EUROPEAN LAWYERS
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The voice of European Lawyers

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GUIDELINES FOR BARS & LAW SOCIETIES on FREE MOVEMENT OF LAWYERS WITHIN THE EUROPEAN UNION 2021

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Introduction

European Union (EU) lawyers have, uniquely among the liberal professions in Europe, a distinct regime governing the free movement of lawyers in the EU (hereafter referred to as the "EU regime on free movement of lawyers"), including their own sectoral Directives. The present guidelines for bars and law societies aim to outline this specific structure.

The guidelines are divided into seven parts, as follows:

(1) Being a lawyer – in other words, who can take advantage of the EU regime on free movement of lawyers;

(2) Double deontology – in other words, how to deal with potential conflicts between professional rules from different bars under the EU regime on free movement of lawyers;

(3) Establishment – when a lawyer moves permanently to another Member State to practise law in that State under his professional home title (covered principally by the Establishment Directive (98/5/EC));

(4) Temporary provision of services – when a lawyer provides cross-border legal services temporarily under his professional home title (covered principally by the Services Directive (77/249/EEC));

(5) Acquisition of professional title of another Member State – when a lawyer obtains a lawyer's title in another Member State and uses it in the host State, in his home Member State or in any other Member State (in other words, requalification);

(6) Lawyers who are not fully qualified – when a person with some legal training and experience but who has not yet been admitted to a bar or by a law society as fully qualified lawyer is able to take advantage of the EU's free movement (the *Morgenbesser* case);

(7) Cooperation between bars.

These parts are described in greater detail in this Guide. A list of the jurisprudence from the Court of Justice of the European Union (CJEU) on the EU regime on free movement of lawyers is available here.

Each of the Directives mentioned in this Guide will have been implemented through national legislation. The first place to seek guidance regarding the interpretation of a Directive's provisions will therefore be in the national implementing legislation for the relevant jurisdiction. On the Commission's website, there is a page summarising the national provisions on the transposition of EU law into national law in the different Member States.

In addition, in 2018, the CCBE put together an overview table to access at a glance key information on national/local rules (and their relevant references) applicable to lawyers who want to provide services or be established in another country in the EU. The national regulations are available online.

The Directives themselves can be consulted in all the official languages of the EU. No one language version prevails over another: each is equally authentic. Obviously, if further countries accede to the EU, this would be likely to necessitate additional language versions (and indeed expand the lawyers' titles covered by the Directives).

In a case where there are difficulties in interpreting the applicable legal provisions, the CCBE offers a service

of assistance, as outlined in the CCBE's guidelines on implementing the Establishment Directive:

> *The CCBE will provide a service to competent authorities in attempting to resolve difficulties in interpreting provisions of the Directive, to ensure that, so far as possible, there is a uniform interpretation of the Directive around the EU. Accordingly, competent authorities are encouraged to alert the CCBE to any such difficulties. The CCBE will also offer an advisory service, which will be voluntary and non-binding and offered only where requested by parties, for the resolution of disputes between parties under provisions of the Directive.*

Generally, meetings of the CCBE EU Lawyers Committee include an exchange of experience on free movement issues.

I. Being a lawyer

There is one fundamental condition which needs to be satisfied before a person can take advantage of the Directives: being a lawyer. This condition is common to both the Services Directive and the Establishment Directive (the Lawyers' Directives). The definition of the term "lawyer", which follows in the next section, is consistent across these directives.

1. Who is a lawyer?

Only those persons recognised by the Directives as being lawyers can benefit from the EU's free movement provisions for lawyers. The Establishment Directive defines a lawyer by listing two cumulative conditions:

(1) the person must be an EU national; and

(2) the person must hold one of the professional titles listed within the Directive.

In both Directives, the term 'lawyer' is not defined by area or length of years of practice, nor by educational qualifications or years of study, but only by whether the person concerned holds one of the recognised legal professional titles listed in the Establishment Directive. The titles refer to fully qualified lawyers. The holding of such a title, together with being a national of a Member State, entitles any fully qualified lawyer to take advantage of both of the Lawyers' Directives. The rights in the Directives to establish and to provide services, derived from Articles 49 and 56 TFEU, can be asserted not only against the host State but also against the home State, and both must facilitate the exercise of the fundamental freedoms found in the Treaty.

The regime of fully qualified lawyers holding a title listed in the Establishment Directive and the Services Directive differs from that of most, or probably all, other liberal professions. In other sectors, the ability to cross borders is derived from a mutually recognised educational route to qualification, whereas in the legal profession it arises solely from the acquisition of a title, through whichever route that is nationally recognised. The routes to qualification as a lawyer in the Member States differ quite widely, with different emphasis placed (for instance) on practical or academic training. However, the Lawyers' Directives override these differences; they are based on the mutual recognition that each Member State has an adequate route to qualification with equivalent consumer protection.

The Lawyers' Directives state (Article 1 of both Directives) that a lawyer is someone who is authorised to pursue his or her professional activities under one of the following professional titles:

Austria	Rechtsanwalt
Belgium	Avocat/Advocaat/ Rechtsanwalt
Bulgaria	Адвокат
Croatia	Odvjetnik
Cyprus	Δικηγόρος
Czech Republic	Advokát

Denmark	Advokat
Estonia	Vandeadvokaat
Finland	Asianajaja/Advokat
France	Avocat
Germany	Rechtsanwalt
Greece	Δικηγόρος
Hungary	Ügyvéd
Ireland	Barrister/Solicitor
Italy	Avvocato
Latvia	Zvērināts advokāts
Lithuania	Advokatas
Luxembourg	Avocat[1]
Malta	Avukat/Prokuratur Legali
Netherlands	Advocaat
Poland	Adwokat/Radca prawny
Portugal	Advogado
Romania	Avocat
Slovakia	Advokát
Slovenia	Odvetnik/Odvetnica
Spain	Abogado/Advocat/Avogado/Abokatu
Sweden	Advokat

By decision of the European Economic Area (EEA) Joint Committee, the Lawyers' Directives have been incorporated into the EEA *acquis* so that lawyers from Iceland, Norway and Liechtenstein complete the above list as follows:

Iceland	Lögmaður
Liechtenstein	Rechtsanwalt
Norway	Advokat

In addition, following the Swiss-EU bilateral agreement on the free movement of persons, Swiss lawyers are also entitled to take advantage of the Lawyers' Directives:

Switzerland	Avocat, Avocate / Anwalt, Anwältin / Rechtsanwalt, Rechtsanwältin/ Fürsprecher, Fürsprecherin / Avvocato

2. Law firm and joint practice

A law firm is defined as grouping of lawyers (regardless of legal form). The law of home Member State defines what a law firm is. A branch of the grouping will be registered in a host Member State (with the bar and/or on the relevant commercial register). Therefore, the rules governing this grouping in home Member State must not be incompatible with the fundamental rules of host Member State on groupings of lawyers. For example, Alternative Business Structures (ABS) and Multi-Disciplinary Practices (MDPs) will be recognised where they are permitted/admitted in host Member State (compare Case C-309/99 Wouters with Case C-384/18 EC v. Belgium). Proof of registration of a firm in the home Member State is done by excerpt from the commercial register or similar.

Lawyers are also entitled to form a grouping under the rules of the host Member State. Partners of the grouping (also when registered as a branch) must be lawyers under the Establishment Directive.

For details, see Part 3 below.

1 Notwithstanding the wording of the Directives, the actual title to be considered in Luxembourg is "Avocat à la Cour".

Frequently asked questions

How can I ascertain whether someone is a member of a profession recognised under the Lawyers' Directives?

There are a variety of ways:

(1) The lawyer seeking to establish under the Establishment Directive must present 'a certificate attesting his registration with the competent authority in the home Member State' under Article 3 – see more on this below.

(2) The competent authority of the host Member State may request the lawyer seeking to provide temporary services under the Services Directive to establish his qualification as a lawyer (Article 7 (1) of Directive 77/249/EC).

(3) The host bar, if it is a competent authority, may be able to use the Internal Market Information System (IMI) which allows professional organisations to seek information from their counterparts in other Member States. The IMI regulation is available here. The European Commission also has a dedicated website, which can be consulted here (for updated information). More information on IMI system can be found in Part 7 of this Guide.

(4) Most European bars have electronic directories of registered members, the majority of which have been amalgamated into a single 'Find-A-Lawyer' directory (in all official EU languages) on the European Commission's e-Justice portal.

(5) The lawyer can be asked for his or her professional ID card. Not all competent authorities issue professional ID cards; and the CCBE has an EU identity card which lawyers can obtain from their own competent authority. A lawyer may have one or both of these professional ID cards.

(6) Lastly, confirmation of qualification can be sought from the bar of which the lawyer claims to be a member. Contact details of relevant bars may be obtained through the CCBE.

If a legal profession is not listed in the Lawyers Directives, is there a remedy?

If a legal profession is not listed – e.g. notaries – then a member of that profession cannot take advantage of the Lawyers' Directives. Efforts can be made to have the profession listed. Alternatively, the person may be able to take advantage of the general provisions of the Treaty on the Functioning of the European Union (TFEU) regarding free movement of persons.

What is the position of non-EU nationals?

Non-EU nationals are not able to take advantage of the Directives, nor of the general provisions of the TFEU regarding the free movement of persons in order to establish themselves or provide temporary services. However, they may be able to take advantage of a certain amount of free movement, if permitted by national laws, or if there are existing free trade agreements concluded at national or EU level with their home jurisdiction, or under the rules of GATS.

At this point it should be pointed out that several EU Member States have connections with particular territories, which enjoy special status within or outside the EU (e.g. the Outermost Regions and the Overseas Countries and Territories). As the applicability of primary and secondary EU law may vary, national authorities should be aware whether a lawyer from one of these territories is able to invoke the rights laid down in the Lawyers' Directives.

Can trainee lawyers take advantage of the Directives?

The CCBE's guidelines on the implementation of the Establishment Directive say that 'Avocats stagiaires' or trainee lawyers do not fall within the scope of the provisions of the Directive.

However, it may be possible for candidates who are in the process of becoming lawyers to take advantage of the free movement provisions of the TFEU – see Part 6 below.

How are seconded lawyers within a law firm (sent from a branch/office operating in one Member State to a branch/office operating in another Member State) treated under the Establishment Directive?

