

## Meeting Transparency Register – Stakeholders

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**A. What is the overall balance sheet of the Transparency Register? Both in terms of meeting its own objectives (wide coverage, proportionate, informative, etc) and in terms of how it compares to other similar regulatory systems in the world.**

**- The remaining obstacles to the registration of lawyers.**

(1) ~~CCBE represents a profession that doesn't consider itself to lobby, but which does undertake activities falling under the scope of the TR.~~

(2) Two specific aspects of the legal profession must be taken into account:

- own regulation and code of conduct with discipline and sanctions, much wider than TR;

- lawyers represent clients with disputes under EU law (such as antitrust cases) before the ECJ and with EU institutions as adversaries.

(3) While lawyers have no problem with the transparency objective in itself, they are bound by stringent deontological rules and professional secrecy obligations which, and in some countries this includes the prohibition to reveal the client's name and financial information client confidentiality (identification of client and fee paid). As a result they cannot disclose the information which is required for the Transparency Register. Some bars have found a compromise (BE/ UK etc) Although some bars (such as the Belgian bars) have found ways to address this issue, this problem remains a general issue of concern, which explains the overall reluctance of lawyers to register, especially of those who would as a result of that be in conflict with their national code of conduct. Within that context the CCBE supports the voluntary basis of the TR.

**B. What would be your agenda for change? Why and how?**

(1) ~~CCBE would support a voluntary system.~~ As a matter of principle (legal theory) lawyers have an issue with para 17 of the IIA regarding disciplinary sanctions. The EU institutions are both judge and party to the complaint procedure, which may at least create an appearance of lack of impartiality and ~~there~~ no possibility is given for an appeal to an independent body. The need to avoid the appearance of partiality and the right to an appeal are two recognised fundamental aspects of the rules of due process which apply to disciplinary proceedings as well. Those concerns are of course relevant for all those who would be registered, even though lawyers may be specifically more sensitive to them. Lawyers would therefore

~~welcome call for~~ a mechanism which addresses those concerns and which would be practical, efficient and within the framework of the EU institutions. For instance, i.e. a judge of the Court that could be appointed as an the party making the decision could be a judge of the Court of First Instance instead of the joint secretariat ~~ad hoc arbitrator~~.

The fact that in any administrative procedure, of course legal recourse is ~~might be available~~ possible before the courts does not adequately address those concerns. First, the recourse that might be available against actions of such kind by the Commission would involve litigation of a kind that is disproportionate to the issue at stake. Secondly, it would only be available in cases where the joint secretariat were actually proven to have been biased, which in practice would never occur, and it would not be possible to address a complaint based on the appearance of partiality. Similarly, the suggestion made that (Ombudsman etc) but remains "theoretical". It has been suggested that the Bar or professional body representing the organisation (e.g. the Bar authorities) would could be given the possibility to "intervene"; ~~but this does not sufficient address the concern that the body making the decision could be perceived as being both the judge and one of the parties. to remove the "appearance" of partiality of the EU institutions. Finally, the possibility to lodge a complaint before the ombudsman cannot be a substitute for the right to appeal before an independent disciplinary authority.~~

(2) The CCBE would ~~welcome wish~~ clarification of para 8 of the IIA: namely regarding the scope and ~~activities~~ which fall within ~~concerned by~~ the scope of the TR. The terminology used, i.e. "indirectly" influencing, needs to be clarified, as well as the fact that especially as concerns the preparing of information material, ~~or~~ discussion papers or position papers in preparation for lobbying activities that do not materialise for dossiers and do not result in contacts with European officials, should never give rise to registration with no follow up.

(3) Should the register become *de facto* or *de jure* mandatory, CCBE is concerned that the understanding reached on what is to be declared might later be unilaterally changed.

**C. How does your own organisation intend to contribute itself to help us achieve our common goals? Promotion within your members, a requirement for your own members, etc.**

CCBE is willing to enter into discussions with the institutions in the framework of the review, in order to find a workable compromise, so that lawyers can sign up to the TR.