

**FEDERATION DES BARREAUX D'EUROPE
EUROPEAN BARS FEDERATION
VERBAND EUROPÄISCHER RECHTSANWALTSKAMMERN
FEDERACION DE LOS COLEGIOS DE ABOGADOS DE EUROPA
FEDERAZIONE DEGLI ORDINI FORENSI D'EUROPA**



Secrétariat des Commissions

REPORT ON FBE COMMISSIONS

Presidency Meeting - Lisboa, October, 24th , 2019

PERMANENT COMMISSIONS

COMMISSION ACCESS TO JUSTICE - LUCCA

President : Enrico Lattanzi - Vice President : Suzanne Stern - Secretary : Elena Picchetti

President Lattanzi has sent the following email to SeCo :

Dear Philippe,

as you already know at Barcelona meeting our Commission decided to start a collaborative work with Equality Commission so future activity will be jointly set up accordingly.

On the other hand Lucca Board of Lawyers has matured the desire to continue hosting the Commission for the next two years working under the direction of its newly appointed President Michele Lucherini on the issue of collective redress.

As requested in your letter dated September 20th, our President will send You a letter to confirm our commitment and the proposed work programme for the Commission.

See You in Lisbon!

Enrico Lattanzi

HUMAN RIGHTS COMMISSION - POZNAN

President : Artur Wierzbicki - Vice President : Marc Wesser - Secretary : Renata Karbowska-Kuźma

President Wierzbicki has sent the following report to SeCO :



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Dear Ms President, Dear Presidency, Dear Secretary,

In accordance to the mail - I send the composition of FBE Human Rights Commission (HRC) activities planned for 2020:

- 1. preparation to the report on refugee action - encouraging our members to develop their own initiatives, assist member bar associations with training ideas for refugee action / all*
- 2. work on the Third International Human Rights Competition for young lawyers and law students (Bilbao, Autumn 2020) / all*
- 3. develop a training programme for community legal education programme at schools and community centers on human rights for the use of our member bar associations / all*
- 4. carry the studies on the HRC new project "International Trial Observation - Turkey" / all*
- 5. start the cooperation between FBE and National Bar of Turkey (FBE delegation 2019 in Ankara Mr M. Lucherini, Mr Ch. Kaufhold, Mr P Loew, Mr A. Wierzbicki)/ Mr Charles Kaufhold & Mr Artur Wierzbicki by FBE Team*
- 6. Day of the Endangered Lawyer 2020 PAKISTAN /all*
- 7. proposal of the FBE Resolution on independence of Judiciary and Lawyers in Europe / all*
- 8. The Colombian Caravana 2020*
- 9. consider the European lawyers access to their profession /a all*
- 10. support all international activities on human rights /all*
- 11. FBE CONGRESSES (incl. Barcelona and Paris in Mat 2020 / all*
- 12. working regular meetings of HRC (Barcelona, Paris, Sophia, Strasburg, Poznań) / all*

and not only ☺

Yours sincerely,

ARTUR WIERZBICKI

President of Human Rights Commission , FBE

President Wierzbicki has also sent reports on Lawyers in Philippines and in Hong-Kong which have been or will be put on the website.

ETHICS COMMISSION – BILBAO

President : Michael Auer - Vice President : Rod Mole - Secretary : Maria Begoña Angulo

Following agenda has been sent by Maria Begoña Angulo to SeCo regarding the meeting in Lisbon :

1.- NEW MEMBERS

*How to increase membership.
Attendance to the congresses*

How to increase membership?

This is a point that should be worked on.

FBE contact in each country: FBE is the Organization of bars and not of national bars like CCBE is. But the idea is should be pushed on. It is important to have one or two Bars members in each country, so that they are notifying us both legislative developments that may arise in each country in terms of Ethics, to try to establish, as far as possible, common guidelines.

Is the way that FBE Ethics Commission is actually communicating the right way? Are there things that have to be improved or changed?

Lobbying, writing, acting proactive ... is interesting.

Attendance to the Congresses

Difficult to say what subjects could be interesting. Having two meetings a year, all subjects have a chance to come through. Possibly a completely different type of congress? To have the opportunity to treat the contents of the various committees in "Workshops"

Permanent contact between the members of the Commission.

2.- DISCUSSION ON THE FUTURE WORK OF THE COMMISSION.

Convenience of cooperating with CCBE for protection of professional independence & confidentiality;

Convenience of protecting the right of citizens to confidentiality. Necessary change of words (confidentiality instead of secrecy).

Contribution of self-regulation to achieving a balance between the quality of services and respect for ethical principles. The balance between ethical values and quality in lawyer's work.

3.- ANY OTHER BUSINESS (AOB)

The Secretary of the commissions Maria Begoña Angulo has also sent an email to the whole members in order to know if they wish to remain members of the commission.