The CCBE's guidelines on the implementation of the Establishment Directive, cited above, state that:

> *"Lawyers who are seconded from one firm or branch of a firm within one Member State to another firm or branch of a firm within a second Member State in order to be trained or to further their personal development shall not be considered as falling within the provisions of the Directive."*

II. Double deontology (Article 6 of the Establishment Directive and Article 4 of the Services Directive)

General

Lawyers practising under the EU regime on free movement of lawyers are subject simultaneously to two professional codes of conduct - the code of their home State and the code of the host State - in respect of all activities pursued in the host State. This kind of situation is referred to as 'double deontology'.

The CCBE has adopted an interpretation of the 'double deontology' provision of the Directives (Article 6 of the Establishment Directive, Article 4 of the Services Directive).

Article 6 of the Establishment Directive:

A lawyer practising under his/her home Member State professional title remains subject to the rules of professional conduct of his/her home State only to the extent that these do not conflict expressly or impliedly with the rules of professional conduct of the host State. In case of conflict between rules of conduct, host State rules override home State rules.

Article 4 of the Services Directive:

With regard to the representation of clients in legal proceedings, according to Article 4.1, the lawyer pursues that activity "under the conditions laid down" for lawyers established in the host Member State. The "conditions laid down for lawyers established" in the host country for the pursuit of such representation do comprise specific proceeding-related professional rules in some jurisdictions. Rules that are considered to be rules of civil or criminal procedure in one Member State may be considered to be professional conduct rules in another Member State. Temporarily servicing lawyers have to comply with these rules without regard to their qualification as procedural or professional conduct rules.

Article 4.2 stipulates that "a lawyer pursuing these activities shall observe the rules of professional conduct of the host Member State, without prejudice to his obligations in the Member State from which he comes".

The CCBE considers that the only interpretation of Article 4.2 (in the sense of a conflict rule), in line with the Directive's language is the same interpretation as already adopted on Article 6 of Directive 98/5, i.e. "in case of a conflict between home and host State professional rules the host Member State's professional rules prevail.

According to Article 4.4 a lawyer pursuing activities other than those referred to in paragraph 1, i.e. "out of court" work, "shall remain subject to the conditions and rules of professional conduct of the Member State from which he comes". But at the same time host Member State professional rules are applicable as well "to the extent to which their observance is objectively justified to ensure, in that State, the proper exercise of a lawyer's activities, the standing of the profession and respect for the rules concerning incompatibility". As a general rule the lawyer has to comply with home country professional rules without regard to host country rules – this general rule is consistent with the E-Commerce-Directive's country of origin regime where cross-border services are provided under circumstances governed by said Directive. In exceptional situations however host country professional rules come into play.

On the basis of fact finding done by the CCBE, it appears that, with regard to individual lawyers, there is no field of application for Article 4.4 2nd sentence; i.e. no cases of such conflicts have come to the knowledge of Bars and Law Societies, and no complaints from clients and/or lawyers seem to have been made.

Nevertheless, it is desirable to uphold the provision of Article 4.4 2nd sentence in order to be able to deal with conflicts of rules should such conflicts occur in the future. Such potential situations might arise if professional rules in other Member States undergo drastic changes, e.g. in case a Member State should abolish the interdiction to directly address another lawyer's client, thereby depriving said client of his/her lawyer's advice and protection.

Where a team of lawyers from different jurisdictions handles a client's case, national conflict of interest rules may differ from one another. Law firms in such a case apply in practice the strictest rule one of the lawyers concerned will have to comply with and may on these grounds from time to time refuse to accept a client's case.[2]

In summary, it appears that:

- *Real practical problems do not occur with regard to individual lawyers.*
- *Practical problems that may occur where lawyers from different jurisdictions handle cases within a team cannot be tackled by a conflict rule in favour of home country rules, but by application of the strictest home country rules.*

The following should also be borne in mind:

(1) The CCBE has developed a Code of Conduct for European Lawyers[3] with the objective (among other things):

"to minimise, and if possible eliminate altogether, the problems which may arise from "double deontology", that is the application of more than one set of potentially conflicting national rules to a particular situation (see Article 1.3.1)".

(2) There can be no problem if the content of the particular rule in question is identical or nearly identical in both codes of conduct. If both rules "point in the same direction", then it is usually stated that the application of the wider rule will also incorporate the application of the narrower one.

(3) It is only if there is a conflict between the two rules that a problem might arise; however, this is a rare occurrence.

2 The Maastricht University/Panteia study's suggestion to introduce a conflict rule according to which only home country rules should be applicable obviously would not be helpful in situations where lawyers from different Member States jointly handle a common client's case.

3 See Article 1.5 of the CCBE Code of Conduct for European Lawyers that refers to its field of application (ratione materiae): "Without prejudice to the pursuit of a progressive harmonisation of rules of deontology or professional practice which apply only internally within a Member State, the following rules shall apply to the cross-border activities of the lawyer within the European Union and the European Economic Area. Cross-border activities shall mean:
(a) all professional contacts with lawyers of Member States other than the lawyer's own;
(b) the professional activities of the lawyer in a Member State other than his or her own, whether or not the lawyer is physically present in that Member State."
The CCBE Code of Conduct for European lawyers is available on the CCBE website.

Frequently asked questions

Does double deontology mean that a lawyer established in a host Member State might suffer disciplinary sanctions from two different bars (home and host) for the same incident?

The CCBE's guidelines on implementation of the Establishment Directive say the following:

> *A lawyer registered under Article 3 of the Establishment Directive is subject to regulation not only by his or her home bar but also in accordance with Article 6 of the Directive by the host bar where he or she is registered. In the case of professional misconduct, this may lead to disciplinary proceedings both by the host bar and by the home bar in respect of the same misconduct, although it is recognised that the disciplinary sanction accorded by each competent authority in such a case may be different, or be of a different severity, according to circumstances.*

This will also be the case for a lawyer who is a full member of two bars from different countries after integration in the host bar on the basis of Article 10 of the Establishment Directive, although in such circumstances there will no longer be a home bar and a host bar. In case of conflicting rules, the stricter rule will apply (see also hereabove in case of a team of lawyers belonging to different bars). In such cases, bars are encouraged to exchange information on disciplinary procedures (see below part 7).

Does double deontology mean that a lawyer who temporarily renders legal services in a host Member State might suffer disciplinary sanctions from two different bars (home and host) for the same incident?

Unlike lawyers established under Article 3 of the Establishment Directive, lawyers temporarily providing services under the Services Directive, are not members of a bar or law society in the host State.

Whether these lawyers nevertheless are subject to disciplinary sanctions by a host Member State bar, depends on the host Member State's legislation. Article 7.2 of the Services Directive affirms the host Member State's jurisdiction over lawyers providing services on a temporary basis from other Member States in so far as it provides that:

> *"In the event of non-compliance with the obligations referred to in Article 4 and in force in the host Member State, the competent authority of the latter shall determine in accordance with its own rules and procedures the consequences of such non-compliance (...)".*

The Services Directive is addressed to Member States. Hence it depends on the host Member State's domestic regulation whether the host Member State delegates disciplinary power over lawyers providing services on a temporary basis to a bar or law society (even though they are not members), or indeed to another competent authority.

The host Member State may also – and some Member States have done so – decide to refrain from exercising disciplinary power over lawyers temporarily providing services, instead leaving it to the competent authorities in the home Member State to discipline lawyers in relation to a breach of professional rules in the host Member State.

Can a lawyer working in one Member State in a local establishment of a foreign law firm, established in another Member State, be subject to the rules of professional conduct imposed by the legislation or the bar of the latter Member State where the head office of the law firm is located, without the lawyer being established in that Member State?

Both the Services and the Establishment Directives are applicable when a lawyer, qualified in one Member State (home Member State) wants to either temporarily provide services or practise on a permanent basis in another Member State (host Member State), under the home professional title. However, the respective provisions do not provide answers as regards the applicable rules of professional conduct when a lawyer works in a local establishment of a foreign law firm, the head office of which is established in another Member State, where he does not exercise any type of professional activity.

Furthermore, no guidance can be gained from the Court of Justice of the European Union, which has not dealt with this issue or with any similar question. In the absence of an EU provision and guidance from the EU courts in this regard a careful analysis of every individual case is necessary. In practice, the national legal framework of the Member State of the law firm's head office is likely to be relevant if members of local establishments in other Member States are also subject to these rules.

If a lawyer or law firm from one Member State provides cross-border legal services from the home jurisdiction, or from time to time on a temporary basis in another Member State, which rules are applicable to the law firm's website?

A practical example can be noted concerning the use of professional titles from lawyers established in different countries about the choice of domain names for their websites, e.g. if local rules exist to prevent the use of "lawyer" professional title (in the original language) in generic terms by domain names in order to guarantee the protection of consumers and avoid confusion/misleading publicity. Therefore, a lawyer established in another country offering his services with a visibility of the website in the host State should be aware of such rules.

III. Lawyer from another Member State established under his home Member State professional title (Establishment Directive)

This regime is governed by the Establishment Directive, the full title of which is 'Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained' (OJ L 77, 14.3.1998, p. 36).

It is available in all official languages of the EU here.

On the Commission's website, there is a page summarising the national provisions on the transposition of EU law into national law in the different Member States.

Two basic conditions:

(a) being a lawyer, and

(b) being established

After having ascertained that the person is a lawyer, the host bar has to verify his or her establishment.

1. What does 'establishment' mean?

There are two key ways of providing services under home title as a lawyer in the EU: by practising on a permanent basis in another Member State, or by providing temporary services across the border. A third possibility described in the introduction is providing services across borders under host title, after having acquired the host title. While the extremes of each of the two types of provision under home title are clear, the boundary between them is not. Opening a law firm under home title after permanently migrating to another Member State would be establishment. Dealing with a brief client matter for one day in another Member State would be the provision of temporary services. But what about a sojourn of a few months? The answer is important because very different rights and duties stem from the correct decision, which in turn depends on the directive applying to the lawyer. He or she cannot fall under both: the Directives are mutually exclusive (Article 1.4 of the Establishment Directive).

Article 2 of the Establishment Directive defines establishment as the pursuit of practice by a lawyer on a permanent basis in another Member State, without giving further details. But Article 10, which provides certain rights after three years of such permanent practice, provides more detail by saying that the lawyer must have 'effectively and regularly pursued' the activity, and further sets out that *"Effective and regular pursuit means actual exercise of the activity without any interruption other than that resulting from the events of everyday life"* (Article 10.1 of the Establishment Directive).

