Belgique (OBFG et OVB) – résumé des commentaires, 23/06/08 :

Les pages relatives à la Belgique contiennent quelques informations inexactes. Ainsi, il y est question

- de divers règlements qui n'existent plus, ayant entre-temps été abrogés (notamment l'ancien règlement de l'ordre national comportant une recommandation de barèmes d'honoraires et un ancien règlement d'un barreau local en matière de publicité);
- d'une prétendue interdiction de tout pacte d'honoraires, alors que la loi belge n'interdit les pactes d'honoraires que lorsqu'ils sont exclusivement liés au résultat;
- de prétendues disparités entre les règlements en matière de stage alors que les règlements des deux ordres communautaires ont fait disparaître ces disparités.

Par ailleurs, la contribution relative à la Belgique manque également de précisions

- quant au port du titre d'avocat,
- quant au statut et à la compétence des deux ordres communautaires,
- dans ses développements relatifs à la procédure disciplinaire, à la réglementation du stage, à la formation permanente ainsi qu'en matière de multidisciplinarité.

Corrigendum OBFG - OVB 0310/04/2008

~~Rédigé en juin 2007~~

BELGIUM

1. Avocats

1.1.L'exercice de la profession d'avocat et le port du titre d'avocat

L'article 428 du Code Judiciaire (CJ) protège le titre d'avocat. Ainsi, nul ne peut porter le titre d'avocat et exercer la profession d'avocat, s'il n'est belge ou ressortissant d'un Etat membre de l'Union européenne[1], porteur du diplôme de docteur ou licencié en droit[2], s'il n'a prêté le serment requis et s'il n'est inscrit au tableau de l'Ordre ou sur la liste des stagiaires.

Le port illicite et public du titre d'avocat est sanctionné pénalement par l'article 227ter du Code Pénal.

A côté du tableau de l'ordre et de la liste des stagiaires existent une liste des avocats communautaires et une liste non visée par le Code Judiciaire des membres de barreaux étrangers associés à des avocats belges.

~~1.2.~~*1.2. L'organisation de la profession d'avocat*

Mise en forme : Puces et numéros

La Belgique compte 27 arrondissements judiciaires. Outre le barreau de cassation, ~~C~~chaque arrondissement a un barreau. Chaque barreau a un conseil de l'Ordre. Le chef de l'Ordre est appelé le bâtonnier. Bruxelles compte toutefois deux ordres : l'ordre français et l'ordre néerlandais.

Les 14 barreaux francophones composent~~ressortissent de~~ l'O.B.F.G. (~~l'~~Ordre des Barreaux Francophones et Germanophone)[3] et les 14 barreaux néerlandophones sont regroupés au sein de l'O.V.B. (~~l'~~Orde van Vlaamse Balies)[4]. ~~Autrefois, il existait un Ordre national~~ Les ordres communautaires remplacent l'ancien Ordre National[5].

~~L~~Ces ~~O~~ordres communautaires ont pour mission de veiller à l'honneur, aux droits et aux intérêts professionnels communs de leurs membres. Ils sont compétents notamment en ce qui concerne l'aide juridique, le stage, la formation professionnelle des avocats-stagiaires et la formation de tous les avocats appartenant aux barreaux qui en font partie (art. 495 du C.J.). Ils prennent les initiatives et les mesures utiles en matière de formation, de règles disciplinaires et de loyauté professionnelle, ainsi que pour la défense

---

[1] L'arrêté royal du 24 août 1970 détermine les conditions auxquelles doivent satisfaire les avocats qui ne remplissent pas la condition de nationalité.

[2] Actuellement, il n'existe pas de limitation du nombre d'inscriptions à l'université dans les facultés de droit.

[3] L'O.B.F.G. compte 6~~690~~820 avocats (fin 2007).

[4] L'OVB regroupe 8~~500~~670 avocats (fin 2007).

Mis en forme : Français (France)

[5] ~~L'Ordre national a été scindé en 2 ordres distincts et autonomes (O.V.B. et O.B.F.G.) en 2001.~~ L'Ordre des barreaux francophones et germanophone (OBFG) et 'lOrdre van Vlaamse balies sont des personnes morales de droit public, créées par la loi du 4 juillet 2001, entrée en vigueur le 25 juillet 2001 (date de publication au moniteur belge).

Mis en forme : Français (France)

des intérêts de l'avocat et du justiciable ~~le stage, et la formation professionnelle des avocats et des avocats stagiaires~~.

Les assemblées générales des ces deux ~~O~~ordres arrêtent ~~Les ordres~~, à cette fin, les règlements appropriés. Les règlements ainsi adoptés s'imposent aux barreaux qui font partie de l'Ordre concerné et s'appliquent à tous les avocats de ces barreaux. ~~Les Conseils de l'Ordre~~ Les bâtonniers, les présidents des Conseils de Discipline, les ~~les C~~Conseils de Discipline et les ~~s~~ Conseils de disciplin~~aires~~e d'appel *ont une compétence exclusive en matière disciplinaire.

~~1.3.~~1.3. Monopole

Mise en forme : Puces et numéros

Les avocats bénéficient d'un quasi monopole ~~* L'article 440 alinéa 1 du Code judiciaire comprend les exceptions suivantes :~~

- ~~devant le juge de paix, le tribunal de commerce, les juridictions de travail, les parties peuvent aussi être représentées par leur conjoint ou par un parent ou allié porteur d'une procuration écrite et agréée, spécialement par le juge (article 728 alinéa 2 du Code judiciaire),~~
- ~~devant la Cour d'assises, un proche, ami ou parent, peut plaider avec la permission du président (article 295 du Code d'instruction criminelle),~~
- ~~devant les tribunaux du travail, les délégués syndicaux peuvent représenter le travailleur (article 728 alinéa 3 du Code judiciaire),~~
- ~~en matière fiscale, l'article 379 du Code des impôts prévoit que dans les contestations relatives à l'application d'une loi d'impôt, la comparution en personne de l'Etat peut être assurée pour tout fonctionnaire d'une administration fiscale,~~
- ~~en matière de disciplinaire des magistrats, la personne concernée peut se faire représenter par la personne de son choix devant l'autorité (article 421 du Code judiciaire)…~~

Mise en forme : Puces et numéros

de la plaidoirie et de la représentation. Les exceptions sont prévues par les articles 440 et 728 du C.J. **

Par ailleurs, en matière civile, seuls les avocats à la Cour de cassation peuvent postuler et conclure devant cette Cour (article 478 C.J.)[6].

~~1.4.~~1.4. Incompatibilités

Mise en forme : Puces et numéros

---

* un par ordre communautaire

** L'article 440 alinéa 1 du Code judiciaire comprend les exceptions suivantes :

- devant le juge de paix, le tribunal de commerce, les juridictions de travail, les parties peuvent aussi être représentées par leur conjoint ou par un parent ou allié porteur d'une procuration écrite et agréée, spécialement par le juge (article 728 alinéa 2 du Code judiciaire),
- devant la Cour d'assises, un proche, ami ou parent, peut plaider avec la permission du président (article 295 du Code d'instruction criminelle),
- devant les tribunaux du travail, les délégués syndicaux peuvent représenter le travailleur (article 728 alinéa 3 du Code judiciaire),
- en matière fiscale, l'article 379 du Code des impôts prévoit que dans les contestations relatives à l'application d'une loi d'impôt, la comparution en personne de l'Etat peut être assurée pour tout fonctionnaire d'une administration fiscale,

en matière de disciplinaire des magistrats, la personne concernée peut se faire représenter par la personne de son choix devant l'autorité (article 421 du Code judiciaire)…[6] Les avocats à la Cour de Cassation sont nommés par arrêté royal (après avis de la Cour de cassation). Il y a actuellement 20 avocats à la Cour de cassation.

Certaines professions sont incompatibles avec l'exercice de la profession d'avocat. L'article 437 du Code Judiciaire organise l'incompatibilité avec laes professions de magistrat, de notaire, et d'huissiers de justice et avec. L l'exercice d'une industrie ou d'un négoce ainsi qu'avec des emplois et activités rémunérés, publics ou privés à moins qu'ils ne mettent en péril ni l'indépendance de l'avocat ni la dignité du barreau. Cet article permet en outre, au Conseil de l'Ordre de prononcer l'incompatibilité d'une activité ou d'un emploi public ou privé, lorsque cette activité met en péril l'indépendance, ou la dignité du barreau.

Le règlement du 21 février 2005 de l'O.B.F.G. stipule que la profession d'avocat est incompatible avec les professions de juriste, de conseillers fiscal ou juridique, salarié ou indépendant, ainsi qu'avec toute activité professionnelle susceptible d'être exercée par l'avocat en cette qualité.

(En outre, certains barreaux subordonnent l'exercice d'une activité complémentaire à l'autorisation du bâtonnier (qui peut l'assujettir au respect de conditions[7]) ou du conseil de l'ordre[8]. D'autres barreaux réservent la faculté d'exercer une activité complémentaire à certaines catégories (les jeunes avocats) ou limitent cet exercice dans le temps[9].)

Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré
Mise en forme : Puces et numéros
Mis en forme : Barré

1.5.1.5. Le stage

Pour être inscrit au tableau de l'Ordre, il est nécessaire d'avoir accompli 3 années de stage au moins pendant lesquelles le stagiaire devra satisfaire aux obligations de stage[10]. Les obligations de stage sont déterminées par le Conseil de l'Ordre sans préjudice des pouvoirs attribués à l'OBFG et à l'OVB (art. 435 C.J.).

(Dès lors, il existe certaines disparités entre les barreaux. Ainsi, l'ordre néerlandais du barreau de Bruxelles impose aux avocats stagiaires un minimum de 15 dossiers (suffisamment diversifiés) pour être admis au tableau. Note de Philippe De Jaegere : Je ne retrouve pas cette règle dans les règlements de Bruxelles. L'Ordre des avocats de Namur réserve la charge de maître de stage aux avocats inscrits depuis 12 ans au moins, tandis que ceux de Tournai et Neufchâteau imposent un minimum de 10 années. Certains barreaux limitent le nombre de stagiaire par patron[11]. D'autres encore, imposent aux stagiaires de consacrer un minimum d'heures au traitement des affaires du maître de stage[12].)

Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré

Le règlement du stage de l'OBFG relatif au stage datant du 10/10/200514/01/208 prévoit que les maîtres de stage doivent être inscrits au tableau de l'ordre depuisau moins de 5 ans au moins. Le même règlement prévoit que le stagiaire consacre au minimumtout au moins 75 heures par mois au moins à l'instruction des dossiers et à la défense des causes qui lui sont confiées par son maître de stage.

---

[7] Neufchâteau.

Mis en forme : Barré

[8] Dinant.

[9] Huy.

Mis en forme : Barré

[10] L'article 456 C.J. permet à l'Ordre des avocats d'omettre de la liste des stagiaires un avocat qui n'aurait pas satisfait à toutes les obligations (imposées par son barreau) cinq ans après son admission sur la liste.

[11] Mons, Dinant.

Mis en forme : Barré

[12] Mons

Les règlements de l'O.B.F.G. et de l'O.V.B. subordonnent, en outre, l'inscription du stagiaire au tableau de l'Ordre à l'obtention du « C.A.P.A. (’un certificat d'aptitude à exercer la profession d'avocat) » (C.A.P.A. !), c'est-à-dire à la réussite d'un examen organisé par le C.F.P. (un centre de formation professionnelle) (C.F.P. !)[13].

Tant les règlements de l'O.V.B. que Le règlement dede l'O.B.F.G. prévoient des clausesclauses de rémunération minimale dans les conventions de stage[14].

L’OVB est en train d’élaborer un règlement général. A l’heure actuelle l’OVB a recommandé aux différents barreaux d’imposer des minima de rémunération.

1.6.1.6. *Application du droit de la concurrence*

L'application du droit de la concurrence à la profession d'avocat ne fait aucun doute. Le Conseil de la concurrence a déjà eu J'occasion de se prononcer sur cette question.

Affaire Tambue :

Me Raphaël Tambue était stagiaire. Il a demandé au Conseil de la concurrence de constater que les règlements de l'Ordre national des avocats relatif au C.A.P.A. et les règlements des divers barreaux de Belgique qui limitent le nombre de stagiaires par patron de stage constituent des pratiques restrictives de concurrence au sens de la loi du 5 août 1991 sur la protection de la concurrence économique. Cette demande au fond était assortie d'une demande de mesures provisoires.

