

To the president of the Senate,
Mrs. A. Broekers-Knol
Eerste Kamer der Staten-Generaal
Postbus 20017
2500 EA DEN HAAG

Brussels, 14 October 2013

Re: Dutch Legal Profession Position and Supervision Act nr. 382

Dear Mrs. Broekers-Knol,

The Council of Bar and Law Societies of Europe, by this letter, would like to express its deep concerns about the government proposal aimed at reforming the supervision of lawyers in the Netherlands.

The Council of Bars and Law Societies of Europe ([CCBE](#)) represents the bars and law societies of 32 member countries and 11 further associate and observer countries, and through them more than 1 million European lawyers.

Ever since its establishment in 1960, the CCBE has been in the forefront of advancing the views of European lawyers, protecting the rights of citizens and defending the legal principles upon which democracy and the rule of law are based.

It is one of the core objectives of the CCBE to monitor actively the defence of the rule of law, the protection of fundamental and human rights and freedoms, and the protection of democratic values inextricably associated with such rights (CCBE [statutes](#), III, Objectives) – it is in this context that I write to you.

A. Proposals of the government of the Netherlands to reform the supervision of lawyers

The CCBE has recently learnt that the Dutch Parliament is considering a government proposal aimed at reforming the supervision of lawyers in the Netherlands.

The proposed legislation provides, amongst others, that:

- A Supervisory Council shall be set up, consisting of three members, including one lawyer;
- Its members will be appointed by the Minister of Security and Justice;
- The Minister may select members of the Supervisory Council for suspension / dismissal;
- The Minister can squash decisions of the Supervisory Council;
- The Minister is to adopt the budget and annual accounts of the Supervisory Council;
- The Supervisory Council and its employees / other persons appointed by the Supervisory Council have access to all data held by lawyers, including individual client files;
- The costs of the Supervisory Council shall be borne by the Netherlands Bar.

The proposed reform also foresees that the Supervisory Council:

- is entitled to give Bar Presidents general or specific directions;
- is entitled to select Bar Presidents for suspension or dismissal; and that
- it is not bound by the principle of professional secrecy/confidentiality (this also applies to persons appointed by the Supervisory Council who are to assist the Council with their work).

Furthermore, the proposal provides that the Supervisory Council is responsible for the supervision of lawyers, including supervision on compliance with the Dutch Anti-Money Laundering and Counter-Terrorism Financing Act.

B. CCBE concerns

The CCBE would like to express its serious concerns with regard to the proposals of the government of the Netherlands.

a) Independence and self-administration of the profession

The powers conferred on the Minister of Security and Justice over the legal profession are unprecedented in Europe and - in the CCBE's view - clearly go against the very concept of a legal profession based on independence and self-administration – these principles are enshrined in European and international legal instruments.

The CCBE does not see how the Netherlands government proposals can guarantee compliance with the Council of Europe [Recommendation](#) Rec(2000)21 on the freedom of exercise of the profession of lawyer of 25 October 2000 (which provides, *inter alia*, that Bar associations should be self-governing bodies, *independent of the authorities and the public* - Principle V) or the UN [Basic Principles](#) on the Role of Lawyers of 1990 (which states in point 24 that “*the executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference*”), since the Minister of Security and Justice will play a leading

role in the appointment, suspension and dismissal of the members of the Supervisory Council, and will have the right to squash decisions of the Supervisory Council.

The CCBE [Charter](#) of Core Principles of the European Legal Profession also lists the principles of self-administration and independence amongst the core principles of the European legal profession – it is the CCBE’s conviction that only a strong element of self-administration can guarantee lawyers’ professional independence vis-à-vis the state, and without a guarantee of independence it is impossible for lawyers to fulfil their professional and legal role.

b) Confidentiality

The lawyer’s duty to maintain confidentiality with respect to all information professionally received in confidence is a core duty of the profession which is recognised as crucial to the proper provision of legal services. If the right of the citizen to safeguard confidentiality, i.e. the right of the citizen to be protected against any divulging of his/her communication with his/her lawyer, would be denied or at least cannot be guaranteed, people may be denied access to legal advice and to justice.