There is no case law yet regarding the meaning of this wording when translated into the actual circumstances of lawyers' lives. However, there was a seminal case decided by the Court of Justice of the European Union at a time before the passage of the Establishment Directive– the *Gebhard* case (Case C-55/94) – which gives some indication of the difference between establishment and the temporary provision of services by lawyers. The wording is rather general, but the Court said that the temporary nature of the provision

of services is to be determined 'in the light of its duration, regularity, periodicity and continuity'; and that establishment implies 'a stable and continuous basis' of professional activity in another Member State. In particular, the Court said the following:

> *the temporary nature of the activities in question has to be determined in the light, not only of the duration of the provision of the service, but also of its regularity, periodicity or continuity. The fact that the provision of services is temporary does not mean that the provider of services within the meaning of the Treaty may not equip himself with some form of infrastructure in the host Member State (including an office, chambers or consulting rooms) in so far as such infrastructure is necessary for the purposes of performing the services in question.*

2. Registration with the host Bar (Article 3 of the Establishment Directive)

In order to take advantage of the Establishment Directive, the established lawyer must register with the competent authority in the host State. This is usually the bar which has jurisdiction in the area where the lawyer works. In order to register, the Directive requires that the lawyer submits a certificate attesting to his registration with the competent authority in the home Member State' – in other words, his or her home bar[4]. The host authority can require that the certificate be not more than three months old (Article 3.2 of the Establishment Directive).

The CCBE guidelines on the implementation of the Directive comment on the certificate of attestation as follows:

> *Where a lawyer registering under Article 3 of the Directive has more than one home jurisdiction, the relevant competent authority is entitled to ask for a certificate of attestation under Article 3.2 of the Directive from each of the competent authorities with which that lawyer is registered in a Member State.*
>
> *A certificate of attestation under Article 3.2 of the Directive shall mention all disciplinary proceedings (as defined … below) which have been commenced in the home Member State against the lawyer applying for registration under Article 3 of the Directive, or in which a finding has been made against the lawyer.*
>
> *For the purposes of: (...)*
>
> *(b) any declaration to be made by the relevant competent authority in the home Member State in a certificate of attestation under Article 3.2 of the Directive;*
>
> *disciplinary proceedings shall be defined as having commenced when formal proceedings have started before the court, tribunal or other body which has jurisdiction in the home Member State to take disciplinary actions against, and impose sanctions upon, the lawyer registering under Article 3 of the Directive. The mere receipt of a complaint against the lawyer is not considered for these purposes to be „disciplinary proceedings".*

If the bar publishes a list of its local lawyers, it must include any lawyer registered under the Directive on such a list. In addition, registered lawyers must be granted appropriate representation in the professional associations of the host Member State. This must include at least the right to vote in elections to those associations' governing bodies.

Article 9 states that decisions not to effect a registration, or to cancel a registration and decisions imposing disciplinary measures, must state the reasons on which they are based. In addition, a remedy must be available against such decisions before a court or tribunal in accordance with the provisions of domestic law[5].

4 Experience suggests that care needs to be taken to verify the authenticity of the certificate attesting to a lawyer's registration because of the risk of fraud, such as for example a private company incorporated with the identical name to the relevant bar.

5 In the case of *Graham J. Wilson v Ordre des avocats du barreau de Luxembourg* (Case C-506/04), it was held that Article 9 precludes an appeal procedure in which the decision refusing registration must be challenged at first instance before a body composed exclusively of lawyers practising under the professional title of the host Member State and on appeal before a body composed for the most part of such lawyers, where the appeal before the supreme court of that Member State permits judicial review of the law only and not the facts. On the other hand, the CJEU has considered the Consiglio Nazionale Forense in its capacity as a court to be a judicial body in the sense of Article 267 TFEU (e.g. *Torresi* C-58/13 and 59/13).

Frequently asked questions

Which bar does the lawyer need to register with?

There are Member States which offer multiple options for registration depending on the field of practice and regional aspects. As mentioned previously the Commission's website has a page summarising the national provisions on the transposition of EU law into national law in the different Member States.

In some Member States[6], for example in Ireland, there are two legal professions covering the same geographical location. This is the only instance of the 'which-bar-to-choose' dilemma that is explicitly dealt with in the Establishment Directive itself. The Directive states that registrants from outside that jurisdiction must choose which of the two professional bodies they wish to register with.

In other Member States or locally[7], registrants must choose between different bars based on language.

In a few Member States[8], the lawyer must register with the bar local to his or her intended practice.

In the rest of the Member States, the lawyer must register with the national bar.

Must the bar register a lawyer if he or she has provided a valid certificate?

Under the provisions of the Establishment Directive, a bar may choose not to register a lawyer, even if the lawyer has fulfilled the requirements of Article 3 in the following circumstances:

(1) where the lawyer is not an EU national;

(2) where the lawyer holds no valid professional indemnity insurance according to Article 6;

(3) where the lawyer is practising within a legal structure in the sense of Article 11.5.

However, the bar cannot add criteria for registration which do not exist in the Directive itself. This was confirmed in the case of Graham J. Wilson v. Ordre des avocats du barreau de Luxembourg (Case 506/04), where the Court held that registration cannot be made subject to a prior examination of proficiency in the languages of the host Member State.

More recently, the Court, in the case Monachos Eirinaios c. DSA, (Case C-431/17), recalled (para. 26) that Article 3 of Directive 98/5 harmonises fully the preconditions for exercise of the right of establishment conferred by that directive, laying down that a lawyer who wishes to practise in a Member State other than that in which he obtained his professional qualification is obliged to register with the competent authority of that Member State, which must effect that registration "upon presentation of a certificate attesting to his registration with the competent authority of the home Member State".

However, the Court also underlined (para. 30): "A distinction should be drawn between, on the one hand, registration with the competent authority of the host Member State of a lawyer who wishes to practise in that Member State under his home-country professional title, a process which, in accordance with Article 3(2) of the directive, is subject solely to the condition referred to in paragraphs 26 to 28 above, and, on the other, the practice itself of the profession of lawyer in that Member State, in respect of which that lawyer is subject, by virtue of Article 6(1) of the directive, to the rules of professional conduct applicable in that Member State."

6 Ireland and Poland. In Poland (which became a member of the EU after the Directive was passed), registrants must also choose between two legal professions, the advocates (Naczelna Rada Adwokacka) or the legal advisors (Krajowa Izba Radców Prawnych).

7 For example, in Brussels they must choose either Flemish (Nederlandse Orde van Advocaten bij de Balie te Brussel) or French (l'Ordre français des avocats du barreau de Bruxelles).

8 France, Italy, Spain, Germany, Austria, Hungary, Luxembourg, Belgium (apart from Brussels – see above) and Greece.

In this context, issues have arisen with appreciable numbers of trainee lawyers deciding not to apply for the bar in their home State but to travel to another Member State (where for example there is no period of compulsory practical experience) in order to be fully qualified there. Cases C-58-9/13 Torresi confirmed the legality in principle of such arrangements in the context of registration with a host State bar under Article 3 of the Establishment Directive.

Competent authorities should closely scrutinise applications as there have been examples of fraudulently obtained certificates attesting to registration with the home bar (of the country of qualification). Accordingly, in the context of any new 'pathway' to qualification emerging with a number of applicants, cooperation between host and home bars under Part 7 below is likely to be critical.

A lawyer from another Member State is not to be treated like applicants in the host State who are not yet a lawyer, but rather as a fully qualified lawyer from another Member State entitled to mutual recognition and free movement, subject to the conditions laid out in the Directive.

Must the lawyer pay a registration fee even though the lawyer is also paying a fee to his or her home bar for enrolment on the home bar's list?

The lawyer will have to pay fees to both home and host bar.

Must the registration fee for the established lawyer be at the same level as that of the host bar's own lawyers?

The CCBE's guidelines on the implementation of the Establishment Directive say the following about the registration fee:

> *All lawyers registering under Article 3 of the Directive shall pay a registration fee or fees (which term includes either a one-off or a regular payment) to the relevant competent authority (as defined under Article 1.2(f) of the Directive), and to such other authorities as may be required under local rules. Such fee or fees may be equivalent to, but not higher than, the fee or fees charged to lawyers enrolled in the host Member State. Such fee or fees may be lower than the fee or fees charged to lawyers enrolled in the host Member State, for instance in the following circumstances:*
>
> *(a) if the registration fee covers work (such as that reserved to host State lawyers under Article 5.2 of the Directive) which the lawyer registering under Article 3 of the Directive will not be entitled to carry out under the Directive; or*
>
> *(b) if the fee covers items already paid elsewhere by the registering lawyer, such as indemnity insurance or social security contributions.*
>
> *A lawyer registering under Article 3 of the Directive who does not pay the fee requested by the relevant competent authority shall be considered to be guilty of unprofessional conduct, and the relevant competent authority may report the matter to the lawyer's home bar for further consideration, and may itself bring disciplinary proceedings against the lawyer under Article 7 of the Directive.*

What documents can be requested from the registering lawyer?

The registration process should not be so burdensome as to amount to an obstacle to free movement. The CCBE's guidelines on implementation of the Establishment Directive (cited above) say:

So far as possible, the following documents only should be requested by a bar or law society on a request for registration:

(a) a completed application form for the registration;

(b) a certificate of attestation from the home bar or law society;

(c) evidence of existing professional indemnity insurance.

In any case, the requested documents for such an application should not exceed those which would be requested from a lawyer transferring from one bar to another bar within the host Member State.

An authenticated translation of the requested documents, into an official language of the host bar, may be requested by the host bar or law society.

The CCBE guidelines also have a model registration form for use by the bars.

3. Practical requirements to avoid confusion with host State professional title (Article 4 of the Establishment Directive)

It is important that the registered, established lawyer practises under his or her home title. This should not be translated into the equivalent title in the host State, as this could lead to a misunderstanding that the lawyer is admitted to the bar in the host State. Instead, the home State title expressed in the official language (or one of the official languages, if more than one) of the home State, continues to be used. In other words, a French 'avocat' established in Ireland must use the title of 'avocat' and not 'solicitor' or 'barrister'.

The Directive also provides that it must be expressed 'in an intelligible manner'. This has not yet been tested in court, but it could mean that a Greek 'Δικηγόρος' should also use a transliteration of the title - 'dikigoros' – in countries which do not use the Greek alphabet (and vice versa for other lawyers established in Greece).