Plainte avait aussi été déposée auprès de la Commission européenne. Cette plainte fut rejetée pour défaut d'intérêt communautaire suffisant.

Dans sa décision du 8 janvier 2002, statuant sur la demande de mesures provisoires, le Conseil de la concurrence a dit que l'avocat est une entreprise et que les règlements litigieux sont des décisions d'association d'entreprises au sens de la loi sur la protection de la concurrence économique. Le Conseil de la concurrence a toutefois déclaré la demande non fondée. Me Tambue a fait appel de cette décision. La cour a estimé qu'eu égard au nombre d'échecs par rapport au nombre de personnes inscrites (4/609), le règlement litigieux relatif au C.A.P.A. n'a pas pour objet de restreindre de manière sensible la concurrence. Par contre, en ce qui concerne le second règlement attaqué (relatif au nombre de stagiaires par patron de stage), la Cour a estimé qu'il allait au delà de ce qui est nécessaire à la qualification et à la déontologie des avocats[15]. Toutefois, faute de restriction sensible, la Cour a estimé que la mesure ne tombait pas sous le coup de l'interdiction visée dans la loi sur la protection de la concurrence économique.

1.7.1.7. *Formation permanente*

Les avocats (et, seulement pour les avocats de l’OBFG, les avocats stagiaires, (après la deuxième année de stage cfr. règlement OBFG du 27/05/2002) doivent justifier d'une formation permanente (cfr. aussi articles 495 et 496 du Code Judiciaire). Le non respect de cette obligation peut être sanctionné par les autorités compétentes par les autorités

[13] Règlement de l'OBFG du 28 juin 2004 et Les règlements de l'Ordre national des avocats du 28 novembre 1991,14 octobre 1993 et 13 janvier 1994 (ces règlements restent applicables à l'OVB dans la mesures où ils n'ont pas encore été remplacés.

[14] Voir infra Article 15 du règlement OBFG du 14/01/2008

[15] Arrêt du 4 mai 2004, point 32JLMB 2004, page 923.

Mise en forme : Barré

Mise en forme : Puces et numéros

Mise en forme : Puces et numéros

Mis en forme : Barré

Mise en forme : Barré

Mise en forme : Barré

Mise en forme : Français (France)

~~de discipline par les Conseils de l'Ordre, statuant comme en matière disciplinaire pour l'OBFG et par les Conseils de Discipline pour l'OVB.~~

La formation permanente est évaluée et contrôlée ~~organisée~~ selon un système de points~~.~~ au prorata du temps consacré à la formation. [16] ~~(Le règlement OBFG datant du 27/05/2002 prévoit un minimum de 20 points = 20 heures de formation par an.)~~ ~~Le règlement fixe le nombre de points par année civile ainsi que le nombre de points que vaut chaque type de formation.[17]~~ Les avocats établissent librement le programme de formation qui leur permet de justifier l'obtention du nombre de points requis. Pour être reconnue, la formation doit, au préalable, être agréée par ~~l~~ les ~~'O~~ordres communautaires, ~~des barreaux,~~ les Conseils de l'Ordre ou le centre de formation professionnelle en ce qui concerne~~pour~~ les avocats de l'OBFG. L'OVB a prévu une commission d'agréation distincte. ~~et par une commission au sein de l'OVB pour les avocats de l'OVB.~~

~~1.8.~~1.8. La rémunération

Le code judiciaire impose aux avocats de faire preuve de modération lors de la taxation de leurs honoraires~~ et interdit en outre, les pactes d'honoraires~~.

Il interdit les pactes d'honoraires liés exclusivement au résultat.

Un règlement de l'O.B.F.G. du 26/11/2004 impose aux avocats d'informer dès le début de la relation leurs clients sur la méthode de calcul de leurs honoraires et frais[18]. ~~Nonobstant ce règlement, une enquête réalisée récemment par l'organisme de défense des consommateurs « Test achats» a révélé que les honoraires des avocats étaient aussi « variés qu'opaques »[19]~~

Soucié de répondre à la légitime attente de transparence du justiciable [1]9, l'OBFG a en outre adopté un règlement datant du 13/02/2006 sur le contentieux des honoraires, encourageant le recours à des modes alternatifs de résolution de conflits en cette matière.

~~*(La ministre de la justice avait l'intention de déposer un projet d'arrêté royal portant tarification indicative des honoraires des avocats[20].)*~~ ~~Dans l'accord du gouvernement du 18/03/2008, il est indiqué que le gouvernement se concertera avec les barreaux au sujet d'une plus grande transparence et d'une information préalable concernant les barèmes.~~

~~Tant l'O.B.F.G. que l'O.V.B. ont adopté un barème en ce qui concerne la rémunération des stagiaires. La plupart des barreaux locaux ont adopté des dispositions similaires.~~

---

[16] 20 points pour l'OBFG et 16 points pour l'OVB.
~~p~~Pour l'OBFG ce règlement vaut aussi pour les avocats stagiaires après leur deuxième année de stage. Pour l'OVB l'obligation ne s'applique qu'après stage.

~~[17] 20 points pour l'OBFG et 16 points pour l'OVB pour l'OBFG ce règlement vaut aussi pour les avocats stagiaires après leur deuxième année de stage.~~

~~[18] Règlement de l'O.B.F.G. du 27 novembre 2004.~~

[19] Budget & Droits, septembre/octobre 2006, n°188.

~~[20] Il s'agissait en fait d'un amendement à la proposition de loi relative à la répétibilité des honoraires et frais des avocats.~~

Mis en forme : Barré
Mise en forme : Puces et numéros
Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré
Mis en forme : Barré

~~Par ailleurs, le Service de la concurrence a constaté que l'O.V.B. et/ou les barreaux locaux établissent des tarifs obligatoires (par exemple, le tarif relatif aux remplacements simples, ou à la nomination d'un séquestre, ou d'un administrateur provisoire).~~

Pour mémoire : du temps de l'Ordre National existaient des recommandations de barèmes, lesquels ont été abrogées notamment en raison de leur incompatibilité avec le droit de la concurrence~~Les Ordres ont notamment à cause des dispositions du droit de la concurrence au niveau européen aboli même les anciennes recommandations en matière de calcul d'honoraires. Aucune barémisation n'est prévue.~~

~~En ce qui concerne la rémunération des stagiaires on a prévu des rémunérations minimales à prévoir dans les conventions de stage (voir par ex. règlement OBFG du 10/10/2005).~~

~~1.9.~~1.9. *Publicité*

Mise en forme : Puces et numéros

~~La loi du 2 août 2002 relative à la publicité trompeuse, à la publicité comparative, aux clauses abusives et aux contrats à distance en ce qui concerne les professions libérales permet aux ordres des avocats d'interdire ou de restreindre la publicité comparative dans la mesure nécessaire pour préserver la dignité et la déontologie de l'avocat.~~

~~Ni l~~L'O.B.F.G.~~, ni~~ et l'O.V.B. autorisent le ~~n'interdisent~~ principe de la publicité. L'article 2 du règlement du 25 juillet 2001 de l'O.B.F.G. sur la publicité interdit le démarchage, c'est-à-dire la sollicitation de clientèle~~, , en ce compris, la mise à disposition sur un site de services juridiques définis.~~ L'article 3 interdit les mentions comparatives. Par contre ~~l~~le règlement de l'OVB n'interdit ni la publicité comparative, ni le démarchage en général.

Mis en forme : Barré

La loi du 2 août 2002 relative à la publicité trompeuse, à la publicité comparative, aux clauses abusives et aux contrats à distance en ce qui concerne les professions libérales permet aux ordres des avocats d'interdire ou de restreindre la publicité comparative dans la mesure nécessaire pour préserver la dignité et la déontologie de l'avocat.

(Certains barreaux interdisent toute publicité[21]. L'ordre néerlandais du barreau de Bruxelles interdi~~sait~~t toute publicité comparative, règle aboli par décision du 25.07.2007 du conseil de l'Ordre. Ces règlements sont caducs dans la mesure où ils contreviennent aux règlements de l'O.B.F.G., de l'O.V.B. et sont contraires à la loi du 2 août précitée.)

~~1.10.~~1.10. *La multidisciplinarité*

Mise en forme : Puces et numéros

En septembre 2003, la Cour de cassation a annulé 2 articles du règlement de l'O.V.B. relatif à la collaboration entre les avocats, qui interdisaient toute collaboration entre avocat et non-avocat. La Cour de cassation a considéré que ces articles introduisaient une limitation trop importante de la possibilité de collaborer et portaient dès lors atteinte à l'article 81.1 du Traité.

L'O.B.F.G. adopte une démarche différente. ~~Le principe est l'interdiction de collaboration sauf à collaborer avec des professions au préalable agréées.~~ Dans son règlement du 26/06/2003 l'OBFG ~~maintient l'interdiction d'une collaboration dans une structure intégrée directe et organique avec d'autres professions, mais~~ autorise ~~sinon~~ la

[21] ~~Marche-en-fFamenne, Huy.~~

Mis en forme : Barré

Mis en forme : Barré

collaboration avec d'autres professions dans l'intérêt du client, sans que les honoraires puissent être partagés. L'avocat peut en outrepourtant constituer une société de moyens avec les membres de certaines professions agréées. Le même règlement du 26 juin 2003 définit comme suit les professions agréées: « *toute profession agréée par l'Ordre des barreaux francophones et germanophone, légalement organisée et soumise à une déontologie professionnelle compatible avec celle des avocats, respectant, notamment l'indépendance et le secret professionnel* ».

Sur cette base, plusieurs professions ont été agréées par l'O.B.F.G. (en mai 2004) : les médecins inscrits à un tableau de l'ordre et les experts comptables et fiscaux appartenant à l'IEC[22] (à l'exclusion de ceux se trouvant dans un lien de subordination) ainsi qu'à l'I.P.C.F.[23]. Le 15 mai 2006, un autre groupe de profession s'est vu accordé l'agrément : les notaires, les huissiers de justice, les réviseurs d'entreprise, les architectes, les médecins vétérinaires et les pharmaciens.

[22] Institut des experts comptables.

[23] Institut professionnel des comptables et fiscalistes agréés.

Report on „COMPETITIVE RESTRICTIONS IN LEGAL PROFESSSIONS“

DAF/COMP(2007)39
28 January 2008
http://www.oecd.org/dataoecd/12/38/40080343.pdf

Str. 159 – 162:

CZECH REPUBLIC

1. Introduction

This paper addresses the regulation of three legal professions . advocates, notaries and court executors. We will focus in particular on the barriers to and conditions of entry into these professions, exclusive and other activities, the issue of remuneration and professional self-regulation. All three professions are subject to extensive regulation by the state. The numbers of offices of notaries and executors are determined by the state acting through the justice minister (in accordance with the *numeru clausus p*rinciple). The number of advocates is not restricted. The justice minister is further authorized to appoint notaries and executors to office subject to the satisfaction of statutory conditions. As regards remuneration, remuneration other than contractual is stipulated by a decree of the Ministry of Justice. Instead of remuneration so stipulated, advocates may agree on remuneration by contract, while executors may, in addition to remuneration other than contractual, agree with the obligee on contractual remuneration which does not constitute a cost of execution, and as such is not paid by the obligor. Notary.s remuneration must always be in accordance with the decree. Professional self-regulation of all three professions is carried out by professional chambers/associations with mandatory membership. Their powers include supervisions of their members. activities, and the issuance of professional regulations which regulate, rather sporadically, economic competition and advertising in the areas in question.

2. Advocates

2.1 Regulation of entry

The status of an advocate stems from his/her activity as a person versed in the law, and consists of the provision of legal assistance as an independent profession in the provision of advice and instructions, defense of other persons. interests before courts or outside courts (*advocacy sensu largo*), or as a profession involving legal assistance to other persons and requiring special qualifications and formal authorization (*advocacy stricto sensu*).

The terms and conditions on which advocates who are Czech citizens, or other natural persons from EU member states and other counties, may provide legal services, are stipulated by Act No. 85/1996 Coll., on Advocacy, as amended, effective as of July 1, 1996. The said act provided a uniform regulation of provision of legal services previously provided pursuant to separate laws by advocates and commercial lawyers.