The proposal of the Netherlands government – which provides for members of the Supervisory Council and other persons appointed by the Supervisory Council to access all data in the possession of lawyers, including clients’ files, thus ignoring the principle of confidentiality - is in the CCBE’s view in breach of European and international standards.

The importance of this principle is recognised at international and European level. We refer in this context, for instance, to the [decision](#) of the Court of Justice of the European Union in the case *Wouters* C-309/99, which stated very clearly that confidentiality “*constitutes an essential guarantee of the freedom of the individual and of the proper working of justice, so that in most Member States it is a matter of public policy*”. The Council of Europe Recommendation and United Nations Basic Principles also include confidentiality in their texts as essential principles of the legal profession.

Finally, it is important to note that the core values referred to above should not be seen as rights of the lawyer but rather as obligations of the lawyer to implement the rights of his / her clients.

The CCBE already expressed concerns about the proposals of the Netherlands government back in 2011 (see annex). The CCBE had no reaction to its letter at the time.

In light of the above comments, the CCBE urges you to re-consider this legislative proposal.

I am happy to discuss these comments further with you, if you wish.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'E. Tsouroulis', with a stylized initial 'E'.

Evangelos Tsouroulis
CCBE President

Cc to: Mr. W.F. Hendriksen, President of the Netherlands Bar

Annex

CCBE [letter](#) to the Minister of Security and Justice, Mr I.W. Opstelten, of 18 October 2011

Mr. I.W. Opstelten
Minister of Security and Justice
P.O. Box 20301
2500 EH The Hague
The Netherlands

Brussels, 18 October 2011

Dear Minister,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE).

The CCBE is the representative organisation of around 1 million European lawyers through its member bars and law societies from 31 full member countries, and 11 further associate and observer countries.

The Netherlands Bar Association, which is a member of the CCBE, has brought to the CCBE's attention recent plans for a legislative proposal aimed at establishing a Supervisory Board, composed of three non-lawyers, which would have special guidance powers over local Bar Presidents. Under the proposal, the Netherlands Bar is entitled only to recommend candidates for membership of the Board, whereas it will be the Government's decision actually to make the appointments.

The CCBE is very much concerned about these developments which in our view would go against European and international standards concerning the legal profession, including the following:

- [UN Basic Principles on the Role of Lawyers \(1990\)](#)
- [Recommendation No. R \(2000\) 21 of the Committee of Ministers to the member states on the freedom of exercise of the profession of lawyer](#)
- [European Parliament resolution on the legal professions and the general interest in the functioning of legal systems](#) (16 March 2006)

The core values at stake – independence and professional secrecy – have also been recognised by the Court of Justice of the European Union and the European Court of Human Rights.

All EU Member States recognise these core values as major objectives and principles of regulation for the legal profession. They should be seen primarily not as rights of the lawyer but as obligations on lawyers to implement the rights of clients.

(-) Self-regulation and independence

The CCBE believes that the legislative proposal - which provides for non-lawyers having supervisory powers over local Bars and for Governmental control over the appointment of these non-lawyers - will put at risk the independence of the profession. The European and international legal instruments clearly state that Bars should be entitled to form self-regulatory associations which are independent from any external influence, the authorities

and the public¹. An independent legal profession is the cornerstone of a free and democratic society, although of course the legal profession accepts and indeed provides for a high degree of accountability to the public.

Self-regulation is characteristic for the legal profession in Europe. No country has total and unrestricted self-regulation of the legal profession, and the regulatory structure of the legal profession in Europe varies from country to country. However, there is in all European countries which are members of the CCBE a significant extent of self-regulation.