The host Member State can also insist on the established lawyer including a reference to the home bar of which he or she is a member plus a reference to his or her registration with the competent authority. In the example given above, it would be 'Δικηγόρος' (dikigoros registered with the Athens Bar under licence number 12345) or the equivalent .

The CCBE's guidelines on implementation of the Directive add the following:

In order to inform clients and other lawyers, EU bars and law societies are encouraged to ensure that, in addition to the provisions of Article 4 of the Directive, lawyers practising under their home title in another Member State also put on their notepaper the following information:

(a) a statement attesting to their registration with the competent body in the host State (written in the host language); and

(b) a statement of their registration with the home bar in the home State (translated into the host language).

4. Salaried practice (Article 8 of the Establishment Directive)

One of the significant differences in the practice of law across the EU is the extent to which lawyers are entitled to be employed, either by other lawyers or by non-lawyers. Employment is considered by some bars to be inconsistent with the idea of independence. In particular, in-house counsels are not recognised by some European bars as independent lawyers who can enrol with the bar.

Article 8 of the Establishment Directive allows employed lawyers, whether employed by lawyers or non-lawyers, to take advantage of the Directive only to the extent that the host State permits such practice. So, if a lawyer working as an in-house counsel is admitted as a member of his or her home bar, he or she will only be able to establish as an in-house counsel in a host State which similarly recognises in-house counsels as members of the bar.

The CCBE has additionally provided its interpretation of Article 8 in its position on Evaluation of the Lawyers' Directives, as follows:

> *Article 8 gives the right to a lawyer practising in a host Member State under his home Member State professional title to have access to the forms of salaried practice available to lawyers of the host State, irrespective of any restrictions on salaried practice applicable in the Member State from which he comes.*
>
> *However when practising in his/her home State, the employed lawyer remains subject to all restrictions on salaried practice applicable to lawyers in his/her home State, including, if applicable, the prohibition to represent or assist, in his/her home Member State, a client who employs him/her.*

The home bar should not deprive a practising lawyer of his/her admission to the home bar if he exercises his right to work as a salaried lawyer in another Member State (which permits such salaried practice) under Article 8 of the Establishment Directive.

For persons who were admitted to the bar, left the bar to work as a salaried lawyer/in house in their home State and then wish to exercise their free movement rights (in another Member State), it may be necessary for such a lawyer to be readmitted in his home State in order to receive the certificate of attestation needed to register with the host bar in order to become a salaried lawyer.

When applying national law for the purposes of free movement in an Article 8 context, both home State and host State bars remain under a legal obligation to act so as to provide effective protection for free movement rights arising both under the Establishment Directive and the Treaty on the Functioning of the European Union. Furthermore, Member States must take all necessary and appropriate measures to ensure that the fundamental freedoms articulated in the Establishment Directive are respected on their territory.

5. Professional indemnity insurance (Article 6.3 of the Establishment Directive)

There is one area of double application of rules – see double deontology above - with which the Directive deals specifically and that relates to professional indemnity insurance. A lawyer establishing in the host country will have to satisfy both home and host rules relating to professional indemnity insurance, which may not be the same.

The Directive states that a host Member State **may** require (not **must** require) a lawyer practising under home State professional title, either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that State lays down for professional activities pursued in its territory. However, a lawyer practising under home state professional title shall be exempted from that requirement if he or she can prove the existence of insurance taken out or a guarantee provided in accordance with the rules of the home Member State, insofar as such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the competent authority in the host Member State may require (again **may**, and not **must**) that additional

insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the home Member State.

The CCBE's guidelines on the implementation of the Directive say:

> *7. Professional liability insurance*
>
> *The bodies responsible in each Member State for arranging and/or providing professional indemnity insurance as mentioned in Article 6.3 of the Directive shall liaise with corresponding bodies in other Member States to ensure that, so far as possible, insurance arrangements made by a lawyer in one Member State are respected and recognised in another Member State both before and after integration under Article 10 of the Directive, to avoid problems relating to double premiums and double insurance.*

The European Commission has in the past encouraged member bars to follow the example of the Paris Bar and the Law Society of England and Wales, which have come to a mutual recognition agreement in respect of the professional indemnity insurance schemes in each other's jurisdiction.

Frequently asked questions

What steps has the CCBE taken to ensure better co-operation on insurance matters between Member States?

The CCBE has undertaken a significant body of work attempting to bring the various insurance regimes in the Member States into closer co-operation:

(1) Minimum standards for European Lawyers' Professional Indemnity Insurance

(2) Model of a questionnaire on professional indemnity insurance for lawyers asking for registration under the Establishment Directive

(3) Terms of Difference in Conditions Cover

(4) Insurance terminology (a glossary of terms in English, French and Dutch)

6. Legal form and shareholding requirements

Article 11 of the Establishment Directive regulates the extent to which differing legal form requirements as well as shareholding requirements in Member States may impede free movement of lawyers and law firms as follows:

(1) the general provisions found in Article 11.1-11.4, which deal with legal form among lawyers (see (1) below); and

(2) the specific provisions for non-lawyer shareholding or management under Article 11.5, which raise their own complex and lengthy issues in the case of non-lawyer involvement (see (2) below).

The Court of Justice has already issued decisions on this topic for other professions: accountants[9] and veterinarians[10]. In the first case (C-384/18), which rejected restrictions on multi-disciplinary practice by accountants, the Court of Justice reiterated that (paragraph 78) :

> *"According to well-established case-law of the Court, national measures which are liable to restrict or to make less attractive the exercise of the fundamental freedoms guaranteed by the TFEU may nonetheless be permitted where they serve overriding reasons in the public interest, are appropriate for attaining their objective, and do not go beyond what is necessary to attain that objective (judgment of 18 May 2017, Lahorgue,C-99/16, EU:C:2017:391, paragraph 31 and the case-law cited)".*

9 Case C-384/18, *European Commission v Kingdom of Belgium*, 27 February 2020

10 Case C-297/16, *Colegiul Medicilor Veterinari din România (CMVRO) v Autoritatea Națională Sanitară Veterinară și pentru Siguranța Alimentelor*, 1 March 2018

(1) ARTICLE 11.1-11.4 OF THE ESTABLISHMENT DIRECTIVE

Joint practice between lawyers is allowed under the Establishment Directive where the host State permits it. Therefore, if two or more established lawyers in a host State belong to the same grouping in their home State, they shall be allowed to practise together in a branch or agency of their grouping in the host State.

However, if the fundamental rules governing the grouping in the home State are incompatible with fundamental rules in the host State, the host State rules shall prevail 'insofar as compliance therewith is justified by the public interest in protecting clients and third parties' (Article 11.1 of the Establishment Directive).

The CCBE has considered this provision in its position on the Evaluation of the Lawyers' Directives, and says the following:

> *The only situation which the CCBE delegations have identified, in which the fundamental rules governing a grouping in the home Member State may be incompatible with the fundamental rules laid down in the host Member State arises when limited liability structures want to establish a branch or agency in a Member State where domestic lawyers may not limit their professional liability to the extent that the limited liability structure would effectively do. However, in light of Articles 54, 62 TFEU this conflict cannot be solved simply by prohibiting the establishment of a branch of limited liability structures in such host Member State.*
>
> *The solution in line with the structure's establishment rights is to allow the establishment of European lawyers practising within a branch of a limited liability structure in a host Member State, provided that such lawyer may be held personally liable in the host Member State at least to the same extent as lawyers practising under that Member State's title.*

The lawyers entitled to joint practice must be given access to a form of joint practice. If there is a choice between several forms in the host State, these same forms must also be made available to lawyers who are established or are seeking to establish in the host jurisdiction. The forms themselves are, of course, governed by the rules in the host State. Lawyers from different Member States as well as host State lawyers must be allowed to practise together under the same conditions.

Frequently asked questions

What about limited liability structures crossing borders?

Please see text in italics above. In addition to what is stated there, the host Member State may in such cases choose to allow the limited liability form but in addition to provide for a higher professional indemnity insurance obligation in order to compensate for the lack of personal liability (as Germany does).

What are the consequences when law firms themselves are registered with the bar in the home State?

The CCBE has considered this in its position on the Evaluation of the Lawyers' Directives, and says the following:

> *In some Member States, where law firms as such are members of the bar and law firms as such may represent clients in and out of court, these rights will have to be granted to migrating law firms where they fulfil the host Member State's requirements.*

(2) SHAREHOLDING/MANAGEMENT BY PERSONS WHO ARE NOT MEMBERS OF THE PROFESSION - ARTICLE 11.5 OF THE ESTABLISHMENT DIRECTIVE

Some Member States now permit so-called alternative business structures (ABSs), allowing non-lawyer participation in a law firm to differing degrees. Other Member States still strictly forbid such practices. This section considers joint practice in these circumstances.

The CCBE has taken a position on ABSs, summarised below:

> *The CCBE … considers that the investment of third-party capital (equity) in law firms, and certainly a majority interest, may constitute a severe danger to the proper practice of the legal profession and thus to the sound administration of justice, as well as citizens' access to justice.*

The same CCBE position paper on the Evaluation of the Lawyers' Directives describes some of the forms that ABSs might take:

> *Non-lawyer involvement in law firms is not restricted to third party capital, i.e. non-lawyer investors being owners or co-owners of a law firm. Non-lawyer involvement does occur in certain Member States in a range of particularly different forms, e.g., retired partners, widows or offspring of former partners to avoid law firms having to be liquidated as a result of the death or retirement of a partner, lawyer's spouses or other non-lawyers acting as clerks or managers and earning their own living within the firm, or non-lawyer professionals practising within a common structure.*

The Establishment Directive provision (see Article 11.5) which governs the cross-border activities of ABSs may permit a Member State which forbids ABSs to refuse to allow a lawyer to practise in its jurisdiction in his/her capacity as a member of an ABS. In order to prohibit such lawyers from practising in their jurisdiction, the following conditions laid out in the Directive must be satisfied (but see also below):

(1) The Member State must prohibit its own lawyers from practising in such a structure;

(2) The structure must be such that:

i. the capital of the grouping is held entirely or partly; or

ii. the name under which it practises is used; or

iii. the decision-making power in that grouping is exercised de facto or de jure,

by persons who do not have the status of a European lawyer as listed in Article 1.2 of the Establishment Directive.

