

Meeting of VP SEFCOVIC with CCBE and various bar associations with regard to the Transparency Register and the sub-section law firms

18 November 2013

The VP raised 4 concerns:

Transparency and in particular the review of the Transparency Register is an important issue in the spotlight of public interest.

Public pressure for increased transparency is growing and with European elections in 2014 will be a focus for citizens.

Discussions for the review are not easy, with some favouring a long-term mandatory approach and the Commission a more pragmatic one, although it should also be made clear that mandatory doesn't mean better; the current approach brings probably more transparency than a mandatory approach.

The current system is good with over 6,000 registrants, but largely one group is missing: law firms.

It is clear that lawyers are in a different situation with the lawyer/ client privilege and professional secrecy as vital concepts for the profession. But some bar associations (Paris bar/ Flemish bar UK law society etc) have moved on this issue and accept that lawyers can offer more to clients than legal advice. Law firms often make it clear on their websites that they are providing other services. US law firms register in Washington as lobbyists, yet when working in Brussels they do not - why? This situation is untenable; we should move on and the bar associations should help.

CCBE:

While CCBE is a European body the bars themselves answer to national jurisdictions. DE bar could not attend the meeting today (UK, ES, BE present). The current situation is unclear, COM speaks of a voluntary system but using disincentives/ incentives blurs the definition.

Lawyers are a profession with their own ethics/ rules

In EU, two categories of bar rules in this regard: absolute ban on disclosing client identity even in case of client consent vs. nuanced approach (with client consent)

It is near impossible to change bar rules EU-wide, whereas in US all 50 states have the same rules

In fact, only a very small part of law firms in Europe do lobbying at EU level.

Issues which need clarification: no lobbying without a lobbying contact with an institution; sanctions by the administration are a problem for an independent profession; maybe less problematic if an independent body is involved; definition of indirect lobbying; attending meetings can be passive or active.

If there could be a formal exchange of letters with the EU institutions in order to clarify some of these issues, it could be easier to move forward on this dossier.

Spanish bar has particular problems, with a formal constitutional ban on waiving client secrecy even if the client would agree.

FR bar : Paris bar with 25,000 members: the deontology rules have been changed in order that clients can be identified when law firms are lobbying (and will be changed on national level also), on the condition that there is clear client consent. The problem

is that clients do not consent. Culture and attitudes would have to change. The EU elections and TR review are good opportunities to communicate and raise awareness.

UK law society - UK Law Society practice note published in 2009, needs to be updated to take account of changes to TR; they wanted to wait for the results of the review. A problem is that in the same international law firm, lawyers of different nationalities might be subject to different ethical rules. The US system is mandatory with a clear definition.

BE/ Lux: after 4 to 5 years discussion rules have changed and are in line with Flemish position, they now agree that, with client consent, the name of a client can be made public with regard to TR. They would recognise that many of the international law firms based in Brussels are actively lobbying. They stress that to change attitudes communication and awareness rising is required. CCBE could have a role and take action together with EP/EC in this regard.

VP Sefcovic response & conclusions: To be seen if the issues outlined could be clarified in an exchange of letters. Institutions and bar associations should work together to find a mutually beneficial solution. A joint declaration (CCBE/ EP/EC) could also be considered. A confidentiality clause wider than the Quebec model should be examined for those law firms with real difficulties. Change of culture might require a gradual approach, maybe involving a third "independent" body. The "passive" role issue should be clarified. Lawyers have indeed stricter rules than that of the TR. COM and CCBE should come back to these issues.

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