An advocate is a person entered in the list maintained by the Czech Bar Association seated in Prague (the .Bar Association.). No maximum number of advocates (numerus clausus) is set with regard to the pursuit of advocacy. Registration is subject in particular to the following conditions: full legal capacity, university degree in law, three-years of practice as a trainee, no criminal record, no employment or other similar relationship, passing the bar examination, taking an oath before the chairman of the Bar Association. Further, a foreign citizen may be registered upon providing evidence of authorization to provide legal services in another state, and passing a nostrification examination. The two examinations are regulated in

detail by Examination Rules issued by the Ministry of Justice upon prior consultation with the Czech Bar Association in the form of a decree (Decree No. 197/1996 Coll., issuing examination rules for bar examinations and nostrification examinations, as amended).

The Act on Advocacy distinguishes between several way in which advocacy may be carried out. The simplest is ~~an independent~~the exercise of advocacy by a sole advocate. Other way include the exercise of advocacy jointly with other advocates as a member of an association or as a partner in a business company, or, as the case may be, the exercise of advocacy as an employee.

An association is characterized by its permanent nature, including the fact that it was not established in order to provide legal services in one or several predetermined cases. The parties regulate their mutual relations by a memorandum of association drawn up in accordance with the Civil Code, and such memorandum of association must be in writing. Only advocates may be members of the association, and they are obliged to exercise advocacy under a common name. Advocates-members of an association must further have a common registered seat.

Another way in which advocacy may be exercised is as a partner in a business company. Pursuant to the Act on Advocacy, advocates may exercise advocacy as partners in a general partnership, limited partnership or a limited liability company established in accordance with the Commercial Code, if the purpose of such company is solely the exercise of advocacy, and all its members are advocates. The provisions of the Commercial Code permitting the establishment of a limited liability company by a sole founder do not apply to a limited liability company established for the purpose of exercise of advocacy. If a limited liability company established for the purpose of exercise of advocacy has fewer than 2 members, the Czech Bar Association, upon learning of such fact, immediately files a petition with a court for the dissolution and liquidation of the company pursuant to the Commercial Code; the court may dissolve and order the liquidation of the company even without a motion. The advocate becomes entitled to exercise advocacy in the company only upon his/her registration in the Commercial Register as member, and upon the entry into the Commercial Register of the fact that his/her entire contribution to the company´s registered capital has been paid up. That creates no prejudice to the advocate.s right to exercise advocacy independently, in an association or other company. Advocates who are company members exercise advocacy in the name and for the account of the company. If in individual cases, separate legal regulations do not permit the exercise of advocacy in the name of the company, advocates exercise advocacy in their own names and for the account of the company. If an advocate is disbarred, his/her participation in the company is extinguished, and the advocate becomes entitled to a settlement share pursuant to the Commercial Code. An advocate who exercises advocacy as a company member cannot concurrently exercise advocacy independently, in an association, as a member of another company or as an employee.

The last option under the Act on Advocacy is the exercise of advocacy under an employment relationship with another advocate or a (lawyer´s) company. Labor relations of advocates-employees are governed by the Labor Code. An advocate may be employed by one advocate or (lawyer´s) company only; an employed advocate cannot concurrently exercise advocacy independently or jointly with other advocates. An employed advocate is obliged to indicate its employer next to the designation .advocate. in the exercise of advocacy. An advocate-employee exercises advocacy in the name and for the account of the employer, unless separate legal regulations stipulate otherwise.

2.2 Activities of the advocate

The activity of the advocate consists in the provision of legal services. Pursuant to the Act on Advocacy, legal services are deemed to mean representation in proceedings before courts and other bodies, defense in criminal matters, provision of legal advice, drafting of deeds, preparation of legal analyses and other forms of legal assistance, if conducted independently, on a permanent basis and for consideration.

In a civil proceeding (civil, business or labor disputes), one may be represented by anyone possessing legal capacity, not necessarily a person with legal education. Such representative must act in person and must not consistently engage in such activity. On the other hand, in a criminal proceeding, one must be represented only by an advocate if he/she is willing to be represented or if he/she must be represented. ~~or in proceedings before the Constitutional Court, one must generally be represented by an advocate.~~ Representation by an advocate, or possibly a notary public, is ~~further~~ necessary in appellate proceedings before the Supreme Court. A notary may represent the appellant to the extent of his/her powers stipulated in the Notarial Code. Representation by an advocate is further required in proceedings addressing cassation complaints before the Supreme Administrative Court. Cassation complaint is an extraordinary remedy against final and enforceable decisions of regional courts in the administrative court system.

In criminal proceedings, there are situations when the accused must have an advocate. In the preparatory proceedings (i.e., when the criminal activity is investigated by the police), the accused must have an advocate if he/she is in custody, serving a prison sentence or being prosecuted as a fugitive from justice. Further, the accused must have counsel if the accused does not possess full legal capacity or is placed in a health care facility for examination of his/her mental state, or, if the state attorney has any doubt that the accused is able to properly defend himself/herself (e.g., because of physical or mental handicaps). In a criminal trial, the accused must have counsel if the accused is charged with a criminal act that carries a potential prison sentence of more than 5 years. Further, there has to be a counsel in a criminal trial in an expedited preparatory proceeding. This is a fairly novel option whereby under certain circumstances, the offender may be sentenced within several days from the commission of the crime. The last situation where a counsel has to be involved in criminal procedure are cases with a foreign element, i.e., extradition proceedings or proceedings for the recognition of a foreign award. Similarly, one needs to have counsel in enforcement proceedings or proceedings concerning extraordinary remedies (motion for post-judgment relief, complaints against violations of the law).

Having an advocate is thus a must ~~in proceedings before the Constitutional Court,~~ in case of motion for post-judgment relief filed with the Supreme Court, in proceedings concerning cassation complaints before the Supreme Administrative Court, and, in defined cases, also for representation in criminal trials. To avail oneself of legal services provided by advocates in the drafting of contracts is useful but not mandatory.

In the proceedings before the Constitutional Court, the participants have to be represented only by the advocates. However only the individual natural persons and the artificial persons must be represented in such proceedings.

2.3 Remuneration

Advocacy is exercised for consideration as a matter of principle. The determination of remuneration and reimbursement of advocates and the amounts thereof is entrusted by the law to the Ministry of Justice who does so by way of a decree after consultations with the Bar Association. Remuneration due for the exercise of advocacy is currently stipulated in Decree No. 177/1996 Coll., on remuneration and reimbursement of advocates for the provision of legal services (fee tariff - FT), as amended, and Decree No. 484/2000 Coll., stipulating lump-sum payments for representation of parties by advocates or notaries in cost awards in civil proceedings. If the protection of the interests of the party so requires, or if a counsel needs to be appointed in proceedings where representation by counsel is mandatory, the chairman of the court tribunal appoints counsel from among advocates. The fees of a counsel so appointed are paid by the state.

The FT distinguishes between contractual fees and non-contractual fees. The advocate and the client decide at their discretion how they will regulate by contract their relations in the provision of legal

services; the issue of amount and payability of remuneration and reimbursement for legal services rendered may be regulated in this manner as well. If the advocate and the client do not avail themselves of this option, the FT´-s provisions on non-contractual fees are applied. In its provisions on non-contractual fees, FT addresses in particular the issue of setting the amount of the fees; payability is not expressy addressed therein. Even if the advocate and client agree on contractual fees, the court grants to the advocate, in case of success in the court proceedings, as award of costs only an amount equivalent to remuneration calculated in accordance with the Decree No. 484/2000 Coll. or with the fee tariff (i.e. especially in criminal proceedings).

In addition to remuneration, the advocate is entitled to receive from the client reimbursement for costs incurred in connection with the provision of legal services, in particular reimbursement for out-of-pocket expenses and compensation for lost time.

4. Administrative costs of the advocate are included in the fee, which means that unless the advocate and the client agree otherwise, such costs (e.g., general administrative costs, rent for and furnishings in the office) are included in the advocate.s fee.

2.4 Self-regulation

Professional self-regulation is carried out by the Czech Bar Association (Česká advokátní komora), a legal entity with its seat in Prague, as a professional organization, membership being mandatory by law for all advocates in the Czech Republic. The Bar Association exercises public administration with regard to advocacy, procures that uniform rules are applied in the provision of legal services and supervises the quality of legal services, procures professional discipline and provides for the provision of mandatory services in the area of law protection. A three-member disciplinary senate consisting of members of the disciplinary board of the Bar Association decides whether an advocate or trainee advocate committed a disciplinary breach, and decides on the imposition of a disciplinary measure in a disciplinary proceeding. A disciplinary breach is deemed to mean a serious or recurrent breach of duties of the advocate or trainee advocate under this or separate law or professional regulation. The penalties that may be imposed on advocates for disciplinary breaches include disbarment.

The Bar Association further issues professional regulations binding on all of its members. One of the most important regulations is the Code of Ethics which stipulates rules of professional ethics and competition for advocates in the Czech Republic (Code of Ethics).

As regards competition, the regulation stipulates that the advocate must act fairly in competition with other advocates in the interest of both clients and undertakings. For the purposes of competition, the advocate must not consciously use false or misleading information or information downgrading another advocate. For the purposes of this provision, false information is any information capable of eliciting unreasonable expectations of results achievable by the advocate, or any doubt that the result will be attained by means compliant with the law and professional regulations. The advocate may use the designation „advocate“ even outside the exercise of advocacy. In competition, the advocate acts in compliance with legal regulations governing economic competition, i.e., for instance, Sections 41 *et seq.* of the Commercial Code, Act No. 143/2001 Coll., on the Protection of Economic Competition and Amendments to Certain Acts (Competition Act), as amended.

The regulation briefly addresses the issue of advertising**.** It stipulates that the advocate is entitled to inform the public about services provided, provided that such information is accurate, is not misleading and respect the confidentiality obligation and other fundamental values of advocacy. Provided such conditions are satisfied, personal publicity of the advocate is permitted in the media, such as the press, radio, television, electronic commercial communication and other media. The advocate is obliged to keep records of such activities.

Str. 169 – 170:

5. Report of the Competition Office on Independent Professions

During 2006, the Office for the Protection of Economic Competition (the „Competition Office“) prepared and submitted to the Czech government in March 2007 the Report on necessary restrictions of economic competition under applicable legislation in the sector of independent professions in the Czech Republic (the .Report.). By the end of June 2007, an analysis of internal regulations of professional associations of independent professions from the point of view of competition law will be added to the report. The analysis aims to identify the rules that are not required for the due pursuit of the respective professions, and as such are anticompetitive by definition. It will focus on the regulation of independent professions in general, rather than legal professions only.

As regards the setting of remuneration according to fee tariffs, the Competition Office noted in the Report that the individual categories of legal professions have set the same rules for remuneration, and anyone demanding their services thus must pay fees set in accordance with the same principles. However, the Competition Office has stressed that a general requirement must be that the price of services needs to reflect the quality of service rendered, or rather each market must exhibit a relationship between the quality of services rendered and the prices paid by the consumer. According to the Report, the ratio is largely missing in case of the tariffs.

After a consultation with the Chamber of Notaries, the Competition Office for instance noted that the application of hourly rates, or rather calculation of price on the basis of time spent by the staff members of the notarial office on a task was not quite appropriate (especially since it cannot be checked at all). Similarly, the direct ratio between the price of the matter being tackled (e.g., the value of real estate being transferred) and the fee amount does not comply with the requirement that the quality of service be reflected in the price.

The Competition Office has proposed in connection with tariff fees whether the relationship between the value of the matter and the fee amount should not be changed *de lege ferenda* from the current, more or less linear system (price brackets) to a gradual digressive system, or a system where the price would at first be progressive and then began to digress once it reaches a certain level.

The Danish Bar and Law Society
Secretary General

To whom it may concern

KRONPRINSESSEGADE 28
1306 KØBENHAVN K
TLF. 33 96 97 98
FAX 33 36 97 50

DATE: 30-05-2008
J.NR.: 04-014001-08-0153
REF.: lsg-lsg

The Danish Bar and Law Society has had the opportunity to go through the section of the OECD report on competitive restrictions in legal professions that regards Denmark.

No substantial errors have been identified, but the subject and title considered we find it appropriate had the 2006 law on legal advice been mentioned. Also it would have been desirable had the information, since drafted, generally been updated , since major changes in the regulation of the legal profession (in this case defined as lawyers) has occurred due to the fact, that the proposed bill, which was mentioned in the report, was passed on June 1st 2007 and entered into force January 1st 2008 .

In the enclosed copy of the OECD report's section on Denmark we have therefore taken the liberty to include mentioning of the 2006 law on legal advice and generally updated the information provided on both the regulation of lawyers and on the Danish Bar and Law Society. The changes have been made in track change mode.