LEGAL EDUCATION COMMISSION - MADRID

President : Raúl Ochoa Marco - Vice President : To be determined - Secretary : Constance Lubet

No report has been sent to SeCo.

AD HOC COMMISSIONS

ARBITRATION COMMISSION - NAPOLI

President : Alessandro Senatore - Vice President : No information - Secretary : No information

No report has been sent to SeCo.

COMMISSION PROFESSIONAL INSURANCE - ANTWERP

President : Leo Bouteligier - Vice President : Luc De Somer - Secretary : Stefanie Verstraete

Following report has been sent to SeCo :

The commission examined the report of the CCBE who has organized an inquiry on the item of the legal expenses insurance.

The 24 questions all relate to the 2 following subjects:

- 1. The freedom of choice of the lawyer*
- 2. For the insurance companies, ways and targets of intervention*

1. The freedom of choice of the lawyer.

This principle has been upheld by the article 4 of the directive 87/334.

According to the inquiry responses, one can safely consider that the freedom of choice of the lawyer is scrupulously and strictly respected by 5 countries, i.e.: Finland, Estonia, Iceland, Luxemburg and Sweden.

The other countries raise all sorts of obstacles to the free choice, by more or less inventive ways. Not a single of the other countries goes against the principle they are all supposed to respect, at least not openly.

What are the obstacles?

- At the time of signing the contract:

The legal expenses insurance companies in certain countries submit at the time of acceptance, different price conditions according to the question whether the policy guarantees that the insured has a complete freedom of choice of his lawyer, or either a freedom of choice limited to the lawyers (single or list of lawyers) which are proposed to the insured. It goes without saying that before all litigation, the insured will choose the cheapest contract.

- During the execution of the contract:

The company puts forward its lawyer when the compulsory first meeting or optional meeting before trial takes place. According to the policy, the insured is not invited to express a free choice of lawyer at this stage.

However it is evident that in the big majorities of cases, the insured is encouraged to choose the lawyer who has been charged for first consultation, meaning the lawyer chosen by the company.

When the lawyer accepts the case, the acceptance is not altogether identical since:

- either the lawyer chosen by the company accepts of the case; this will also imply that the company takes charge of the case;
- or in case the lawyer is chosen by the insured, this means that he takes care of the case but limited to a certain level (sooner or later quickly attained);

It goes without saying that this type of clause evidently puts an end to the freedom of choice, which becomes theoretical.

2. Mode and intervention of the legal expenses insurance companies.

a) In the majority of cases the companies insist on trying to solve the claim on a amical basis. They tend to solve the claim on a amical basis. Generally speaking they want to undertake all necessary steps without consulting a lawyer.

To this system there are 2 exceptions: Finland and Sweden systematically revert to a lawyer.

b) Generally speaking the legal expenses insurance companies stipulate that in most cases, they have an active role of counseling parties, even prior to the lawsuit. The role of the lawyer is limited to the litigation activities.

c) Most policies exclude family law and penal law.

d) The majority of countries imposes a maximum on fees and disbursements of the lawyer, although with the exception of Finland, Iceland and Sweden.

e) One will also notice that the countries where legal protection is most successful in terms of policies subscribed, are also the countries where the margin of intervention by the company is most limited, and where the free choice of lawyer is best respected. (Finland: 80-90% of the households have a legal expenses insurance; Sweden: about 95% of the households have a legal expenses insurance)

f) In most countries the subsidiary system exists, meaning that legal aid intervenes only when the insurer does not have legal expenses insurance.

g) The average premium varies enormously from one country to another.

3.

The commission has also taken note and discussed 2 important judgements of the Court:

- SNELLER / DAS dd. 7/11/2013 C-442/12

The Court rules:

1. Article 4(1)(a) of Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance must be precluding a legal expenses insurer which stipulates in its insurance contracts that legal assistance will in principle be provided by a lawyer or legal representative chosen freely by the insured person will be covered only if the insurer takes the view that then handling of the case must be subcontracted to an external lawyer.

2. The answer to question 1 will not differ depending on whether or not legal assistance is compulsory under national law in the inquiry or proceedings concerned.

- MASSAR / DAS dd. 7/04/2016 C-460/14

The Court rules:

Article 4(1)(a) of Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance must be interpreted as meaning that the term "inquiry" referred to in that provision includes a

procedure at the end of which a public body authorizes an employer to dismiss an employee who is covered by legal expenses insurance.

4.

The Commission is following the evolution towards the European Commission through her contacts with the CCBE.

