

## 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:

- it has its 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.

(32) While lawyers have no problem with the transparency objective in itself, they are bound by stringent deontological rules and professional secrecy, and obligations which in some countries ~~this includes client confidentiality (identification of client and fee paid). As a result they cannot disclose~~ include the prohibition to reveal the client's name and financial information which is relating to them, as required for under the Transparency Register. ~~Some~~ TR. Although some bars (such as the Belgian bars) have found ~~a compromise (BE/ UK etc)~~ ways to address this issue, this problem remains a general issue of concern for lawyers, which explains their overall reluctance 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, through the Joint Secretariat, are both judge and party to the complaint procedure, ~~and there which may at least create an appearance of lack of impartiality, and~~ 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 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 more sensitive to them than others, in particular those who represent clients against the Commission. Lawyers would

~~welcometherefore consider that~~ a mechanism should be found which addresses those concerns and which would be practical, efficient and within the framework of the EU institutions, ~~i.e. a~~. For instance the party making the decision could be a judge of the Court that ~~could be appointed as an ad hoc arbitrator. Inof First Instance instead of the Joint Secretariat.~~

The fact that legal recourse is available before the courts against an administration that exceeds or abuses its powers and that they might be available in the case of a decision by the Joint Secretariat does not adequately address those concerns. First, the recourse that might be available against such decisions under those rules would involve litigation of a kind that is disproportionate to the issue at stake. Second, it would only be available in cases where the joint secretariat were actually biased in rendering a decision. This is not the concern. The concern is that it taking such a decision, the Joint Secretariat might under the circumstances create the appearance of partiality, which is not a ground for annulment of an administrative procedure, of course recourse is possible (Ombudsman etc) but remains "theoretical". It has been suggested that the Bar or decision under those rules. Similarly, the suggestion made that the professional body representing the organisation could be (e.g. the Bar authorities) would be given the possibility to "intervene", but this is not sufficient to remove the "appearance" of partiality of the EU institutions" does not address the concern that the body making the decision could be perceived as being both the judge and one of the parties. 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 welcomewish clarification of para 8 of the IIA<sup>2</sup>, namely regarding the scope and -activities concerned by which fall within the scope of the TR. The terminology used, i.e. meaning of the expression "indirectly" influencing" needs to be clarified, especially as concerns and it should be made clear that the preparing of information material or, discussion papers for dossiers or position papers in preparation for lobbying activities that do not materialise and therefore do not result in actual contacts with no follow up European officials, should never give rise to registration.

(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.