However, the exercise of the possibility provided by Article 11.5 of the Establishment Directive for Member States to refuse the right of establishment to individual lawyers (1st sentence) as well as to law firm's branches or agencies (2nd sentence) also needs to be justified by overriding reasons in the general interest and be subject to a proportionality test on the basis of a case-by-case evaluation.

Primary EU law (as in case law of the CJEU) demands these tests – overriding general interest and a proportionality test – whenever a Member State is given the right to restrict free movement.

Article 49 TFEU reads:

> *"(1) Within the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of another Member State.*
>
> *(2) Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject the provisions of the chapter relating to the capital."*

Restrictions on the freedom of establishment occur as a result of differing domestic regulation from one Member State to another. According to CJEU case law such restrictions may by way of derogation from the general rule laid down in Article 49 (1) TFEU be justified by overriding reasons in the general interest, if they are applied in a non-discriminatory manner, are suitable for securing the attainment of the objective which they pursue and do not go beyond what is necessary in order to attain it.

Whether restrictions of free movement rights, caused by a Member State's domestic laws by way of derogation from Article 49.1 TFEU, are justified on grounds of overriding reasons in the general interest, therefore depends on the application of EU law, in particular Article 49.1 TFEU, CJEU case law and the Charter of Fundamental Rights. This question may arise due to a lack of EU-wide regulation as well as due to provisions in Directives leaving options to Member States. The Establishment Directive has been adopted in order to facilitate freedom of establishment, as provided for by Article 50 TFEU, of the legal profession.

With regard to legal form requirements of lawyers' joint practice, Article 11.1 of the Establishment Directive restricts Member States' competence to hinder or discourage establishment to two specific overriding reasons in the general interest: protection of clients or third parties.

As opposed to legal form requirements, Article 11.5 of the Establishment Directive, does not in any way, restrict the scope of overriding reasons in the general interest, that Member States may rely on, in case their domestic regulation restricts establishment of individual lawyers practising the profession of lawyer within a grouping in the sense of Article 11.5 of the Establishment Directive, i.e. non-lawyer involvement in the grouping, as well as the establishment of the grouping itself. Nevertheless, the exercise of the option laid down in Article 11.5 in any event needs to be justified by an overriding reason in the general interest and has to be enacted in a proportionate way.

These details are explained and laid out in more detail in the CCBE's position on the Evaluation of the Lawyers' Directives.

First, the refusal must be justified because of overriding reasons in the general interest and the CCBE has stated the following about this:

> *On the basis of the CJEU's case law, the following elements should, among others, be considered as overriding reasons in the general interest: sound administration of justice, protection of consumers of legal services, proper practice of the legal profession, independence of lawyers, duty to act in the sole interest of clients, observance of the duty to avoid any risk of conflict of interest, and strict observance of professional secrecy.*

Secondly, a proportionality test is applied as per the Gebhard case (C-55/94), which defined the test as follows:

> *National measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions:*
>
> - *they must be applied in a non-discriminatory manner;*
> - *they must be justified by imperative requirements in the general interest;*
> - *they must be suitable for securing the attainment of the objective which they pursue;*
> - *and they must not go beyond what is necessary in order to attain it.*

The CCBE considers that it is only if all of the conditions outlined (those taken from Article 11.5 itself, together with the tests on 'overriding reasons in the general interest' and proportionality) are satisfied that a Member State may refuse to allow a lawyer from an ABS to register in its jurisdiction.

Article 11.5 2nd subparagraph of the Establishment Directive covers groupings of lawyers (whereas Article 11.5 1st subparagraph covers individual lawyers from such groupings). This provision states that where the fundamental rules governing a grouping of lawyers in the home Member State are incompatible with the rules in force in the host Member State or with the other provisions of Article 11.5 of the Establishment Directive regarding groupings, the host Member State may by way of derogation from the restrictions laid down in Article 11.1 oppose the opening of a branch or agency within its territory without the limitation of possible justification to 'the public interest in protecting clients and third parties'.

7. Compulsory pensions and social security schemes

The Establishment Directive includes no specific provisions on the impact of lawyers' mobility on compulsory pension and social security arrangements. Nevertheless questions occasionally arise because of the different ways that such arrangements are made in the Member States. In some Member States, there are lawyer-specific pension and social security arrangements, usually run by the bars, and in others lawyers are treated no differently from any other member of the population. Movement from one system to another can create difficulties.

The CCBE's guidelines on the implementation of the Establishment Directive state:

> *In order so far as possible to avoid double payment of pension, social security and health scheme payments by EU lawyers practising under their home title in another Member State, EU bars and law societies are encouraged to permit where possible migrant EU lawyers to continue paying into such schemes in their home State, without the necessity of their also contributing to any schemes in the host State, provided that they are able to provide evidence of such home State payments to the appropriate authorities in the host State.*

The CCBE has created a practical guide for lawyers to the different arrangements in the Member States.

Finally, the CCBE has produced Guidelines with a view to a homogeneous application of the principles present in Regulation 1408/71/EC by social security organisations.

The Court of Justice recently issued a decision on the question of double payment of pension contributions regarding lawyers registered in Belgium and in Germany[11] (Case C-480/17).

8. Continuing education

The Establishment Directive does not explicitly address continuing professional education. However, the compatibility of different systems, either compulsory or mandatory, to which a migrant lawyer may be subject in the home and host State has given rise to some questions, which the CCBE has tried to resolve.

The CCBE's guidelines on implementation of the Directive state the following:

> *Where a lawyer is established under the Directive in a Member State other than that in which he or she is qualified, the lawyer shall be subject to the continuing professional education rules of the host State bar, except where the home State bar has rules which oblige the lawyer to continue home State professional education wherever he or she is based. In addition, the bars and law societies of all Member States are encouraged to develop flexible continuing professional education rules which will permit migrant lawyers to satisfy them by undertaking continuing professional education not only in host State law but also in home State law.*

In 2013, the CCBE has agreed a resolution on continuing legal education, which is largely devoted to this issue and states the following:

1. *Continuing legal training helps to ensure the quality of services provided by lawyers.*
2. *The competent authorities of Member States should establish clear and straightforward mechanisms of recognition without the necessity of providing sworn translations of the contents of training received or that otherwise make the recognition of a training course unduly cumbersome.*
3. *The realisation of joint training courses by lawyers of different countries, in particular, training in European Union law and European comparative law is a very positive step to establish a legal culture in Europe and to generate confidence in the respective legal systems. For this reason, providers of such training courses should not be required to ask for recognition of these training courses in every Member State. Likewise, lawyers who receive such training should not have to undergo a recognition process unless the applicable national system also provides such recognition for national training courses.*

11 C-480/17, *Frank Montag v Finanzamt Köln-Mitte*, 18 January 2019

4. *The competent authorities of each Member State which establish a system of compulsory continuing legal education should expressly regulate the situation of lawyers under the Establishment Directive and which are confronted with dual compulsory continuing training requirements:*
    a. *They should develop flexible continuing legal education rules that will permit migrant lawyers to satisfy such rules by undertaking continuing legal education not only in host State law, but also home State law and EU law, regardless of where such training takes place.*
    b. *The trust in the competent authorities of other Member States which require compulsory continuing legal education should prevail.*
    c. *Additional national continuing training requirements may only be established if national lawyers are required to have specific knowledge in particular legal areas or in order to comply with a minimum number of hours of training.*
    d. *Continuing legal training should never be a barrier to the freedom of free establishment.*
5. *The competent authorities of the Member States which establish systems of compulsory continuing legal education should implement an easy mechanism for the recognition of:*
    a. *courses offered by service providers that have been accredited or recognised by the competent authorities of another Member State in which systems of compulsory continuing legal education exist (system of pre-accreditation of courses);*
    b. *courses followed by lawyers that have already been accredited or recognised by the competent authorities of one Member State in which systems of compulsory continuing legal training exist (system of post-recognition initiated by the participating lawyer).*
6. *In order to facilitate and simplify the recognition of continuing legal education, it is recommended to require that such courses follow a common system of recognition that is suitable to the legal profession.*

IV. Lawyer from another Member State providing services in a host Member State

1. Introduction

Lawyers in Europe advise companies wishing to expand into new markets, individuals seeking to relocate or work cross-border, families with assets in multiple European countries (for example in relation to inheritance arrangements or taxations), consumers seeking compensation from a supplier of goods or services based in a neighbouring country, and citizens facing criminal prosecution in a country where they are not resident.

European lawyers maintain their professional status and continue to be bound by their ethical obligations, when practising in another European country; they meet colleagues, ethics and professional law of the host country. They communicate with courts, be it civil, criminal or administrative. They communicate with the government or the police.

At the same time, they must be aware of the differences with their home jurisdiction and act accordingly. Their activity is based on the freedom to provide services (Article 56 TFEU) and is protected by the core values of the legal profession which "guarantee the proper performance by the lawyer of his mission recognised as essential to the proper functioning of any human society" *(« garantissent la bonne exécution par l'avocat de sa mission reconnue comme indispensable au bon fonctionnement de toute société humaine »*). The Code of Conduct for European lawyers and Article 4 of the Services Directive define the requirements:

> *Activities relating to the representation of a client in legal proceedings or before public authorities shall be pursued in each host Member State under the conditions laid down for lawyers established in that State, with the exception of any conditions requiring residence, or registration with a professional organization, in that State.*
>
> *A lawyer pursuing these activities shall observe the rules of professional conduct of the host Member State, without prejudice to his obligations in the Member State from which he comes.*

It should be noted that some services may be reserved in a Member State to a specific category of service providers (e.g. authentication of signatures on official land deeds). Lawyers who are not established in the Member State involved are not necessarily entitled to render these services in that specific Member State, even if they may render these services in their home State (see Case C-342/15, *Piringer*).

When a lawyer exercises the right of freedom to provide services on an occasional basis, local bars must work out how to balance various European and national requirements, arising from law and case law:

(1) Articles 56 and 57 TFEU,

(2) Lawyers' Services Directive 77/249/EEC,

(3) The local legislation regarding the legal profession,

(4) Directive 2006/123/EC of 12 December 2006 on services in the internal market,

(5) The *Gebhard* judgment (C-55/94), in particular its proportionality principle,

(6) The CCBE Code of Conduct for European lawyers, where applicable,

(7) The *Lahorgue* judgment (C-99/16), regarding the question whether denial of access to e-services for lawyers providing services is justified or not.