Self-regulation, conceptually, must be seen as a corollary to the independence of the profession. It addresses the collective independence of the members of the legal profession. The principle of self-regulation is nothing less than a structural defence of the independence of the individual lawyer which requires a lawyer to be free from all influence, especially such as may arise from his/her personal interests or external pressure (such as through an external Supervisory Board which is composed only of non-lawyers and, moreover, non-lawyers appointed by the Government).

Copenhagen Economics – when examining the Danish legal services market – also looked at the issue of self-regulation (see [Report](#) on “The Legal Profession, Competition and liberalisation”, January 2006) and concluded that there are a number of clear advantages in favour of self-regulation of the legal profession. According to Copenhagen Economics, lawyers, given their special knowledge of the profession/business, are in the best position to lay down the requirements for a lawyer’s work. Lawyers will also feel greater responsibility for regulation if they are involved in the process of regulation. Besides, it is easier to change rules that are adopted via self-regulation than modifying rules via legislation. This results in lower administrative costs for professional associations/authorities, greater acceptance of the rules (since they come from within the profession), better compliance and lower compliance costs for the firms. Lawyers are also in the best position both to observe and evaluate professional misconduct and assist the profession in sanctioning it. Lawyers will have an interest in maintaining the good reputation of the profession, and therefore will strive to ensure that lawyers live up to the requirements of the code of conduct.

Establishing a Supervisory Board composed of non-lawyers will therefore go against European and international standards.

(-) Professional secrecy

The CCBE also understands that this proposal would allow for professional secrecy - which is one of the core values of the legal profession, and the very essence of the relationship

¹ [UN Basic Principles on the Role of Lawyers \(1990\)](#)

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

[European Parliament resolution on the legal professions and the general interest in the functioning of legal systems](#) (16 March 2006)

E. whereas the importance of ethical conduct, of maintaining confidentiality with clients and of a high level of specialised knowledge necessitates the organisation of self-regulation systems such as those run today by legal professional bodies and orders,

[Recommendation No. R \(2000\) 21 of the Committee of Ministers to the member states on the freedom of exercise of the profession of lawyer](#)

Principle V. Associations

2. Bar associations or other professional lawyers’ Associations should be self-governing bodies, independent of the authorities and the public.

3. The role of Bar associations or other professional lawyers’ associations in protecting their members and in defending their independence against any improper restrictions or infringements should be respected.

between a lawyer and a client - to be set aside to a certain extent in the interest of supervision. The new Board could also delegate its supervisory powers to 'others' than the local Bar Presidents. It seems that these 'others' could query files of a lawyer regardless of professional secrecy.

In the CCBE's view, this again will be contrary to European and international standards; the legal instruments cited above guarantee professional secrecy as one of the fundamental rights and duties of a lawyer² in order to guarantee citizens' rights.

If the right of the citizen to have professional secrecy/confidentiality safeguarded, i.e. the right of the citizen to be protected against any divulging of his/her communication with his/her lawyer, would be denied, people may be denied access to legal advice and to justice.

Accordingly, the CCBE urges you to re-consider this legislative proposal in the light of the comments we have made. If you have any questions, please let me know.

I am of course happy to discuss these comments further with you, if you wish.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Dal', with a long horizontal line extending to the right from the end of the signature.

Georges-Albert Dal
CCBE President

² [UN Basic Principles on the Role of Lawyers \(1990\)](#)

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

[Recommendation No. R \(2000\) 21 of the Committee of Ministers to the member states on the freedom of exercise of the profession of lawyer](#)

2. Professional secrecy should be respected by lawyers in accordance with internal laws, regulations and professional standards. Any violation of this secrecy, without the consent of the client, should be subject to appropriate sanctions.

[European Parliament resolution on the legal professions and the general interest in the functioning of legal systems](#) (16 March 2006)

E. whereas the importance of ethical conduct, of maintaining confidentiality with clients and of a high level of specialised knowledge necessitates the organisation of self-regulation systems such as those run today by legal professional bodies and orders,