Should the OECD wish to obtain further information as to the matter we remain at disposal.

Yours sincerely

Henrik Rothe

DENMARK

1. Regulation of Entry

1.1 Quality standards and entry

A Danish bachelor and master ~~law~~ degree in law ~~from a recognized university~~ is required in order to practice law in Denmark. A law degree obtained in an EU-member state or in a State with whom the EU has made an agreement to this end can be used in Denmark, but the Ministry of Justice may fix a trial periode as a condition for the authorisation as trainee in order to ensure, that the applicant has the necessary knowledge of Danish procedure law and the Danish language in order to conduct a full litigation before the courts. The period will usually be from 6 months to two years. There are limitations on the number of study places. However, these limitations are not actual obstacles as the limitation (approximately 500 students in the first year of law school for each law school) is relatively high.

Additional training to the law degree is required in order to practice law as a lawyer. According to the Danish Administration of Justice Act and an order given hereby it is required that a lawyer, in addition to a law degree, attends a theoretic course ~~consisting~~ totaling ~~of~~ ~~three semesters (3 years)~~20 ~~full~~ days ~~of~~ ~~lectures~~spread over a period of one year (the pre-lawyer education) and passes a concluding bar examination. Furthermore, ~~and~~ a practical test ~~on~~of litigation need to be passed. The law and bar society ~~.Advokaternes Serviceselskab. a company under the Danish Bar and Law Society~~ administers the education under the supervision of the Ministry of Justice. A trainee can only register for the examinations three times. If a trainee does not pass the examinations the third time, the trainee will never be able to obtain the right to practice as a lawyer. In addition to the theoretical training it is required that a lawyer has practiced law for three years in a law firm, the courts or the crown in which litigation constitutes an essential part of the work. It is expected that for the future experience of legal practice in e.g. an organisation or a private company might be put at a more equal footing with legal practice in e.g. a law firm as the Ministry of Justice since January 1st and due to the recent changes of the Administration of Justice Act has been given the legal basis to let experience obtained elsewhere than a law firm, the courts or the crown include in the 3-year requirement. An eventual trial period for a person with a law degree from another EU-Member State or from a state with whom the EU has made an agreement to this end, might be deduced in the 3 -year requirement.

Mis en forme : Exposant

Furthermore a trainee and a lawyer must participate in continuing education for at least 54 lectures ~~every~~over a period of 3 years. The obligation of continuing education is also reflected in ~~There are no requirements relating to ongoing education. However, it follows from~~ the rules of professional and ethical conduct that inter alia provides that a lawyer must attend to the clients' interests thoroughly, conscientiously and with sufficient speed~~. Furthermore, it follows~~ and that a lawyer must not undertake cases/duties for which the lawyer has not sufficient competence. These rules also provide that a lawyer must keep updated within the scope of his or her field of work.

According to the Danish Administration of Justice Act ~~all lawyers are required to be members of~~ the Danish Bar and Law Society consists of all Danish lawyers and is as of January 1st 2008 a public law institution.. Therefore ~~A~~a lawyer is automatically granted ~~becomes a member o~~accepted ~~inf~~ admission to the Danish Bar and Law Society when he/she obtains the appointment as a lawyer. This ensures the lawyers independence of the governmental powers and that they are bound up with the Danish Bar and Law Society´s exercise of disciplinary and supervising authority. Withdrawal from the Danish Bar and Law Society can only happen if the lawyer voluntarily deposits his/her appointment to practice law as a lawyer, or if the right to practice law as a lawyer is deprived by judgement of the court or the Disciplinary Board of the Danish Bar and Law Society. ~~Membership of the Danish Bar and Law Society is compulsory to ensure the lawyers independence of the governmental powers and is bound up with the Danish Bar and Law Society´s exercise of disciplinary and supervising authority.~~ The General Council of the Danish Bar and Law Society supervises that lawyers comply with the professional and ethical rules of conduct, the obligation of continuing training and that lawyers have liability insurance. ~~The Danish Bar and Law Society also manages activities which are typical for professional and industrial organizations.~~

Mis en forme : Exposant

No quantitative limits regarding the entry into the legal profession exist in Denmark.

Persons from countries outside the EU/EEA and EFTA cannot practice law in Denmark. Thus, persons from countries outside the EU/EEA and EFTA have to obtain a law degree from a Danish university in addition to the law degree from their own country in order to practice law.

~~Changes are being considered. A recent change to~~bill which changes parts of the Danish Administration of Justice Act ~~entered into force~~was introduced on the ~~28th~~ 1st ~~of February~~ January 2008, ~~clarifying that~~. ~~The bill intends to clarify that a Danish bachelor degree and master degree in law is a requirement in order to attain appointment as a lawyer and will also seek to puts experience of legal practice in e.g. an organisation at a more equal footing with legal practice in a law firm. Furthermore, it is proposed that the Danish Bar and Law Society should no longer manage activities which are typical for professional and industrial organizations but focus on ensuring supervision of lawyers´ compliance with the specific duties assigned to lawyers. This includes that the Danish Bar and Law Society cannot uphold ownership to the company Advokaternes Serviceselskab. The bill also provides for fundamental changes in the training of future laywers and for mandatory continuing training. The bill came into force as of January 2008.~~

Mis en forme : Exposant

1.2 Exclusive rights

According to The Danish Administration of Justice Act the plaintiff and the defendant are entitled to plead before the court themselves without representation from a lawyer. However, the court can order the plaintiff or/and the defendant to let the case be handled by a lawyer if it is not possible to handle the case in a warrantable manner without representation from lawyers.

According to the Danish Administration of Justice Act lawyers have an exclusive right to plead before the courts. This exclusive right only covers representation in the form of pleadings before the courts and signing pleadings. The exclusive right does not cover extrajudicial legal advice for example composing/drawing up pleadings.

The exclusive right rests on the premise that legal assistance in the form of pleadings before the courts must be delivered by independent and expert professionals who have expert knowledge of the legal system. The fact that this exclusive right is given to lawyers rests on the premises that the Danish Administration of Justice Act in combination with the automatic admission to the Danish Bar and Law Society ensures the requisite qualifications which lawyers have to attain and the supervision of the work of lawyers. Consumers have direct access to all kinds of legal services. There is no commonly used system of referrals for finding the legal service provider.

The exceptions to the lawyer's monopoly on representing people before the courts has for many years been that one can choose to be represented by the following category of persons:

1. The legal guardian if the person in question is a minor or is under legal guardianship.
2. Certain close relatives.
3. Persons belonging to the same household.
4. Persons employed by the party for a period not shorter than one month and – when the party is not a lawyer him-/herself – not for the particular purpose of representing the party before the courts.
5. If deemed responsible, having regard to the character of the case and other circumstances, a lawyer from another Nordic country.
6. Provided that there is no negotiation of a dispute, any other persons during proceedings before probate court, for the party against who an act of execution is directed at bailiff court, and for the party who bids at an auction.

Mise en forme : Puces et numéros

The mentioned modifications only apply to pleadings before the City Courts and not before the High Courts, the Maritime and Commercial Court or the Supreme Court. Nor do the

modifications apply to non dispositive cases.
The cases before the City Courts in which others than lawyers will be allowed to plea before are more specifically as follows:

A) Free access to hand in payment claims to the bailiff´s court in relation to the simplified collection proceedings and in that connection free access to plead before the court including before the execution where there is no dispute.
B) Free access to plead before the court in enforcement proceedings in relation to execution/enforcement of judgements, orders, settlements concerning pecuniary claims where there is no dispute.
C) Access for others than lawyers to plead before the court in disputes concerning small claims cases. A small claim case is defined as cases concerning pecuniary claims under 50,000 DKK (approximately 6,600 Euro).
D) Access for others than lawyers to plead before the court in cases of execution before the bailiff´s court/enforcement court.
E) Access for employees in unions, professional and industrial organizations who represent their members in the labour law system on the basis of a permission from the Ministry of Justice to plead before the city courts in cases which deal with wages and conditions of employment e.g. cases which the unions/the professional and industrial organizations as mandatory manage on behalf of their members within the unions´ etc. field of interests

These representatives will – contrary to the persons mentioned under number 1-4 - be subject to a code of conduct which has been issued by the Ministry of Justice. It is the Ministry of Justice who oversee that the code of conduct is adhered by and who is able to sanction eventual violations. The sanctions span from a reprimand to the prohibition of conducting representation before the courts until further notice.

Furthermore since July 2006 legal advice provided to consumers for a commercial purpose has been subject to separate regulation in the law on legal advice regardless of the educational background of the legal adviser. The law explicitly does not apply to legal advice provided by lawyers as part of their independent law practice nor does it apply to legal advice provided by unions or NGOs, as such advice is not deemed to be of a commercial nature, cf. above. Legal advice provided by financial operators falls outside the scope of the law as far as the financial operator is subject to codes of conduct issued by the minister of Economic and Business Affairs.

The main features of the law on legal advisors can be described as follows:

- A legal adviser shall conduct himself/herself in a manner consistent with the code of conduct. This shall include performing his/her duties thoroughly, conscientiously and consistently with what is indicated by justified regard for the client's interests. Advice shall be provided with the promptness necessary.
- Agreements on provision of legal advice shall be in writing.
- A legal adviser is not obliged to take out professional indemnity insurance, but information to this end shall be included in the agreement on provision of legal advice.
- A legal adviser shall inform of the price of legal advice.
- A legal adviser may not receive trust property.
- A legal adviser may not assist a client, when he/she has a particular personal or financial interest in the outcome of the case.

Mise en forme : Puces et numéros

- A legal adviser is subject to a code of conduct issued by the minister of justice and his/her observance of the law and the code of conduct is subject to supervision by the consumer ombudsmand.

~~According to the Danish Administration of Justice Act lawyers have an exclusive right to plead before the courts. This exclusive right only covers representation in the form of pleadings before the courts and~~
~~signing pleadings. The exclusive right does not cover extrajudicial legal advice for example composing/drawing up pleadings.~~
~~The exclusive right rests on the premise that legal assistance in the form of pleadings before the courts~~
~~must be delivered by independent and expert professionals who have expert knowledge of the legal system.~~
~~The fact that this exclusive right is given to lawyers rests on the premises that the Danish Administration of~~
~~Justice Act in combination with the compulsory membership of the Danish Bar and Law Society ensures~~
~~the requisite qualifications which lawyers have to attain and the supervision of the work of lawyers.~~
~~Consumers have direct access to all kinds of legal services. There is no commonly used system of referrals for finding the legal service provider.~~
~~Modifications to the exclusive rights mentioned above are proposed in the above mentioned bill which was introduced on the 28th of February 2007. The proposed modifications to the exclusive right entail that others than lawyers will have the right to plead before the courts in some specific cases.~~
~~The proposed modifications will only apply to pleadings before the City Courts in specific cases and not before the High Courts, the Maritime and Commercial Court or the Supreme Court. Nor do the modifications apply to non dispositive cases.~~
~~The specific cases before the City Courts in which others than lawyers will be allowed to plea before are as follows:~~
~~A) Free access to hand in payment claims to the bailiff´s court in relation to the simplified collection proceedings and in that connection free access to plead before the court including before the execution where there is no dispute.~~
~~B) Free access to plead before the court in enforcement proceedings in relation to execution/enforcement of judgements, orders, settlements concerning pecuniary claims where there is no dispute.~~
~~C) Access for others than lawyers to plead before the court in disputes concerning small claims cases. A small claim case is defined as cases concerning pecuniary claims under 50,000 DKK (approximately 6,600 Euro). In connection to this it is proposed to lay down rules concerning good practice which apply for representatives (others than lawyers) in the small claim proceedings.~~
~~D) Access for others than lawyers to plead before the court in cases of execution before the bailiff´s court/enforcement court.~~
~~E) Access for employees in unions, professional and industrial organizations who represent their members in the labour law system on the basis of a permission from the Ministry of Justice to plead before the city courts in cases which deal with wages and conditions of employment e.g. cases which the unions/the professional and industrial organizations as mandatory manage on behalf of their members within the unions´ etc. field of interests~~

2. Regulation of market conduct

2.1 Fees

Fees are freely negotiated. The amount of fees can be based on the number of hours worked, qualifications of the lawyer, complexity of the case etc. However, the following rules of the Danish Code of Good Conduct applies:

3.4. Regulation of fees

3.4.1.