EASTERN BARS COMMISSION - CLUJ

President : Stanca Gidro - Vice President : Christoph Munz - Secretary : Diana Andrasoni

Following report has been sent to SeCo by Calin Iuga :

RAPPORT D'ACTIVITÉ

À compter de la date du dernier congrès, la Commission des Barreaux de l'Est a été et est impliqué dans les activités suivantes:

1. Participe à l'organisation de l'événement marquant le centenaire de Barreau de Cluj et participera à ces événements du 29 mai au 1er juin 2019 par l'intermédiaire de son président et de ses secrétaires. Les événements ne pouvaient pas être planifiés plus tard en raison du programme de six juges de la CEDH qui ont accepté l'invitation du 29 mai au 1er juin 2019. Des avocats et des doyens des barreaux roumains et européens ont été invités à l'événement.

2. Participe au projet de jumelage avec le Barreau de Varsovie, l'acte de jumelage devant être signé le 29 mai 2019.

3. Il travaille à créer une plateforme en ligne visant à aider les ressortissants étrangers dans un État membre à identifier les avocats de cet État qui parlent leur langue maternelle ou une langue commune et qui sont disposés à offrir leurs services.

Par exemple, à l'heure actuelle, un citoyen roumain aura des difficultés à identifier un avocat polonais en Pologne sans connaître le polonais ou une langue commune.

*Président du comité
av. Dr. Stanca GIDRO*

*Secrétaire suppléant
av. Călin Viorel IUGA*

ACTIVITY REPORT

Since the last congress, the Eastern Bars Commission has been and is involved in the following activities:

1. It is involved in organizing the event that marks the centenary of the Cluj Bar and will take part in May 29th - June 1, 2019 at this event through its president and its secretaries. The event could not be planned in another period of time due to the program of six judges from ECHR who accepted the invitation only in the period 29 May - 1 June 2019. Lawyers and deans from Romania and from the European bars were invited to the event.

2. It is involved in the twinning project with the Warsaw Bar Association, the twinning agreement being scheduled for signature on 29 May 2019.

3. It is working to create an online platform to help foreign citizens in a Member State identifying lawyers from that state who speak in their mother tongue or in a common language and who are willing to offer their services. For example, nowadays, a Romanian citizen will find it difficult to identify a Polish lawyer in Poland without knowing Polish or a common language.

Chairman of the committee
av. Dr. Stanca GIDRO

Alternate Secretary
av. Călin Viorel IUGA

MEDIATION COMMISSION - BARCELONA

President : Eugenia Gay - Vice President : No information - Secretary : No information

No report has been sent to SeCo

COMMISSION ORGANISATION AND OPERATION OF THE BAR ASSOCIATIONS AND LAW SOCIETIES - FFM

President : Andrea Griem - Vice President : Rudolf Lauda - Secretary : Heike Steinbach-Rohn

Following report has been sent to SeCo :

*This commission was founded in the nineties of the last century.
It was the time of fundamental historical changes.
The countries of eastern europe suddenly have become the possibilty to get in contact with other countries behind the Iron Curtain.
At this time in many countries the independence of the bar associations was not natural.
Purpose and aim of the commission was therefore to find a common solution which guarantees the independence and self-regulation of the bar associations.*

The comparison of the country reports has shown that, as a consequence of the political changes of the last twenty years, all countries have now implemented these principles, so that the work of the commission has come to a dead end.

The result of the commission in form of the country reports will now be summarized ,so that it might be possible to publish it at the homepage.

In the future the commission will be engaged with the proposed European Convention Recommendation Nr. (2000)21und (2018)2121.

*The proposed European Convention aims to clarify and impose international standards regulating the profession of lawyers in order to enable them to play their role as important actors in protecting rights oft he civilians and upholding the Rule of Law.
It also confirms the institutional independence and self-regulation of the bar associations or other professional lawyers associations (Principle V of the Recommendation).*

Andrea Griem

COMMISSION FUTURE OF THE PROFESSION – LUXEMBOURG

President : Bertrand Christmann - Vice President : - Secretary :

Following email has been sent by Bertrand Christmann, new appointed President of the Commission, to the members :

Dear Colleagues,

Following my recent discussion with Bas Martens, I am hereby writing to you in connection with the next meeting of our commission in Lisbon.

The topic I would like to discuss in Lisbon and also in May in Paris, is the protection of our professional secrecy which is in danger in some countries but also on an EU level.

I think that it could be very helpful to have a better and larger understanding of the national laws and / or practices which allow a public authority to infringe the lawyer's professional secrecy.

I know that this is short notice before our next congress. Therefore, I propose focusing this time on the protection of the written communication between lawyers and their clients, by responding to four precise questions as a first step.

Topic for our Lisbon meeting :

The question I would like to cover is currently also debated in the CCBE commission. Germany gives us a good example of legal innovation where the question is currently a big issue. Indeed, Germany is confronted with a draft new law including a very far reaching provision on the right to confiscate documents concerning the lawyer-client relation.