The prime duty of the host bar is obviously to facilitate the freedom to provide services for any European lawyer within the given legal framework.

2. Who can benefit from the Services Directive?

IS IT ABOUT PROVISION OF SERVICES?

The distinction between provision of services and the establishment of a lawyer is not always clear. The nature of the intervention of the European lawyer should be checked in a factual manner. It sometimes happens, especially in border regions, that an activity which starts as temporary provision of services evolves over time and ultimately gives rise to establishment. Indicators of establishment may be the creation of an office, hiring of staff and/or the frequent presence of the lawyer at the host bar. But this is not necessarily sufficient to be considered as establishment.

Explanations concerning the case law, and in particular the *Gebhard* decision on this issue are found in the chapter 3 "What does establishment mean?"

IS HE OR SHE A LAWYER?

The verification process is explained in the first part of this guide. However, there are some specific considerations which arise in the context of the freedom to provide services.

HOW TO DEAL WITH A SALARIED LAWYER (ARTICLE 6 OF THE SERVICES DIRECTIVE)?

The Services Directive facilitates the effective exercise by lawyers of freedom to provide services on a salaried basis.

Article 6 provides that salaried lawyers employed by a company cannot represent their employers in the courts of the host State if this is not allowed in the host State.

It is therefore necessary to ascertain whether a salaried lawyer employed by a company is able to represent his/her employer before the national courts under host State domestic law. If this is the case, any salaried lawyer from another Member State can do so; otherwise it is forbidden (for a civil servant: CJEU 2 December 2010 *Jakubowska* - C-225/09).

Practical issues encountered by a bar because of the freedom to provide services of a colleague from another Member State can arise in four types of relations:

- courts;
- local lawyers;
- clients;
- the activities of the bar.

The Services Directive 77/249/EC provides a number of rules concerning lawyers providing services by making a distinction between representation and defence of a client before courts or administrative authorities and other types of activities.

In the first case, i.e. court-related work, lawyers must respect the rules of the host Member State, while still being bound to the professional rules of their home Member State (Article 4.1 and 4.2).

Finally, concerning court-related work, the Directive allows Member States to require the roaming lawyer to work in conjunction with a local lawyer (Article 5).

For non-judicial activities, Article 4.4 subjects lawyers to the rules of their home State first, then they must comply with the rules of the host Member State according to the circumstances set out in Article 4.4.

How is it possible to apply these principles in practice?

The fundamental rule is in Article 4.1 of the Services Directive. A lawyer must be treated like a local lawyer.

Should a European lawyer be treated by the courts or other public authorities in the same way as a local lawyer?

Lawyers registered to a European bar should be able to benefit, while delivering services which require interaction with the courts or public authorities, from the same conditions as local lawyers without any additional obligations (CJEU 1 July 1993 Hubbard/ Hamburger C-20/92). Where issues arise, the bar may need to intervene.

Does a European lawyer benefit from the same conditions during access to courts and prisons?

Those lawyers should be treated in the same way as members of the host bar when they access courts. In particular, they should not be subjected to any additional searches for safety reasons merely because they are not registered with the local bar. The same obviously applies for access to prisons.

This is a matter of protection of lawyers' confidentiality and professional secrecy. This is a general principle and courts and local governments are not allowed to treat lawyers differently based on the country in which they are registered.

Should a European lawyer have the same access to case files as local lawyers?

According to some national legislation, access to case files, especially in criminal cases, may be limited to a lawyer registered at the local or national bar. In this case, courts refuse to grant access to criminal files to lawyers registered with foreign bars, even EU bars. This issue, if it arises in any State, stems from local legislation, which potentially infringes Article 4.1 of the Services Directive. Unless proceedings are commenced in relation to this matter, the issue can only be resolved by the host bar by amicable means. If this is not possible, the European lawyer's client will need to engage a local lawyer to access the case files.

Can a European lawyer ask for case files to be sent by post?

In some countries, courts send case files to lawyers by post. Such courts often refuse to send files abroad. Unfortunately, this obstacle to the freedom to provide services cannot be reversed by the bars.

Can a European lawyer take part in electronic communications?

The same question arises in the context of electronic communications as communications with the courts are electronic in numerous European countries[12].

Usually, it is required from the lawyer to have secure access or access to an intranet network to obtain such communications. If those electronic communications are administered by courts, bars may not be able to intervene directly in order to allow a European lawyer to gain access to the proceedings they are undertaking. In that case, it may be necessary to work with a local lawyer. However, it is now clear that the courts (as part of the Member State) need to consider how to permit access to such systems to incoming lawyers from other Member States.

12 For a quick overview, consult the "Survey on the use of electronic tools in Member States' Courts" published by the Council here (10 september 2019) and here (21 January 2020, with more details by countries).

In its judgment of 18 May 2017 (Case C-99/16, Lahorgue[13]) the CJEU held that:

> *"the refusal, on the part of the competent authorities of a Member State, to issue a router for access to the private virtual network for lawyers to a lawyer duly registered at a Bar of another Member State, for the sole reason that that lawyer is not registered at a Bar of the first Member State, in which he wishes to practise his profession as a free provider of services, in situations where the obligation to work in conjunction with another lawyer is not imposed by law, constitutes a restriction on the freedom to provide services under Article 4 of the Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, read in the light of Article 56 TFEU and the third paragraph of Article 57 TFEU. It is for the national court to determine whether such a refusal, in the light of the context in which it is put forward, genuinely serves the objectives of consumer protection and the proper administration of justice which might justify it and whether the resulting restrictions do not appear to be disproportionate in regard to those objectives."*

When bars, as competent authorities, are part of the management of the e-system, they have to take into consideration this judgment.

Can an obligation be imposed on a European lawyer to act in conjunction with another lawyer?

Article 5 of the Services Directive provides that domestic legislation may require the presence of a local lawyer to work in conjunction with the European lawyer but this is only permissible where representation by a lawyer is compulsory. Depending on the implementation of this rule in national law, the bar can assist in resolving this issue by acting as an intermediary to find a lawyer to work in conjunction with (CJEU Case C-294/89, Commission/France, 10 July 1991, para. 20).

If local legislation provides for the legal fees of a case to be charged to the losing party, charging the legal fees of the lawyer working in conjunction is mandatory (CJEU Case C-289/02, AMOK, 11 December 2003).

Can internal rules of procedure be imposed on European lawyers when they represent clients before the courts?

We have explained in a few lines the link between the professional rules of the host State and those of the home State. These rules may conflict or even be contradictory.

In such cases, internal rules of procedures can be imposed on European lawyers representing clients before the courts as set out in the CCBE's Evaluation of the Lawyers' Directives:

> *Article 4.1 and 2 representation of clients in legal proceedings*
>
> *With regard to the representation of clients in legal proceedings, according to Article 4.1, the lawyer pursues that activity "under the conditions laid down" for lawyers established in the host Member State. The "conditions laid down for lawyers established" in the host country for the pursuit of such representation do comprise specific proceeding-related professional rules in some jurisdictions. Rules that are considered to be rules of civil or criminal procedure in one Member State may be considered to be professional conduct rules in another Member State. Temporarily servicing lawyers have to comply with these rules without regard to their qualification*

13 Case C-99/16, *Lahorgue*, 18 May 2017

as procedural or professional conduct rules. Article 4.2 stipulates that "a lawyer pursuing these activities shall observe the rules of professional conduct of the host Member State, without prejudice to his obligations in the Member State from which he comes". The CCBE considers that the only interpretation of Article 4.2 (in the sense of a conflict rule), in line with the Directive's language is the same interpretation as already adopted on Article 6 of Directive 98/5, i.e. ***"in case of a conflict between home and host State professional rules the host Member State's professional rules prevail ."***

How can a conflict of interest be dealt with?

The CCBE states the following in its Evaluation of the Lawyers' Directives:

> *Where a team of lawyers from different jurisdictions handles a client's case, national conflict of interest rules may differ from one another.* ***Law firms in such a case apply in practice the strictest rule one of the lawyers concerned will have to comply with and may on these grounds from time to time refuse to accept a client's case.***

Shall the bar intervene before the court in the event of an incident?

If national legislation or practice requires the intervention of the bar during an incident between a judge and a lawyer, the European lawyer should be defended in the same way the bar would defend any other fellow member of the bar.

How should a bar react in the event of searches, wiretapping or any other infringement to professional secrecy?

The European Court of Human Rights in its judgment in the Xavier da Silvera v France case (5th section 21 January 2010 No. 43757/05), said it is clear that a lawyer from another European country enjoys the same guarantees as a national lawyer. Therefore, if domestic law provides special rules for searches of law firms and wiretapping to protect confidentiality, the fellow European lawyer should benefit from these rules in the same way. The bar should intervene on behalf of the European lawyer before the courts or any other competent authority as the bar would do for one of its own members.

What defence should European lawyers benefit from when they are held in custody?

If a European lawyer is held in custody during the defence of a client, it is necessary to defend him/her as a fellow member of the bar.

Frequently asked questions: Local lawyers

Should a lawyer pay for the fees of a European lawyer?

A dispute may arise between a member of a national bar and a foreign lawyer regarding fees.

The CCBE Code of Conduct for European lawyers deals with most of these issues.

> *Article 5.4 clearly states that no referral fees can ever be charged.*
>
> *Article 5.7 makes any lawyer having entrusted a lawyer from another Member State with a mission responsible for the payment of their fees. In the absence of specific provisions between lawyers and their clients, such responsibility is unlimited.*
>
> *In some Member States the matter governed by Article 5.7 is considered to be a matter of contract law as opposed to professional rules so that neither CCBE nor national delegated professional law is considered competent to regulate this matter. In any event, it is preferable to clarify ex ante, whether the lawyer instructs the European lawyer on his own behalf or in the client's name.*

Is correspondence between lawyers from two national bars subject to the obligation of professional secrecy?