A fee charged by a lawyer for his work shall not be higher than what may be regarded as fair and reasonable, cf. Section 126 (2) of the Administration of Justice Act.

3.4.2
In conjunction with agreement being made on legal services, the lawyer must if requested provide the client with information about the most important elements of the calculated assistance and the size of the fee the lawyer plans to charge. Where it is not possible to give a fixed fee, the lawyer must either state the way in which the fee will be calculated or provide and explain an estimate. The lawyer must also inform the client about the anticipated expenses, including any taxes to be paid to public authorities.
(2) If the lawyer has provided an estimate, the client must be informed as soon as possible if the total fee is expected to exceed the amount given in the estimate.
(3) If an agreement is made for additional services in the case, paragraphs (1) and (2) above shall apply correspondingly to such an agreement.
(4) If the lawyer's fee is to be paid provisionally or finally by the public or an insurance company, the lawyer, when he or she accepts the case, must inform the client about the principles for setting the fee and the possible consequences for the client.
(5) If the client is a consumer, the lawyer must on his own initiative give the client the information provided in (1)-(4) above in writing.

~~However~~Also, the association of judges fixes recommended fees for work carried out by court-assigned counsels and recommended fees for the use of fixing costs within the fields of civil court/civil law, bailiff´s court/enforcement law and probate court and for costs in ordinary litigations.

In Denmark different types of legal aid exist.

Legal aid at level 1, which is free, takes place at the Laywers' Legal Aid offices, which are local offices that has been established on a voluntary basis. In Denmark there are more than 100 of these offices where local practicing lawyers on a pro bono basis offer their assistance. The offices offers help to all who personally seek aid in legal matters and it is permitted to stay anonymous. Legal aid at level 1 consists of fundamental/basic oral advice on legal matters. Everybody irrespective of income is entitled to legal aid at level 1.

Formateret: ~~Engelsk~~

Legal aid at level 2 and 3 is only for people with an income under a certain amount currently 24~~8~~56,000 DKK (approximately 33,~~000~~ 246 Euro). If the person in question is cohabitant/married the total income of the household must not exceed 325.000 DKK (approximately 42,207 Euro) and for every child under the age of 18 who lives with the person in question or for whom the person in question is the main provider, the limit is raised with 44,000 DKK (approximately 5714 Euro).

Legal aid at level 2 entails that the lawyer can carry out work amounting to 8740 DKK (approximately 11~~2~~3 Euro) and that the state pays 6~~30~~52,50 DKK (85~~8~~4 Euro) and the rest is paid by the person seeking the legal aid. The aid at level 2 consists of legal advice and composition/drawing up letters, simple writs/subpoenas, paper of reply/statement of reply, wills, prenuptials and the like.

Legal aid at level 3 entails that the lawyer can do work amounting to 1,9~~8~~20 DKK (approximately 25~~6~~7 Euro). The state pays half of this amount and the other half is paid by the person seeking legal aid. The legal aid at level 3 is given to people who have a dispute with a counterpart but where reasonable prospects/chances that the dispute will end with a settlement are present.

Furthermore, free legal aid exists in the form that all costs in relation to **certain** cases and legal proceedings are paid by the state. This form of legal aid is for instance given in cases of matrimonial proceedings or custody proceedings. Free legal aid is given to people who fulfil some economic conditions concerning the size of their income and who do not have legal expenses insurance. Thus, free legal aid is given to people who have a yearly income under ~~300~~325,000 DKK (approximately ~~40~~42,207~~000~~ Euro). For singles the yearly income must be under 2~~3~~56,000 DKK (approximately 3~~1~~,246~~400~~ Euro). For every child under the age of 18 who lives with the person in question or for whom the person in question is the main provider, the limit is raised with 44,000 DKK (approximately 5714 Euro).

The free legal aid

includes
exemption form paying court fees, appointment of a lawyer paid by the state to handle the case and litigation, consideration from the state for expenses defrayed in connection with the case, exception from
compensating the costs of the counterpart and exemption from giving security for administration costs/probate costs.

2.2 Advertising

Advertising for legal assistance is allowed subject to the same constraints as in any other businesses. Advertisement is regulated by The Danish Marketing Act.
Earlier only lawyers were allowed to advertise their legal services. Thus, jurists who were not lawyers were not allowed to advertise. These rules have now been repealed. Thus, all legal professionals lawyers as
well as non-lawyers, are now allowed to advertise their legal services.
The regulatory bodies do not restrict their members' possibilities of advertising.
According to the Danish Marketing Act there are no advertising restrictions in relation to the content of the advertisement. Special expertise can be advertised as well as fee level and cooperation with others
including foreign lawyers.
Advertisements for legal services are subject to the general rules of advertisement in the Danish Marketing Act. According to the Danish Marketing Act it is forbidden to use incorrect/wrong, misleading
or unreasonably inadequate/faulty statements which are suitable to influence demand for and supply of
goods and services. Statements which are improper towards companies and consumers are not allowed.
Furthermore, the correctness/accuracy of statements concerning factual circumstances must be able to be
proven. Comparative advertisement is allowed under some circumstances.

2.3 Partnerships and business organisation

The formation of legal disciplinary partnerships between lawyers and law firms is allowed. The formation of multidisciplinary partnerships is not allowed.
According to the Danish Administration of Justice Act, practice of law can be performed as one-man businesses, joint ownership or through a law firm which is run as a limited (liability) company or private (limited liability) company. A law firm can only have as its objective to practice law. Shares in law firms can only be owned by 1) lawyers who actively practice law in the firm in question, the parent company or
subsidiary company or 2) another law firm. Since January 1st 2008 shares can also be owned by other employees of the law firm in question. They are however, only allowed to own up to less than 10 % of company shares. This entails that the determining influence in the company will remain with the lawyers. Furthermore, owners of law firms who are not lawyers must pass an examination concerning the rules which surround the profession of lawyers for instance rules on lawyers duties in relation to handling entrusted funds, duties in relation to the legislation on anti money laundering and lawyers´ rules of professional and ethical conduct.

Mis en forme : Exposant

Board members apart from staff-elected board members
must
be lawyers who actively practice law in the company in question, parent company or subsidiary company.
Members of the management/board of directors must be lawyers who actively practice law in the company
in question.

The current regulation on ownership of law companies intends to ensure the independence of the interests of lawyers including the independence of the interests of investors and the lawyers´ loyalty towards their clients.

There are no conflicts of interest with other professions that may be necessary to avoid.

Law practice is defined as legal advice (and economic advice in relation to the legal advice) and representation of the interests of the client before courts and before other public authorities.
Until January 1st ~~According to the current regulation~~ 2008 it ~~is~~ was not possible to convert a law firm to have another objective
than the practice of law. A law firm ~~is~~ was born and die~~s~~d as a law firm. Since January 1st 2008 it is now possible that a law firm can change name and purpose as an alternative to liquidation.

Mis en forme : Exposant

Mis en forme : Exposant

~~The current regulation on ownership of law companies intends to ensure the independence of the interests of lawyers including the independence of the interests of investors and the lawyers´ loyalty towards their clients.~~
~~There are no conflicts of interest with other professions that may be necessary to avoid.~~
~~Changes are being considered in the proposed bill mentioned above. This bill intends to relax some of the rules concerning ownership of law firms.~~
~~According to the proposed amendment other professions than lawyers, should be allowed to own up to less than 10 % of company shares. This entails that the determining influence in the company will remain with the lawyers.~~
~~It is also suggested that only active capital investment in the law firm should be allowed. Moreover, it is proposed that the change of the rules of ownership should be confined only to apply to investment trusts.~~
~~In connection to ownership, it is proposed that owners of law firms who are not lawyers must pass an examination concerning the rules which surround the profession of lawyers for instance rules on lawyers~~
~~duties in relation to handling entrusted funds, duties in relation to the legislation on laundering and lawyers´ rules of professional and ethical conduct.~~
~~Finally, it is suggested that permission to convert a law firm into another objective can be given under certain circumstances.~~
~~The bill and the above mentioned changes entered into force as of January 2008.~~

3. Institutional framework of self-regulation

3.1 application of competition law

Rules enacted by self-regulatory bodies (on fees, advertising and forms of business organization) are covered by the prohibitions against anti-competitive practices in The Danish Competition Act.
There is no exemption for certain types of self-regulatory rules. These rules are subject to the general rules of competition law.
The main effects of competition law enforcement in Denmark have been removal of fixed fees and restrictions on advertising. In 1995 recommended fees for legal advice fixed by the Danish Bar and Law
Society were revoked by The Danish Competition Council and The Competition Appeal Tribunal. As mentioned above, earlier only lawyers were allowed to advertise for legal services. Thus jurists, who were
not lawyers, were not allowed to advertise. These statutory rules have now been repealed.

3.2 Regulatory oversight

Adjudications by the Disciplinary Board of the Danish Bar and Law Society and the General Council of the Danish Bar and Law Society etc. which are Danish self regulatory bodies are not subject to approval
by the state.
Decisions by the above mentioned self-regulatory bodies are, however, subject to antitrust scrutiny i.e. so far as they concern the competitive conditions on the market.
The imposition of sanctions for malpractice comes within the jurisdiction of self regulatory body and the ordinary courts. The General Council of the Danish Bar and Law Society has composed a set of lawyers´ rules of professional and ethical conduct. The General Council of the Danish Bar and Law Society supervises that lawyers comply with the duties which the profession entails e.g. compliance with
the ordinary legislation which is not directed specifically towards lawyers and compliance with the specific

duties which lawyers by virtue of their profession are subject to. If the General Council of the Danish Bar and Law Society finds that a lawyer or a law firm has not complied with the duties which the profession entails, the General Council of the Danish Bar and Law Society can bring a complaint against the lawyer or law firm before the Disciplinary board of the Danish Bar and Law Society.
The Disciplinary Board of the Danish Bar and Law Society is chaired by a Supreme Court Judge and the members are 9 representatives of the public and 9 of the legal profession. The chairman and the vice-chairman are appointed by the president of the Supreme Court. This independent body thus consist of a majority of non-lawyers.

Fee complaints: A lawyer can freely calculate/charge his/her fee, cf. above. However, according to The Danish Administration of Justice Act the lawyer is not allowed to charge a fee which is higher than what can be seen as reasonable. According to The Danish Administration of Justice Act complaints about fees Can be brought before the Disciplinary board of the Danish Bar and Law Society ~~board of one of the Lawyers´ Districts (the local unions/divisions of the Danish Bar and Law Society) where the office of the lawyer or the law firm is situated~~. The board can approve the fee or decide to reduce or cancel the fee.The decision ~~made by the local board can be brought before the Danish Bar and Law Society. The adjudication of the Danish Bar and Law society~~ cannot be brought before another administrative authority, however, the adjudication can be brought before the ordinary courts.
Malpractice complaints: According to The Danish Administration of Justice Act complaints about lawyers´ malpractice can be brought before the Disciplinary Board of the Danish Bar and Law Society. The sanctions for malpractice, which can be ordered by the Disciplinary Board of the Danish Bar and Law Society, are: 1) reprimand, 2) fines amounting to ~~200~~300,000 DKK (approximately ~~2~~386,~~000~~961 Euro), ~~2~~3) deprive/dispossess the lawyer from his/her case or let another lawyer handle the case in question, ~~4~~3) deprive/dispossess the lawyer from his/her right to handle cases or businesses of a certain kind/character or deprive/dispossess the lawyer from his/her right to practice law. The adjudication of the Disciplinary Board of the Danish Bar and Law Society can be brought before the ordinary courts by the lawyer or the law firm in question.
~~Other complaints than complaints about fees and malpractice are handled by the boards of the Lawyers´ districts.~~ Thus, there is no independent Ombudsman for legal services, c.f. however the law on legal advice that cover other legal advisers than lawyers.~~.~~
~~There is no independent~~The regulatory Authority ~~(consisting of a majority of non-lawyers)~~ for the legal Profession is~~s other than~~ the Danish Ministry of Justice.
~~5. Changes are proposed in the above mentioned bill. It is proposed that uniform rules are laid down for complaints concerning fees and malpractice, implying, that all complaints will be handled by the Disciplinary board of the Danish Bar and Law Society as a first and only instance/tier.~~
~~The mentioned bill has entered into force as of January 2008. It should be noted that the Disciplinary Board of the Danish Bar and Law Society is chaired by a Supreme Court Judge and that the members are 9 representatives of the public and 9 of the legal profession. The chairman and the vice-chairman are appointed by the president of the Supreme Court. This independent body thus consist of a majority of non-lawyers. Furthermore, it should be noted that the Danish Bar and Law Society as of January 2008 is a public law institution.~~

Italian delegation to the CCBE, 22.07.08

ITALY

1. Introduction

In Italy, several aspects of the provision of legal services are subject to some form of regulation. Such regulation, however, does not affect the ability of potential service providers to access the market, since no quantitative restrictions on entry exist for the acquisition of the relevant professional qualifications (with the exception of notaries), nor a numerus clausus policy is applied for registration in Law Departments at universities. In fact, Italy is the European country with the highest number of registered lawyers.