According to the bill there would be no protection for the written correspondence between a lawyer and its client any more. Everything which is produced in written will be exposed to confiscation by the public prosecutor, except the written communication of a criminal defense lawyer.

Clients who seek advice in the field of civil or administrative law will have to take into account that the written advice by the lawyer or notes on what the client had reported to the lawyer may be seized if a criminal investigation, which touches the issue which had been subject to the lawyer's activities, comes up.

This without the lawyer being suspected of participation in the alleged crime. The official motivation is the fight of white collar crimes. This could, in the long term, influence the legislation in other European Countries.

I would be grateful if you could share how the law and or practice are in your country. It would therefore be good if you could provide me with short answers to the following questions concerning the situation in your country:

- 1. Is the written correspondence between lawyers and their clients protected against confiscation when the lawyer is not acting as a criminal defense lawyer and not suspected of having participated in the crime?*
- 2. How does your country deal with documents which were handed over to a lawyer (who is not the criminal defense lawyer) and which shall serve as evidence for the investigation?*
- 3. Do you have the requirement that a member of the Bar has to be present during a control or an investigation in a law firm?*
- 4. If documents are confiscated in a law firm, who decides about their admissibility for the investigation? Is there a court which decides or is this just at the discretion of the public prosecutor?*

Topic for our Paris meeting :

I would also like to introduce the next topic regarding the protection of our professional secrecy which I propose to discuss in Paris.

1. Firstly I would be grateful if you could report on national laws and / or practices which allow a public authority to infringe lawyer's professional secrecy.

2. More precisely, I would like to discuss the implementation of the EU directive 2018/822, commonly referred to as DAC6. DAC6 broadly reflects the elements of action 12 of the OECD BEPS project on the mandatory disclosure of potentially aggressive tax planning.

Information received and exchanged under DAC6 among tax authorities of EU member states would allow them to react more rapidly to potentially aggressive tax arrangements and to address potential loopholes through conducting appropriate risk assessments and tax audits, or involving legislative reforms aimed at closing such loopholes.

The reporting obligation would fall on intermediaries. An intermediary would be defined as any person who designs, markets, organizes, makes available for implementation or manages the implementation of a reportable cross-border arrangement.

An intermediary would also mean any person that, having regard to the relevant facts and circumstances and based on available information and the relevant expertise and understanding required to provide such services, knows or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to the activities mentioned above.

Businesses and tax lawyers are directly concerned by that disclosure obligation which means, of course, a large infringement of our professional secrecy.

According to the directive, lawyers may be granted a waiver from reporting information, where doing so would breach their legal professional privilege. However, where such waiver would apply, they would still be required to report information of a general nature to the tax authorities. They would also have an information duty towards another intermediary involved in the transaction or, in the absence of such, towards the relevant taxpayer.

Basically, in Paris, it would be interesting to focus on the question of the implementation of DAC6 in your country, more specifically on the contemplated choice which will be made by the legislators to protect or not the lawyers professional secrecy.

I would also be happy if you could, in the meantime, share your comments and suggestions for additional questions. On my side, I will then revert to you with a more detailed agenda.

Many thanks for your efforts and see you in Lisbon.

Bertrand.

COMMISSION NEW TECHNOLOGIES - WROCLAW

President : Iza Konopacka - Vice President : Franceso Tregnaghi - Secretary : Anna Materla

President Konopacka sent the following news to SeCo :

Dear Philippe,

(...)

The Commission will continue its work with regard to development of NT and its impact on performance of our legal profession.

Best regards

Iza

Following agenda has also been sent to SeCo in view of the meeting in Lisbon :

NT COMMISSION MEETING AGENDA ON 24 OCTOBER 2019 in LISBON

1. *Legal Aspects of AI (including liability issues)– discussion.*
2. *Smart Contracts -a threat or opportunity for lawyers?*
3. *“Smart law” -judgment of the Regional Court of Cologne dated 8 October 2019 which issued a landmark judgement regarding the assessment of legal tech services offered to end users (i.e. not to the legal profession).*
4. *LegalTech tools used in legal practice having significant impact on practicing law.*
5. *Developments in Scotland re. the new “accreditation for legal technologists”.*

<https://www.lawsocieties.eu/latest-news/law-society-of-scotland-launches-new-accreditation-for-legal-technologists/6000362.article>

EQUALITY COMMISSION - PARIS

President : Valence Borgia - Vice President : Roberta Altavilla - Secretary : To be determined

As President, Valence Borgia is setting up the new Equality Commission. An email has been sent to the member Bars on this purpose.

COMMISSION LAW WITHOUT BORDERS - FFM

President : Rudolf Lauda - Vice President : Sergiusz Foltynowicz - Secretary : Tanja Wolf

No report has been sent to SeCo.