



Représentant les avocats d'Europe
Representing Europe's lawyers

CCBE position on the European Transparency Initiative

Conseil des barreaux européens – Council of Bars and Law Societies of Europe

association internationale sans but lucratif

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CCBE position on the European Transparency Initiative

The CCBE has been consulted on its view on the ongoing debate regarding the treatment of lawyers within the current European Transparency Initiative, and in particular how lawyers should be treated pre-law and post-law. The CCBE has reservations with regard to the appropriateness of the distinction between pre-law and post-law actions by lawyers because judicial review before the European Court of First Instance of a Community act may well lead to an on-going debate with the European Commission as to whether new acts can be taken which mitigate the alleged negative effects of the original act.

However, the CCBE would like to underline that even if it were to accept a definition of pre-law interest representation which includes lawyers, certain activities should be exempted, namely those which are the ordinary duties of a lawyer in carrying out individual casework on behalf of a client, or those which are carried out in the public interest and not on behalf of a particular client. The CCBE believes that the exemption likely to be proposed by the Commission (“**exclude activities performed by independent members of the professions providing legal advice, such as lawyers, insofar as such activities relate to the exercise of the fundamental right to a fair trial of a client, including the right of the defence in administrative proceedings**”) is far too narrow, and does not cover all the relevant professional activities of lawyers which should be exempted.

Accordingly, the CCBE would propose the following definition of lobbying:

“All activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions, with the following exceptions:

- (a) all activities carried out by a lawyer in connection with any representation of a client in judicial, quasi-judicial, administrative, disciplinary and other proceedings;*
- (b) all activities concerning legal advice in the context of the political and decision making processes of the European institutions;*
- (c) all responses following a request by the European institutions.*

The CCBE believes that these exemptions should apply to all lawyers, including in-house counsel who are members of a Bar or Law Society and therefore subject to professional obligations of confidentiality under national rules.

Where lawyers’ bodies, whether national bars or the CCBE, are making the interest representation, it is accepted that such bodies are lobbyists within the definitions proposed by the Commission, and so will have to register