The regulatory framework applicable to the legal professions, as well as to other regulated professions, used to present some rigidities, relating to pricing, advertising, reserved activities and business structure. The Italian Competition Authority has consistently advocated a thorough and reasoned review of such restrictions, and the removal of those which caused unnecessary or disproportionate distortions of competition.

Very recent regulatory reforms have eventually taken on board the suggestions and the indications of the Authority, overriding the traditional resistances of professional associations. Although it is still early to assess the impact of these legislative changes the sector is certainly experiencing an evolution towards an even more competitive regulatory environment.

2. The sectoral inquiry on professional services

In 1997 the Italian Competition Authority carried out an extensive sectoral inquiry into liberal professions, aimed at providing a general framework of analysis and at identifying regulatory restrictions of competition calling for possible legislative interventions1. The inquiry, covering a large number of professions, focused on conditions of entry, as well as on regulation of conduct and of business structure.

As far as the legal professions are concerned, the analysis was hinged upon restrictions on prices and advertising and, especially for notaries, on restrictions on entry. With regard to access to the professions, it was noted that the practical training required for most professions depends essentially on the willingness of other professionals, who frequently delegate only simple routine procedures to their trainees. The Authority therefore suggested that more specialisation schools be established throughout the country as an alternative to practical apprenticeship, or even that university courses be reorganised to provide the practical training needed.

The Authority also emphasised that minimum or fixed tariffs and charges are not necessary to guarantee the quality of the service provided. Moreover, the Authority underlined that advertising on fees and other aspects of professional services would reduce the costs that consumers face when trying to evaluate and compare competing offers on the market. The survey also dealt with the issue of professional partnerships. The Authority advocated for the Parliament to enact legislation allowing professionals to choose any organizational form for the provision of the services, making it possible to set up partnerships between persons belonging to different categories of regulated professions or between regulated and non regulated professionals (including foreign professionals). It also suggested that professionals should be able to establish limited liability companies.

Apart from the various, specific suggestions for action contained in the investigation, the Authority stated that regulation of liberal professions should fulfil the criteria of necessity and proportionality. In other words, regulation should be enacted or maintained only when significant market failures make it indispensable, that is when: a) consumers are unable to evaluate the quality of professional services; b) the effects of acquiring a service of inadequate quality are particularly severe; c) the provision of professional services relates to crucial societal values. Even in these cases, however, regulation should not exceed what is strictly required to cure the identified market imperfection.

3. The advocacy activity of the Italian Competition Authority

The inquiry identified a series of legislative measures creating distortions of competition not justified by requirements of general interest, and reported the Authority's opinion as to which steps could be taken to remove such distortions. The Parliament and the Prime Minister were notified of the results of the investigation and invited to revise restrictive regulation accordingly. Following the conclusion of the Authority's investigation, a Commission, set up by the Minister of Justice, produced a Bill aimed at redrafting the regulatory framework of liberal professions.

In February 1999, before the parliamentary discussion on the "reform of liberal professions" had begun, the Authority issued an opinion on the Bill, pointing at its inadequacies in addressing the pitfalls of existing regulation.

In particular the Authority, after restating the indications for action contained in the 1997 investigation, highlighted the importance of providing consumers with more information about the characteristics of professionals' services. Statistics on past market prices of services, for example, (rather than minimum fees), could enable consumers to better evaluate the economic terms of professionals' offers and their relative convenience. Correspondingly, regular and updated information about compliance with predetermined quality standards could reduce consumers' searching costs as well as the risk of their being harmed by poor quality services.

The proposed reform of 1999 was discussed in Parliament but never approved. Since then the reform of the professions was subject to an ample debate. The Italian Competition Authority has addressed to the Parliament and the Government several opinions on existing and draft legislation on liberal professions, advocating the elimination of unjustified restraints to competition4. The Authority has repeatedly advocated the abolition of minimum tariffs for professional services, since entry qualifications are sufficient to ensure that consumers are offered services of adequate quality. It was also suggested to introduce outcome-based pricing, thus allowing professionals to link their fees to the actual result of their work. The Authority has also consistently advocated a full liberalisation, with regard to both the content and the means of advertising for professional services, including comparative advertising.

Such advocacy activity culminated with the adoption of the Report on "Activities Aimed at Liberalizing Professional Services in 2004-2005 whereby the Authority urged the Government and the Parliament to consider a general reform of the regulation of professional services.

The advocacy efforts were not directed only at existing or draft legislation. In parallel, the Authority held in 2004 and 2005 a series of bilateral meetings with representatives of professional bodies7

with a view to analysing their self-regulation under the proportionality test. As a result of this approach, most professional bodies modified their self-regulation in a pro-competitive sense.

4. Recent regulatory reform

Although the debate on the need to reform professional services' regulation has been extremely lively and many projects were discussed in Parliament, such discussion never resulted in a reform because of disagreements among political forces and resistances by the professional associations.

In August 2006, however, important changes regarding liberal professions were introduced by the so called"liberalisation package", enacted by the law of 4 August 2006, n. 248. This law amended several pre-existing provisions, introducing pro-competitive changes in different sectors.

In particular, article 2 eliminated minimum tariff requirements and advertising restrictions for professional services. Professionals are allowed to decide freely the level of their fees, and to link such fees to the outcome of the service. Professionals can advertise their specific qualifications and specializations and the characteristics and the price of their services. They are also allowed to establish multidisciplinary firms providing an array of professional services. However, a professional cannot be associated with more than one firm; moreover, it is necessary to identify ex ante the professionals who will provide any specific services under their personal responsibility. The firm should also state precisely which professionalservices it renders.

The new provisions mirror to a large extent the opinions drafted over the past years by the Italian Competition Authority in its advocacy reports and sector inquiries, addressing some of the main competition issues arising from sectoral regulations. Professional associations were required by the law of 4 August 2006 n. 248 to amend their codes of conduct by the end of January 2007, in order to comply with the new provisions.

In January 2007 the Authority opened a general inquiry in order to analyse the changes in self regulation and to assess whether all restrictions on competition had been eliminated10. The Authority is thoroughly examining the codes of conduct of a number of professions and holding meetings with representatives of the professional bodies. The inquiry is still ongoing.

5. The current regulatory framework

5.1 Lawyers

5.1.1 General regulation and reserved activities

The statute governing the profession of lawyer in Italy dates back to 1933. Subsequent amendments, prior to the abovementioned recent changes, had not significantly modified its provisions. A major distinction was drawn by the 1933 statute between two categories of lawyers (avvocati and procuratori legali). With the Law n. 27 of February 24 1997 the distinction between the two groups of attorneys has been eliminated and the profession of procuratore legale has been abolished.

The activity of lawyers pertains to two main areas: judicial activity, involving representation in courts,and extra-judicial activity involving all other forms of legal advice. The activity of representation in ordinary (civil and criminal) and administrative courts is reserved to lawyers, while

other professionals (such as accountants) are allowed to represent the clients in front of tax revenue Commissions. It is mandatory for parties to be represented before the court by a lawyer.

Representation in superior jurisdictions is reserved to specially qualified lawyers. Only those attorneys who have practised for twelve years, or those who have passed a special examination (that can be taken after at least five years of practice as a lawyer) have rights of audience before the Corte di Cassazione and other superior jurisdictions (e.g. Constitutional Court, Council of State). Such lawyers are listed in a special register.

No extra-judicial activities are reserved to lawyers, unless they are directly functional to assistance in court. Many law firms specialise in fields such as contract, corporate or tax law. These firms typically include experts in commercial law, as well as accountants and auditors. There has been some discussion on the need to regulate extra-judicial advice; however, no formal restrictions on non-attorneys operating in this field have been enacted so far.

Italian lawyers are organized in local Bar Associations (Ordini) which are co-ordinated at national level in the Lawyers National Council (Consiglio Nazionale Forense). Membership in the professional association is compulsory.[1] As for other professions the Lawyers' Bar Associations have often interpreted deontological rules more in view of the protection of their associates than in order to ensure the quality of professional services. Codes of conduct have sometimes been used to introduce competitive restrictions (for instance on advertising).[2]

5.1.2 Entry

Entry in the market is subject to qualitative restrictions. No quantitative restrictions exist. Those who intend to become lawyers need to hold a degree in law, which takes a minimum of five years of study.

Then, they must apply as trainees in a law firm, register with the local Bar Association and complete a two-years training. The Authority has suggested that alternative forms of training be introduced. These indications have been followed only in part. Universities have established specialised schools for the legal professions (not only perspective lawyers but also notaries and judges). There is a competitive entry by exam. The course lasts for two years, the first year is common for the three professions, while in the second year separate courses are provided for notaries on the one hand and

[1] Comment from the Italian Delegation: the bars are here defined as "professional associations" whose membership is mandatory. From a legal standpoint, the allegation is not correct. The nature of the bars is different: they are "Ordini", i.e. professional organizations whose membership is necessary in order to ensure that professional rules can be effectively enforced. If they were associations, mandatory membership would be contrary to the Italian Constitution (Article 18): indeed, freedom of association implies not only the right to take part in an organization but also the right to choose the contrary. The Italian Delegation regrets that the legal analysis carried out by the authors is flawed and incomplete and does not reflect the main elements of our professional organization.

[2] Comments from the Italian Delegation: these claims are not supported by any evidence. The Italian Delegation would be ready to discuss criticisms based on objective elements. We deem it inadmissible that, without relying on any source, the authors formulate serious (and even offensive) judgments on the activity of the bars and the interpretation of deontological rules.

judges and lawyers on the other. After taking the final exams, the candidates that have attended the school will have only one year of training left, instead of the normal two years requirement.

Upon completion of the training, certified by the law firm, candidates take a written examination, which is held once a year at local level (corresponding to the district of the Court of Appeal)16. Only those who pass the written examination are admitted to an oral examination. There are no limits as to the number of candidates admitted to either the written or oral exams. There are, however, systematic territorial differences as to the rate of success (in some districts more than 70% of the candidates are passed, while in others the success rate is below 30%). Since the introduction of a national exam was hardly feasible, considering the number of candidates, in 2003 it was decided to introduce a system of rotation of the examining commissions. The candidates still take the exam in their district of residence, but the relevant commission is selected randomly from a district of similar dimension.[3]

All the local boards of examiners are appointed by the Ministry of Justice; in each board there are two lawyers (with at least 8 years of practice), two judges and a university law professor.

There is no limit to the number of times the test can be taken.

Successful candidates can now register directly as lawyers with the Bar Association and start practising. There is still considerable debate as to the effective ability of the selection method described above to ensure the quality of legal services. However, it is clear that the rules governing access to the profession do not result in quantitative restrictions, since approximately 15.000 new lawyers register every year.

Italy, in fact, is the European country with the highest number of lawyers, with 180.000 registered lawyers (121.380 of whom practising) in 2006.

5.1.3 Fees

Until recently, fees for lawyers' services established by the Lawyers National Council every two years, and approved by the Ministry of Justice were binding. The applicable regulation provided for minimum and maximum fees. The official tariffs were detailed and distinguished between in and out of court services, as well as between criminal and civil matters. Legal services were classified for tariff purposes according to the nature of the tasks performed by lawyers rather than with reference to the time required to perform the service. In addition, specific rules addressed the calculation of travel and office expenses, as well as the drafting of legal documents.

Parties were still free to negotiate fees as long as they were in the range of the established minimum and maximum fees for each service.

[3] Comments from the Italian Delegation: the report fails in assessing the impact of the new rules on examination boards; at footnote 15, it appears that the authors do not understand the difference between "Praticanti Avvocati" and "Praticanti iscritti all'Albo dei Patrocinatori"; the overall evaluation of access regulation is incomplete and vague.

The recent reform has eliminated minimum fees, as well as the ban on contingency fees pactum de quota litis. According to the new rules lawyers are now free to set fees that are related to the outcome of the case.