The scope of professional secrecy may vary, especially as regards correspondence between lawyers. In some European countries it is - vis-à-vis the own client - protected by professional secrecy. The Code of Conduct for European lawyers resolved the issue as follows:

> *Article 5.3.1. If a lawyer intends to send communications to a lawyer in another Member State, which the sender wishes to remain confidential or without prejudice, he or she should clearly express this intention prior to communicating the first of the documents.*
>
> *Article 5.3.2. If the prospective recipient of the communications is unable to ensure their status as confidential or without prejudice, he or she should inform the sender accordingly without delay.*

Frequently asked questions: Clients

Clients may address the host bar about three issues:

- *They can first contact the bar regarding fees. Indeed, in many Member States, bars provide advice during litigation between lawyers and their clients. There are also several types of mediation. Eventually, bars may be competent to decide on fees, as in France.*
- *They may criticize the quality of a lawyer's work and ask for the bar to intervene before a professional indemnity insurer. However, the bar will not be competent or have a role as intermediator between client and insurance company in all jurisdictions.*
- *The client might submit a complaint regarding alleged professional misconduct.*

How to respond when a client asks a host bar to settle the fees of a European lawyer who is not a member of the host bar?

The competence of bars to intervene with regard to fees differs. A bar may act as a mediator or as an expert if seized by a court in civil proceedings between lawyers and their clients. In other jurisdictions, bars are competent to take decisions in the same way as a judge at first instance. Accordingly, the correct answer differs from jurisdiction to jurisdiction.

Regarding fees, two different situations may arise, which must be distinguished from one another:

(a) If it is an intervention within the framework of legal aid, it is sufficient, in order to obtain it, to refer the European lawyer to Council Directive 2003/8/EC of 27 January 2003[14] and its implementation in domestic law.

(b) If there are non-fixed fees and the bar is competent to rule on this issue or is asked for its opinion, there are some conventional arguments to use in this context.

If the parties have entered into a fee agreement which establishes to what extent a bar is competent on the matter, one should check if the clause is valid. Indeed, some European case law considers the competence of bars to rule on fees as a matter of public policy from which the parties may not derogate.

In the absence of a valid agreement, the lawyer should refer to his or her national law to establish the competence of the bar. If it depends (as is likely) on the lawyer being registered with the host bar, the bar is not competent. In this case, it is suggested that the person concerned be informed and provided with the details of the European lawyer's (home) bar.

If the host bar has competence to rule on fees in the framework of the provision of occasional services, the applicable law has to be determined. In the absence of choice by the parties, Article 4.1(b) of Regulation EC 593/2008 on the law applicable to contractual obligations (Rome I) may be considered[15]. Additionally, it is important to keep in mind the application of consumer law since the judgment of the CJEU of 15 January 2015 Case C-537/13, SIBA which applies the Unfair Contract Terms Directive[16] to a contract for legal services.

Furthermore, the lawyer rendering services in another Member State should also pay attention to any local legislation imposing (minimum or maximum) tariffs for certain legal services, provided these rules also apply to foreign service providers (see also Case C-377/17, Commission v. Germany on whether national legislation can impose minimum or maximum fees on service providers[17]).

What if a client complains about infringements of professional rules by a lawyer from another Member State?

The host Member State bar's reaction will depend on how the respective Member State has implemented Article 7.2 of the Services Directive. In a case where a Member State has designated a host Member State bar as competent authority to exercise the host state's jurisdiction over lawyers from other Member States the competent bar will, according to its own professional rules and procedures, decide on possible disciplinary proceedings against the lawyer. Whether professional rules of the lawyer's home Member State or host Member State will be applied, must be decided in conformity with

14 Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, available here.
15 Available here.
16 See Council Directive 93/ 13/EEC of 5 April 1993 on unfair terms in consumer contracts, available here.
17 C-377/17, *Commission v. Germany*, 4 July 2019: this case concerned a German tariff regulation (minimum and maximum fees) for architects and engineers

Article 4 of the Services Directive. Should the host Member State designate a competent authority other than the bar, the complaint must be referred to the competent authority.

Where the host Member State has decided not to exercise jurisdiction over temporarily servicing lawyers, the host Member State bar may refer the complaint to the home bar or consider disciplinary actions or proceedings.

Can a European lawyer ask to benefit from all services offered by the bar to its local lawyers?

An issue may arise regarding the possibility for the European lawyer to benefit from services organised, provided for and financed by the host bar.

Such services may be occasional services, for instance in the framework of larger criminal proceedings: organising rooms, providing resources and communicating with courts.

These services may also include such privileges as the use of a library, car parks or meeting rooms.

They may be related to training and to services during proceedings, such as representation at a preliminary hearing or completing formalities.

Of course, courtesy and fellowship require European lawyers to have access to all premises, which are made available to lawyers in courts or out of courts.

However, participation in this type of activity might cause problems, when it is financed by contributions from the local lawyers. In this case, we suggest a simple rule: if the service is available not only to lawyers of the bar, but also to those of other bars from this country, it must then also be extended to lawyers from another Member State or an agreement to individually contribute to the financing could be sought.

V. Lawyer from another Member State obtaining a host Member State professional title

European lawyers may in addition to the qualification obtained in one Member State wish to acquire another Member State's professional title. It appears that a significant number of professionals seek to enhance their career development in this way.

Lawyers established under their home title in another Member State may seek to acquire the host Member State's professional title in order integrate into the host Member State's profession. This is a choice. Establishment under the home Member State's title is in no way a transitory measure that is intended necessarily to end up in the integration into the host Member State's profession. Lawyers established under their home title enjoy all the desirable practising rights and consequently, in general do not see the need to practise under the host Member State title.

The regulation of the legal professions of the Member States is not harmonised by EU Law and so the exercise of the profession is subject to national legislation. European lawyers wishing to obtain an additional professional title have a choice between two different routes – both routes take into account the fact that a lawyer fully qualified in one of the Member States does not need to start professional training in another Member State from scratch:

- ***Recognition of Qualifications*** - Admission to the host Member State's professional title via the Professional Qualifications Directive[18] which means passing an aptitude test or an adaptation period.
- ***Three years' practice*** - Admission to host Member State profession and use of their professional title via the Establishment Directive through practice under home State title in the host State law.

It appears that compared with the number of integrations through an aptitude test, within the framework of the Professional Qualifications Directive, a limited number of lawyers are integrated into the host Member State through Article 10 of the Establishment Directive after three years of effective and regular practice under their home title. Lawyers are free to choose the routes for obtaining the additional professional title.

Lawyers may choose to establish without seeking integration at all, as establishment under the home country title is an option explicitly offered by the Establishment Directive (recital 3) and provides for all practising rights. They may also choose to pass the aptitude test in order to be integrated in the host Member State immediately, without having to wait for the period of establishment required under Article 10 of the Establishment Directive to have elapsed. Finally, they may choose to pass the aptitude test while not seeking establishment in the host Member State.

18 Directive 2005/36/EC on the recognition of professional qualifications as amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013, available here.

1. Professional Qualifications Directive, Articles 13 & 14 - recognition of qualifications

This section looks at the possibility of acquiring the professional title of a second Member State, without the need to move to that Member State, either temporarily or permanently. The Professional Qualifications Directive governs this route – also referred to in Article 10(2) of Establishment Directive which indicated the original Directive 89/48 on recognition of diplomas (now replaced).

REQUIREMENTS

The principle behind the Professional Qualifications Directive is that there should be recognition of qualifications already possessed by the applicant lawyer when applying to acquire the new title. In the case of lawyers such recognition is not automatic. Article 14 (1) of the Professional Qualifications Directive explains that an adaptation period or an aptitude test can be requested if (a) the training received in the home Member State covers substantially different matters than those covered by the evidence of formal qualifications in the host Member State; (b) the regulated profession in the host Member State comprises one or more regulated professional activities which do not exist in the corresponding profession in the applicant's home Member State, covering specific training on substantially different matters **from those covered by the applicant's attestation of competence or evidence of formal qualifications**. There is therefore no need for the applicant lawyer to start the study of law all over again, but rather to fill in the gaps of difference between the legal knowledge and skills already acquired through possession of the home title, and the knowledge and skills required for acquisition of the new title. The wording 'substantially different matters' means matters in respect of which knowledge, skills and competences acquired are essential for pursuing the profession and with regard to which the training received by the migrant lawyer shows important differences in terms of duration or content from the training required by the host Member State. The principle of proportionality requires that if the host Member State intends to require the applicant to complete an adaptation period or take an aptitude test, **it must first ascertain whether the knowledge, skills and competences acquired by the applicant in the course of his professional experience or through lifelong learning, in any Member State or in a third country, is of such nature as to cover, in full or in part, the above mentioned substantially different matters**.

This filling in of the gaps can be undertaken in two ways recognised by the Professional Qualifications Directive: by taking an aptitude test or by fulfilling a period of adaptation. Usually, the host State must leave the choice to the applicant as to which of the two methods to follow, but for lawyers (defined as "*professions whose pursuit requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity*"), the host State may choose. In this respect, all Member States other than Denmark have chosen to require applicant lawyers to undertake an aptitude test.

In this context, issues have arisen with appreciable numbers of trainee lawyers deciding not to apply for the bar in their home state, but instead to register with the Bar in another Member State, before returning to their home states. As noted in Part 3 above, Cases C-58-9/13 *Torresi* confirm the legality in principle of such arrangements in the context of registration with a host State bar under Article 3 of the Establishment Directive. For those lawyers who seek immediate incorporation into the host profession under Article 10(2) of the Establishment Directive in conjunction with Article 14(1) of the Professional Qualifications Directive, the above commentary will also apply. Admission authorities need to ensure the veracity of Bar registrations. In accordance with Part 7 below, cooperation between bars in respect of such new pathways to qualification is likely to be important.

THE EUROPEAN PROFESSIONAL CARD

The Professional Qualifications Directive, Article 4a, provides for a 'European Professional Card', which is an electronic certificate proving that the professional has met all the necessary conditions to provide services in a host Member State on a temporary and occasional basis or the recognition of professional qualifications for establishment in a host Member State.

In relation to the profession of lawyers, the CCBE has created a card which certifies that the lawyer is registered and thus possesses the professional qualification[19].

