*

380. It is in this author's opinion that these strategies produced under the United States' system of regulation will invoke a trend of similar strategies that will advance the profession and create a more transparent environment in its own regard.

381. *See Fleming*, *supra* note 257, at 9-10.

382. *See generally id.*

## VII. CONCLUSION

The European Union lobbying landscape is set to see some internal and external changes in the immediate future.<sup>383</sup> However, they will not be aimed at promoting the regulatory system like that of the United States.<sup>384</sup> These changes will most likely be seen at the European Union institutional level, and within the lobbying organizations themselves.<sup>385</sup>

Cultural differences will continue to remain a contributing factor in hindering the adoption of a United States style of regulation within the European Union, but as a number of United States lobbying firms and law firms establish branches in the European Union, those differences will most likely be displaced.<sup>386</sup> As the European institutions gain credibility and authority, it is likely that both lobbying cultures will merge.<sup>387</sup>

The issue of funding disclosure may prove to be a more sensitive issue and one that is likely to cause the most resistance to any changes at the institutional level.<sup>388</sup> Even now, most professional European Union lobbying organizations are reluctant to disclose their funding sources.<sup>389</sup> The absence of PACs, a distinctly American lobbying feature, places a significant burden on European Union lobbying forces to comply with any funding disclosure, not because of any covert strategies, but because of problems associated with disclosing such a vast quantity of information.<sup>390</sup> Arguably, a strict regulatory model like that in the United States could help solve some of these problems by requiring organizations to disclose funding information and file reports at set intervals.<sup>391</sup>

The European Union's institutions will first see improvements in the form of information quality and a reduction in the volume of information they receive from professional organizations.<sup>392</sup> This will come as result of the introduction of a more skilled body of trained professionals into the European Union lobbying system.<sup>393</sup> These professionals will bring with them the same lobbying techniques used in the United States.<sup>394</sup> The techniques provided by the firms

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383. See Lehmann, *supra* note 8; see also Fleming, *supra* note 257.

384. *Id.*

385. *Id.*

386. See *EU and US Approaches*, *supra* note 214; see also McGrath, *supra* note 270, at Regulatory Frameworks; see also Lehmann, *supra* note 8.

387. Fleming, *supra* note 257, at 9.

388. See RICHARDSON, *supra* note 122.

389. *Id.*

390. *Id.*; see generally CLAWSON, *supra* note 61.

391. RICHARDSON, *supra* note 122.; see also LDA, *supra* note 7.

392. See Lehmann, *supra* 8; see also Fleming, *supra* note 257.

393. See Lehmann, *supra* 8; see also Fleming, *supra* note 257.

394. See Lehmann, *supra* 8; see also Fleming, *supra* note 257.

will properly advance policy legislation at its highest level, thus assuaging the need for a formal regulation system.<sup>395</sup>

At the same time, lobbying firms and organizations will manifest a movement toward a higher degree of professionalism.<sup>396</sup> The employment of former lawmakers and legal staff will aid in establishing the legitimacy of the profession.<sup>397</sup> Despite these internal changes, it is equally unlikely that the European Union will continue to advance a regulatory framework similar to that of the United States.<sup>398</sup> The transparency initiatives do not dispel the implementation of a mandatory system of registration and regulation, but the overwhelming response by a number of the professional organizations concludes that it is unlikely to come about in the near future.<sup>399</sup>

However, the European Union is continuing with its goal of full transparency at the supranational level, which will include all forms of agenda setting.<sup>400</sup> As the trend toward voluntary registration continues, and as more organizations become integrated and more efficient, the need for a United States model of lobbying regulation may well fade away.<sup>401</sup> Until then, European Union lobbyists will continue their self regulation, while the United States lobbyists continue to debate additional disclosure.<sup>402</sup>

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395. See Lehmann, *supra* 8; see also Fleming, *supra* note 257.

396. See Lehmann, *supra* note 8.

397. *Id.*

398. See *EU and US Approaches*, *supra* note 214; see also McGrath, *supra* note 270, at Regulatory Frameworks; see also Lehmann, *supra* note 8.

399. See *EU and US Approaches*, *supra* note 214; see also McGrath, *supra* note 270, at Regulatory Frameworks; see also Lehmann, *supra* note 8.

400. See EUROPEAN UNION, *supra* note 103.

401. See *EU and US Approaches*, *supra* note 214; see also McGrath, *supra* note 270, at Regulatory Frameworks; see also Lehmann, *supra* note 8.

402. See *EU and US Approaches*, *supra* note 214; see also McGrath, *supra* note 270, at Regulatory Frameworks; see also Lehmann, *supra* note 8.