Self regulation was also changed in order to bring it in line with the new provisions. However, articles 43 and 45 of the code of conduct still provide that the requested fees must not be manifestly disproportioned with reference to the performed activity.[4]

5.1.4 Advertising

Traditionally advertising by lawyers in Italy has been subject to an outright ban. The code of conduct contained a number of provisions aimed at preserving the respectability of the profession and advertising was one of the activities indicated as potentially detrimental of the profession honour. Strict rules contained in the code of conduct applied even to the indication of the name of the lawyers on boards placed outside the law firm premises.

However, already in October 2002, the relevant article of the code of conduct was amended in order to allow some forms of advertising, including signs outside the business premises, brochures, internet sites, juridical publications or 'annuaires', as well as to permit some contacts with the press/media about a case, where the relevant information is non-confidential.

Even after these changes advertising on press, TV or radio was totally banned. Also advertising through billboards or flyers as well as soliciting by phone call, sponsorships, use of the internet to offer free advice were forbidden. Seminars and conferences organised directly by lawyers' cabinets were only allowed in some cases, after seeking prior authorisation by the professional body. Rules on the advertising content allowed the display of personal information, listing of publications, information on the professional practice, a logo, indication of 'quality certificates' (approved by the professional body), while any information relating to third parties, names of clients (even with their permission), information on the lawyers' specialisation (except those allowed by law), prices (including the indication that the first consultation is free), the percentage of cases won, the turnover of the cabinet were all prohibited.

All bans on informative advertising were eliminated by the Law 4 August 2006 n. 284. Consequently some amendments were introduced to articles 17 and 17 bis of the code of conduct, in particular in order to allow all forms of informative advertising as to the characteristics of the offered services. The code of conduct requires the information to be transparent and truthful and assigns to the professional association a right of control.

---

[4] As regards fees, information are incomplete or even wrong: the report says that reviews of fee levels take place every two years, but omits to mention the fact that 10 years elapsed before the last review was adopted. It also omits to mention all derogations to maximum and minimum fees which are foreseen by the fee scale in force. The report criticizes (again without any support or evidence) the obligation, stemming from the deontology code, for a lawyer to observe proportionality when applying fees to legal services. The Italian Delegation wonders whether the Authors are suggesting that the application of fees (in a market where information asymmetry exists) should not be subject to ethical rules, and whether the reports recommends that freedom to compete should lead to the application of disproportionate fees.

6. Notaries

6.1 General regulation and reserved activities

The main law setting a detailed regulatory framework for the notary profession dates back to 1913.

In Italy, as in other civil law countries, notaries belong to the Latin notary system. The main feature of this system is that notaries perform a public function and act as public officers to whom the State delegates a specific public power, i.e. the power to assert the authenticity of a document. This power is functional to giving legal certainty to authentic deeds. As a consequence deeds that are certified by notaries enjoy privileged evidentiary strength, privileged enforceability and almost exclusive entry into public registers.

The recognition of this function implies a pervasive regulation of the profession and the concession to notaries of a number of exclusive rights. Among the reserved tasks one of the most important (also by volume of business) relates to conveyancing services. The purchase and sale of real estate in Italy must necessarily occur with the assistance of an Italian based notary. The notary is legally empowered to witness, validate, and register deeds and contracts for the sale and purchase of Italian immovable property.

Other reserved tasks include business incorporations and some family matters. Until the change introduced with article 7 of Law 4 August 2006 n. 248, transfer of registered movable goods (such as boats, cars and motorcycles) was possible only through public deeds or private deeds with the authentication of a notary. This requirement has been eliminated.

Besides performing the reserved tasks, notaries can also give general legal advice in competition with lawyers.

As for lawyers, self regulatory bodies perform an important role for the profession. Membership in the professional association is compulsory. Both the national (Consiglio Nazionale del Notariato – National Board of Notaries) and local (Consigli Notarili Distrettuali – Notarial District Boards) associations are established by law and their members are selected by the notaries themselves.

6.2 Access to the profession

In Italy there are both qualitative and quantitative restrictions to access to the notary profession. Not only is access regulated but the number of notaries is predetermined and each notary has minimum service obligations in the area of assignment.

The steps required to become a notary in Italy are established by the laws 16 February 1913, n. 89 and 6 August 1926, n. 1365. Holders of law degree intending to become notaries need to be accepted by an established notary as trainees, after which they can register in a Notarial District Board (Consiglio Notarile Distrettuale). The period of internship lasts two years from acceptance of the registration by the Notarial District Board22. The practice should be effective and continuative and must be demonstrated by means of certificates issued every two months by the notary who has accepted the trainee.

The current legislation does not impose attendance of any of the preparatory schools, run by the Notarial District Boards, recognised and operating in the national territory. Such schools do not issue diplomas or certificates and have only a private nature and function. They prepare candidates for thenotarial examination. However, attendance of the post-university specialisation schools for the legal professions can replace one year of practice.

Upon completion of the internship, the aspiring notary must take part in the national competition that consists of three phases: first a general multiple choice test organised electronically. There is a preestablished number of candidates which can be admitted to the following written examination. The written examination is divided into three separate tests of theoretical-practical nature, held on consecutive days, and including: an act among living persons, an act of last will and an appeal of voluntary jurisdiction, randomly selected on the day of each test. Those who obtain at least the minimum mark required by the law on each subject can take the oral examination. The oral examination consists of three separate exams, respectively on civil and commercial law, the system and regulation of notaries and business taxes. Those who obtain for each of the exams the minimum marks are declared suitable, and a graded list of their names is drawn up.

The competition is run directly by the Ministry of Justice and the examining commission is composed of two judges, two notaries (even retired) and one university professor of law. It is an extremely difficult and selective test, passed on an average by only one out of twenty aspiring civil law notaries.

The available seats are attributed to the successful candidates in order of priority on the basis of the results of the exam. According to information by the Consiglio Nazionale del Notariato the exams are taken each year by over 3,000 candidates for a number of available posts normally ranging between two and three hundreds. As already mentioned above, the number of seats is fixed. The overall distribution of notary seats may be revised every 10 years by Presidential Decree, after consultation with the Notary professional bodies. In any case, a new seat can only be created if it corresponds to at least 8000 inhabitants.

As a result of the qualitative and quantitative entry restrictions the number of notaries in Italy (approximately 5.400) is smaller than that in countries of comparable population.

NEDERLANDSE
ORDE VAN
ADVOCATEN

Comments of the Netherlands Bar Association on the part in the OECD report referring to the situation in the Netherlands.

general
The comments on the report have been divided in various relevant items. This means that the comments are not given chronologically. However, reference to the page is made. The Act on advocates and relevant by-laws can be found on http://www.advocatenorde.nl/english/legislation/vademecum.asp.

fees
In footnote 56 on page 42 it is mentioned that "the new government has proposed to transpose the current ethical rule prohibiting contingency fees into a mandatory statutory prohibition". It depends what is meant by contingency fees. For the moment there is a prohibition[1], but the Netherlands Bar wanted to start a experiment on 'no cure no pay'. The Minister of Justice has squashed the by-law allowing this. Now a new experiment will hopefully start soon, but this deals with 'no win no fee', which differs from the former. In the new draft of the Act on Advocates there is still no prohibition, but reference is made to the planned experiment. Only after that a decision will be made.

On page 231 reference is made again to no cure no pay/no win no fee. This information is not correct, as they mix things. See also the remark before (footnote 56 page 42).

structure
On page 51 it is mentioned that "it has been envisaged – or already decided – to create a new independent Regulatory Authority for the legal services' markets. This new Authority may delegate regulatory powers to the existing self-regulatory bodies of legal professionals, subject to its oversight. In this way the net advantages of self-regulation may be maximized." This is not correct for the Netherlands. At the moment we have a by-law about this.[2] The way this the Advisory Council is planned to act, differs completely from the way it has been foreseen in the UK. In the already mentioned draft of the Act on Advocates this Advisory Council is mentioned. This body will only give advice on policy issues and draft regulations. It will still be possible for the Bar to be self-regulating even with this Advisory Council. The information on page 234 is more correct, but still not completely.

[1] See for the text:
http://www.advocatenorde.nl/NOVA/NovVade.nsf/434051c6eaaa3f18c12564ab00288445/a7ef1fec537dc080c1256e7b00449181?OpenDocument.
[2] See for the text:
(http://www.advocatenorde.nl/NOVA/NovVade.nsf/434051c6eaaa3f18c12564ab00288445/e6693ce2b294d39fc1257402002b8b63?OpenDocument.

training
On page 229 information is given with regard to the professional training. This information is not correct. For example the sentence " However, he or she will be conditionally sworn in as lawyer in the court of his or her district: this means that he or she can litigate independently." is not correct, because the trainee has to work under the supervision of the senior lawyer. Neither is the information on the content of the training correct as not most of the subjects are concluded with a written test. It is also not correct that trainees are disbarred at the end of the traineeship as when they are not in the possession of the certificate. The end of the traineeship is not relevant, but the period of three year.

representation by lawyers
On page 52 (and 57) it is mentioned that "In the Netherlands concerns about adverse selection seem justified with respect to the non regulated market for legal advice and the fields of law (administrative law, labour law) where representation in court is not required. The regulatory deficit may be cured by requiring representation by legally qualified professionals in all areas of law where citizens lack sufficient expertise to assess quality." It is not clear to me where this comes from, but as far as I know no steps have been taken to change this. On the contrary plans exist to raise the financial threshold for disputes to start a procedure for the court where you do not need to be represented by a lawyer (instead of 5.000 euro now to 25.000 euro in the future if I am correct).

On page 230 it is mentioned that in labour law no representation by a lawyer is required. This is not correct, as this depends at which court the proceeding takes place. In appeal a lawyer is required.

legal aid
On page 232 legal aid is discussed. The amount of 180 euro is correct, but the information is not complete. Besides that it is strange that where they mention when legal aid is excluded at the second bullet the value of the case is mentioned again.

advertising
Where they mention the by-law on advertising it is not clear to me what they mean with "reversed". The by-law has been withdrawn, if they mean that then it is correct, otherwise not.

partnership
On page 233 they forgot to mention that lawyers can co-operate with certain other legal professionals, where they have mentioned this for notaries. Where they mention the rules that have been made, it is not completely correct what they mention and sometimes not clear what they mean. On the same page it is mentioned that the Bar is obliged to make by-laws. This is a rather strong expression.

complaints
Where they mention the various possibilities to deal with complaints about lawyers, the information is not completely correct.

Kraków, 3 June 2008.

Remarks concerning OECD Report „Competitive Restrictions in Legal Professions 2007"

POLAND

The OECD Report in the part concerning Poland contains some information which is incorrect and outdated.

1. As regards entry restrictions to the advocate profession ("Executive summary, point 5 – *Entry restrictions should be eased or eliminated where not related to quality,* p. 11) Poland (together with Brazil) is indicated as a country with a very selective bar examinations, "with a pass rate of approximately 15-20 percent"), which is totally untrue.
   According to information received from 23 out of 24 district bar councils, the average threshold of **successful pass** between years 2001-2008 has been **93,14%**. In consequence, **only less then 7% of bar trainees have not passed the bar exam**. In the abovementioned period 1910 trainees have taken the exam and 1779 successfully passed. Detailed figures are attached to these remarks ("Figures concerning OECD report").

2. Moreover, information concerning notaries is not actual (Poland, point 2 – *Entry and quality standards*, p. 245-246 with a footnote no 3). On 26 March 2008, the Constitutional Tribunal (K 4/07) found provisions concerning the scope of applicants who are exempted from entry notary exam as unconstitutional. Currently, the same rules concerns legal advisors, advocates and notaries.

3. Finally, the new government has withdrawn from plans to introduce a new legal profession (based on a three-tier licence system – p. 248). These licenses were to be granted by the Minister of Justice. In the opinion of legal corporations, such a reliance on the Ministry of Justice could result in

Warsaw, 2 June 2008

Information concerning results of bar examinations in district bar councils in years 2001-2008

(as of 19 May 2008)

No	District bar examination in:	Years of bar examinations	No of candidates	Number of trainees who sucessfuly passed	% of positive results	Remarks
1	2	3	4	5	6	7
1	Białystok					
		2008	11	9	81,82	
		2007	15	15	100,00	
		2006	*	*		
		2005	11	11	100,00	
		2004	6	6	100,00	
		2003	5	5	100,00	
		2002	5	5	100,00	
		2001	9	9	100,00	
2	Bielsko-Biała					
		2008	*	*		
		2007	6	6	100	
		2006	4	4	100	
		2005	4	4	100	
		2004	5	5	100	
		2003	5	5	100	
		2002	*	*		
		2001	5	5	100	
3	Bydgoszcz					
		2008	*	*		
		2007	5	5	100	
		2006	4	4	100	
		2005	21	21	100	There have been two separate bar exams
		2004	5	4	80	
		2003	10	9	90	
		2002	3	3	100	
		2001	7	7	100	
4	Częstochowa					
		2008	*	*		
		2007	*	*		
		2006	*	*		
		2005	20	20	100	
		2004	2	2	100	
		2003	6	6	100	
		2002	*	*		
		2001	9	9	100	
5	Gdańsk					
		2008	2	2	100	
		2007	13	13	100	
		2006	*	*		There has been no exam
		2005	15	15	100	
		2004	10	10	100	
		2003	10	10	100	
		2002	6	6	100	
		2001	10	10	100	
6	Katowice					
		2008	3	3	100	
		2007	16	16	100	
		2006	*	*		
		2005	67	67	100	
		2004	14	14	100	
		2003	17	17	100	
		2002	21	20	95,24	
		2001	7	7	100	
7	Kielce					
		2008	*	*		
		2007	18	18	100	
		2006	*	*		Ministry of Justice exam
		2005	19	19	100	
		2004	3	3	100	
		2003	8	8	100	9 trainees apply for the exam, but one resigned and decided to pass exam in Bielsko-Biala in 2008
		2002	12	12	100	
		2001	7	7	100	
8	Koszal					
		2008	*	*		
		2007	6	6	100	
		2006	*	*		
		2005	3	3	100	
		2004	3	3	100	
		2003	*	*		
		2002	6	6	100	
		2001	4	4	100	
9	Kraków					
		2008	*	*		
		2007	53	53	100	
		2006	5	0	0	
		2005	33	32	96,97	

		2004	24	23	95,83	
		2003	31	30	96,77	
		2002	22	21	95,45	
		2001	37	33	89,19	
10	Lublin					
		2008	15	12	80	
		2007	13	13	100	
		2006	*	*		
		2005	15	15	100	
		2004	20	20	100	
		2003	6	6	100	
		2002	7	7	100	
		2001	16	16	100	
11	Łódź					
		2008	5	5	100	
		2007	42	37	88,10	
		2006			100	passed in 100 %
		2005			100	passed in 100 %
		2004			100	passed in 100 %
		2003			100	passed in 100 %
		2002			100	passed in 100 %
		2001			100	passed in 100 %
12	Olsztyn					
		2008	*	*		Exam is planned in VI.2008
		2007	4	4	100	
		2006	*	*		
		2005	6	6	100	
		2004	7	7	100	
		2003	*	*		
		2002	4	4	100	
		2001	4	4	100	
13	Opole					
		2008	1	1	100	
		2007	5	5	100	
		2006	*	*		
		2005	9	9	100	
		2004	5	5	100	
		2003	4	4	100	
		2002	*	*		
		2001	3	3	100	
14	Płock					
		2008	*	*		
		2007	8	8	100	
		2006	12	12	100	3 trainees from different district bar councils
		2005	7	7	100	
		2004	*	*		
		2003	7	7	100	
		2002	*	*		There has been no exam
		2001	13	13	100	
15	Poznań					
		2008	44	43	97,73	
		2007	32	32	100	
		2006	*	*		
		2005	42	42	100	
		2004	*	*		
		2003	49	49	100	
		2002	6	6	100	
		2001	6	6	100	
16	Radom					
		2008			100	All trainees passed in 2001-2008
		2007			100	
		2006			100	
		2005			100	
		2004			100	
		2003			100	
		2002			100	
		2001			100	
17	Rzeszów					
		2008	*	*		Exam is planned in VI- VII 2008
		2007	*	*		
		2006	26	26	100,00	
		2005	34	34	100,00	
		2004	38	38	100,00	
		2003	*	*		
		2002	5	5	100,00	
		2001	24	24	100,00	
18	Siedlce					
		2008	*	*		
		2007	*	*		
		2006	6	6	100	
		2005	4	4	100	
		2004	4	4	100	
		2003	*	*		
		2002	*	*		
		2001	2	2	100	
19	Szczecin					
		2008	*	*		
		2007	4	4	100	
		2006	3	0	0	

		2005	16	15	93,75	
		2004	5	5	100	
		2003	6	6	100	
		2002	6	6	100	
		2001	7	6	85,71	
20	Toruń					
		2008	*	*		
		2007	*	*		
		2006	11	11	100	
		2005	*	*		
		2004	8	8	100	
		2003	5	5	100	
		2002	2	2	100	
		2001	2	2	100	
21	Wałbrzych					
		2008	*	*		
		2007	8	8	100	
		2006	9	9	100	
		2005	13	13	100	
		2004	8	8	100	
		2003	8	8	100	
		2002	8	8	100	
		2001	5	5	100	
22	Warszawa					
		2008	2	2	100	
		2007	99		0	
		2006	*	*	#VALEUR!	State exam
		2005	99	99	100	
		2004	43	43	100	
		2003	40	40	100	
		2002	58	58	100	
		2001	41	41	100	
23	Wrocław					
		2008	*	*		
		2007	32	32	100	
		2006	24	24	100	
		2005	12	12	100	
		2004	27	27	100	
		2003	24	24	100	
		2002	3	3	100	
		2001	24	24	100	
24	Zielona Góra					
		2008				
		2007				
		2006				
		2005				
		2004				
		2003				
		2002				
		2001	no information provided			
	Overall		**1910**	**1779**	**93,14**	

Study: **Polish Bar Council Office**

Consejo General de la Abogacía Española
Vicepresident
Head of CCBE Delegation

Jonathan Goldsmith
CCBE Secretary General
Av. De la Joyeuse Entrée, 1
1040 Brussels

Palma de Mallorca, 15th of April 2008

Subject: Comments to the OECD Competition Committee report

Dear Secretary General, dear Jonathan,

I would like to thank you for sending us the OECD Competition Committee Report as well as the request for comments to national Delegations.

After its analysis, our Delegation would like to point out several relevant mistakes that appear in the report concerning the description of the situation of legal professions and, particularly, of the profession of lawyer in Spain.

1°) Introduction.

The study makes a wrong reference to the four categories of professionals analysed: lawyers, solicitors, notaries and "registradores".

We understand that the use of the term "solicitor" is an appalling translation mistake. It certainly refers (as it is explained in the following paragraph) to the profession of "procurador" which has a completely different nature and regulation than the solicitors have in the United Kingdom.

Whilst recognising that many UK solicitors exercise their profession under their home title freely in accordance with EU Directive 5/98/EC and EU Directive 249/78/ECC (which establish both together a very liberal regime for cross border practise and establishment of EU lawyers with its consequent benefits to competition),

CONSEJO GENERAL DE LA ABOGACÍA ESPAÑOLA
Paseo de Recoletos, 13
28004 Madrid

1, Avenue de la Joyeuse Entrée;
1040 Bruxelles
Tel: 00.32.2/280 05 26
Fax: 00.32.2/280 18 95
E-mail : Bruselas@cgae.es

the qualification of the *procuradores* as solicitors is certainly misleading to any reader who will not be familiar with our legal system.

Furthermore, this ambiguity continues in paragraph 2 where the tasks of the "procurador" are defined as the *"mere representation in courts (without legal defense)"*. The report should instead only refer to the "procedural representation" in Courts, since representation in an international and european context refers to a function generally undertaken by lawyers.

2°) Regulation of entry.

This chapter contains another major mistake when it refers to the "Act 34/2006" on Access to the Professions of Lawyer and "Procurador". The description of the regulation of the Act infers the existence of a system of access to the profession in force which is not the case.

It appears of the utmost importance to note that the quoted Law establishes a *vacatio legis* of five years, and therefore the system described as potentially obstructing the Access to the profession will only enter into force till 2012. So far, the Spanish Advocacy remains to be the only Advocacy in the EU without any specific professional requirement to access the legal profession after obtaining the academic title of *Licenciado en Derecho*.

Furthermore, the statement "Foreigners that want to practise the profession in Spain are also required to join the correspondent professional association" is also mistaken. The freedom to provide services by EU lawyers as regulated in the Directives does not require registration according to our national legislation in force for provision of services. Only EU lawyers wanting to establish themselves are requested to register at the Bar.

In several parts of the report, the *Colegios de Abogados* are mentioned as "professional associations". This equivalence is not in agreement with our Constitution. The *Colegios de Abogados* are public law bodies with delegated public functions whilst "associations" are private law bodies. The Spanish Constitution makes reference to three types of professional associations:

→ Trade Unions (art.7), **Article 7:** Trade unions and employers' associations contribute to the defence and promotion of the economic and social interests which they represent. Their creation and the exercise of their activities shall be unrestricted in so far as they

CONSEJO GENERAL DE LA ABOGACÍA ESPAÑOLA
Paseo de Recoletos, 13
28004 Madrid

1, Avenue de la Joyeuse Entrée;
1040 Bruxelles
Tel: 00.32.2/280 05 26
Fax: 00.32.2/280 18 95
E-mail : Bruselas@cgae.es

respect the Constitution and the law. Their internal structure and operation must be democratic.

→ Professional Colleges (art.36) **Article 36:** The law shall regulate the special features of the legal status of the Professional Colleges and the exercise of the degree professions. The internal structure and functioning of the Colleges must be democratic.

→ Professional Organizations (art.52); **Article 52:** The law shall regulate the professional associations which contribute to the defence of their own economic interests.

Leaving Trade Unions to one side, the relevant conceptual difference between Professional Colleges and Organizations is that whilst Professional Colleges are legal entities created in order to protect the public interest connected to their members' interests, Professional Associations are legal entities connected to objective economic interests of the profession.

Regarding the concrete matter of obligatory registration it is not incompatible with the principle of democracy that binds the organisation and functioning of the Professional Colleges as the Constitutional Court established in its 89/1989 decision. The Constitutional Court stated that "it is self-evident that obligatory registration at the College is perfectly compatible with the democratic demand that the Constitution establishes as a requirement since this requirement constitutes a counterweight, a compensation to the duty of registration and at the same time, a guarantee that this duty is submitted to the democratic control of the registered colleagues".

3.1 Fees.

The study mentions the prohibition of *quota litis* as a possible restraint of competition, without having regard to the fact that a) only the pure *quota litis* is forbidden but that *quota litis* as a complement (in lato sensu) is allowed b) the prohibition is included in the CCBE Code of Conduct and c) this prohibition is furthermore confirmed by several judgements of the Supreme Court and the *Audiencia Nacional* whose mention does not appear in the report.

CONSEJO GENERAL DE LA ABOGACÍA ESPAÑOLA
Paseo de Recoletos, 13
28004 Madrid

1, Avenue de la Joyeuse Entrée;
1040 Bruxelles
Tel: 00.32.2/280 05 26
Fax: 00.32.2/280 18 95
E-mail : Bruselas@cgae.es

Consejo General de la Abogacía Española
Vicepresident
Head of CCBE Delegation

4.2 Regulatory oversight.

The reference to the lack of existence of specific self-regulated bodies of complaints for the legal professions seems also to be mistaken. Discipline is a competence that belongs and is enforced by the *Colegios and Consejos de Abogados* for breaches of deontology. An appeal is granted to ordinary Courts. For more information on the Regulation of the Disciplinary procedure please see:
http://www.cgae.es/portalCGAE/archivos/ficheros/1172147145729.pdf

Conclusion

Having regard to this non exhaustive set of comments on the report, the Spanish Delegation would like to request an amendment or at least an explanation on methodology and content from the OECD. Having followed with great interest the debates on this issue with the Directorate General on Competition of the European Commission, we perceive that many of the mistakes hereby exposed are similar to the ones our National Council pointed out by letter to EU Commissioner Nelie Kroes.

Best regards,

Juan Font Servera
Vicepresident of the CGAE
Head of the Spanish Delegation in CCBE

CONSEJO GENERAL DE LA ABOGACÍA ESPAÑOLA
Paseo de Recoletos, 13
28004 Madrid

1, Avenue de la Joyeuse Entrée;
1040 Bruxelles
Tel: 00.32.2/280 05 26
Fax: 00.32.2/280 18 95
E-mail : Bruselas@cgae.es