19 The CCBE identity card, first introduced in 1978, is delivered to the national bar or to the national, regional or local professional authority,

APTITUDE TEST

This is defined by Article 3 (h) of the Professional Qualifications Directive as follows:

> *"a test of the professional knowledge, skills and competences of the applicant, carried out or recognised by the competent authorities of the host Member State with the aim of assessing the ability of the applicant to pursue a regulated profession in that Member State.*
>
> *In order to permit this test to be carried out, the competent authorities shall draw up a list of subjects which, on the basis of a comparison of the education and training required in the host Member State and that received by the applicant, are not covered by the diploma or other evidence of formal qualifications possessed by the applicant.*
>
> *The aptitude test must take account of the fact that the applicant is a qualified professional in the home Member State or the Member State from which he comes. It shall cover subjects to be selected from those on the list, knowledge of which is essential in order to be able to pursue the profession in the host Member State. The test may also include knowledge of the professional rules applicable to the activities in question in the host Member State."*

The following essential criteria of the test can be seen from this definition:

- it must cover only subjects not covered by the existing qualification;
- it must cover only those subjects which are essential in order to practise as a lawyer in the host State;
- as mentioned above in the context of proportionality, the test should be limited to overcoming a 'substantial difference' in training, which is needed for the exercise of the profession.

Frequently asked questions

Can there be a language element in the aptitude test?

Article 53 of the Professional Qualifications Directive states that "Professionals benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practising the profession in the host Member State."

Nevertheless, it is believed that language is not one of the topics which can be tested directly and as such it does not fall within the essential criteria listed i.e. it is not essential in order to practise as a lawyer in the host State. For example, a lawyer could provide services solely to people speaking his or her home language. However, for obvious reasons, language is tested indirectly, both through the fact that the aptitude test will be taken in a language of the host State and through the additional possibility to have part or all of the test undertaken orally or in writing, at the option of the host State. Clearly, if the applicant lawyer does not speak or write sufficiently well to answer the question to the standard required, that can be taken into account in the final result.

according to the conditions fixed in each country. Lawyers regularly registered may requests the card which facilitates access to courts and institutions for lawyers active in other jurisdictions of the EU. The card is also recognised by the European Court of Justice. The modern version (in plastic) of the CCBE identity card is produced and delivered by the national bars under a licensing agreement of the CCBE. For more information, please see the CCBE website.

QUALIFICATIONS FROM THIRD COUNTRIES

EU nationals may obtain a qualification in a third country which is then recognised by an EU State, e.g. a Portuguese national whose qualification as a Brazilian lawyer is recognised in Portugal. In that example, the Portuguese legal qualification would only have to be recognised by other Member States if the lawyer had three years' experience in Portugal: Article 3(3) of the Professional Qualifications Directive.

PERIOD OF ADAPTATION

This is defined by Article 3 (1) (g) of the Professional Qualifications Directive which provides for an adaptation period as follows:

> *"the pursuit of a regulated profession in the host Member State under the responsibility of a qualified member of that profession, such period of supervised practice possibly being accompanied by further training. This period of supervised practice shall be the subject of an assessment. The detailed rules governing the adaptation period and its assessment as well as the status of a migrant under supervision shall be laid down by the competent authority in the host Member State.*
>
> *The status enjoyed in the host Member State by the person undergoing the period of supervised practice, in particular in the matter of right of residence as well as obligations, social rights and benefits, allowances and remuneration, shall be established by the competent authorities in that Member State in accordance with applicable EU law."*

The period of adaptation is set by the Member State concerned and can be for a period of up to three years.

PROCEDURE

In each case – an aptitude test or period of adaptation – the applicant lawyer will have to apply to the competent authority in the host State, usually the bar, in order to find out the national procedure for complying with the Professional Qualifications Directive.

2. Establishment Directive, Article 10 – three years of effective and regular practice

The recognition of professional qualifications for lawyers is also covered by the Establishment Directive, which expressly aims at facilitating practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained. In this context, the Professional Qualifications Directive does not affect the operation of the Establishment Directive.

The Establishment Directive permits established lawyers from one Member State to be admitted to the professional title of another Member State, subject to certain conditions. The Establishment Directive recognises two types of applicant:

(1) one who has effectively and regularly pursued for a period of at least three years an activity in the host Member State in the law of that State including EU law; and

(2) one who has effectively and regularly pursued a professional activity in the host Member State for a period of at least three years **but for a lesser period in the law of that Member State**.

In either case, the established lawyer is to be admitted to the host professional title **without an examination**.

In (1) the host Member State must accept the applicant if the requirements are satisfied, whereas in (2) the host State has discretionary power.

In (1), the lawyer must provide the host competent authority with proof of the effective regular pursuit. The Directive states that proof shall include relevant information and documentation, notably on the number of matters dealt with and their nature. The competent authority may verify the effective and regular nature of the activity pursued and may, if need be, request the lawyer to provide, orally or in writing, clarification of or further details on the information and documentation provided. A reasoned decision must be given by

the competent authority if the application is not approved because of lack of proof, and this decision must be able to be appealed in the host State.

In (2), the host competent authority must take into account the effective and regular professional activity pursued during the three year period and any knowledge and professional experience of the law of the host State, and any attendance at lectures or seminars on the law of the host State, including the rules regulating professional practice and conduct. The lawyer is again required to provide the competent authority with any relevant information and documentation, in particular on matters dealt with. Assessment of the lawyer's effective and regular activity in the host State and capacity to continue the activity pursued there is to be carried out by means of an interview with the competent authority of the host State in order to verify the regular and effective nature of the activity pursued. Once again, reasons shall be given for a decision by the competent authority in the host State not to grant authorisation where proof is not provided that the requirements have been fulfilled, and the decision must again be subject to appeal under domestic law.

Despite the provisions outlining these two routes, the host competent authority has a reserved right (subject to reasoned decision, which must itself be subject to appeal under domestic law) to refuse to allow any lawyer to benefit from these provisions if it would be *'against public policy, in particular because of disciplinary proceedings, complaints or incidents of any kind'* (Article 10.4, Establishment Directive).

The competent authority is under an obligation to keep confidential any information received under an application via these two routes.

A lawyer who obtains the host title under these provisions is entitled to use the host State title in addition to the home State title.

Frequently asked questions

What does effective and regular pursuit of an activity mean?

The Establishment Directive in Article 10 paragraph 1 defines it as follows:

> *"Effective and regular pursuit' means actual exercise of the activity without any interruption other than that resulting from the events of everyday life".*

This is itself not a very clear answer to the question and there will be circumstances where the decision will not be easy. Some circumstances can be easily assessed – for instance, that parental leave will not count as an interruption. But, in due course, only the Court of Justice of the European Union will be able to give further guidance on the more difficult cases that might arise.

It should additionally be noted that the CCBE's guidelines on implementation of the Directive add a gloss to the second route because of a slight difference in wording between the two routes regarding the practice of European law:

> *The definition of "activity in the host Member State in the law of that state", which appears in Article 10.1 and Article 10.3 of the Directive, shall be interpreted as though there is included in both those places the phrase "including Community law" (even though such phrase does not appear in Article 10.3), so that the practice of Community law shall be able to be taken into account in both Article 10.1 and Article 10.3.*

In other words, the view of the CCBE is that practice in the law of the host State includes practice in EU law so as to ensure equal treatment with lawyers of the host Member State.

Can a language test be imposed on an applicant lawyer seeking admission to the host professional title under Article 10 of the Establishment Directive?

In demonstrating effective and regular practice, details would need to be given of the type of practice and the circumstances (e.g. court work, advisory work, etc). As mentioned before (see FAQ, page 37) it is believed that language is not one of the topics which can be tested directly as it does not fall within the essential criteria listed i.e. it is not essential in order to practise as a lawyer in the host State. Seeking to impose it in relation to the Establishment Directive would appear anomalous, especially considering that the lawyer is established (under Article 3) in the host State and therefore should have the ability to establish the factual circumstances of her/ his legal practice, which in turn is likely to indicate whether and to what degree the incoming lawyer requires knowledge of the local language in order to continue her/his practice.

Furthermore, lawyers are subject to the general requirement (CCBE Code of Conduct, Article 3.1.3) not to handle matters which the lawyer knows or ought to know he or she is not competent to handle and this is a means of protecting the consumer interest.

In summary, examining whether the conditions of Article 10 are fulfilled should not amount in practice to imposing a language test but rather ascertaining the effective and regular practice of the lawyer in the country of establishment. This can indirectly take into account her/his knowledge of language, in cases where it is necessary and proportionate, but without taking the form of a systematic language test.

3. Validity of a professional title – ensuring that the European lawyer is able to practise

The professional title of the home Member State must be valid and the individual must be a fully qualified lawyer to benefit from the provisions of Establishment Directive. Where a professional title is not or no longer valid in the home Member State, the applicant may not rely on the provisions of the Establishment Directive, since he/she is not regarded as a fully qualified lawyer.

Accordingly, the national authorities receiving the request for registration under the Establishment Directive would be justified in refusing the registration request because the professional title is not valid in another Member State.

In this case, cooperation among bars to verify the validity of the professional title of the applicant is encouraged (see below Part 7 of this guide), in particular as there have been instances of fraudulent certificates purporting to have been issued by home State bars.

Also, as indicated below, the temporary or permanent withdrawal by the competent authority in the home Member State of the authorisation to practise the profession automatically leads to the lawyer concerned being temporarily or permanently prohibited from practising under home-country professional title in the host Member State (although it is not a prerequisite for the decision of the competent authority in the host Member State).

VI. Lawyers who are not fully qualified

1. Applying *Morgenbesser*

The free movement provisions found in primary EU law and the Professional Qualifications Directive, as interpreted by case law of the Court of Justice of the European Union, apply not just to fully qualified professionals, but also to those who are partly qualified, whereas the Lawyers' Directives apply only to fully qualified legal professionals. The principle of application of primary law to such circumstances was decided in the *Morgenbesser* case (C-313/01)). Ms Morgenbesser had completed university law studies in France, and had some professional experience in both France and Italy. She was not a lawyer in France and applied to the Bar of Genoa to be put on the list of trainee lawyers; this request was refused. The Court of Justice held that Italy was wrong to obstruct Ms Morgenbesser's entry to the Italian register of trainee lawyers by reason of the fact that her university legal education took place in France. The governing authorities should have assessed the overall experience and skills obtained by the candidate at the time of application. If there were a gap in the legal education Ms Morgenbesser had gained when compared with the requirements stipulated by Italy, the competent authority could then require any gaps to be compensated for.

The CCBE has issued guidance on how bars, as the competent authorities, can deal with applicant trainee lawyers under the *Morgenbesser* judgement.

DUTIES OF THE COMPETENT AUTHORITY IN RELATION TO THE COMPARATIVE EVALUATION OF QUALIFICATIONS

a) *The duty of the competent authority is to assess applicants' competences holistically, that is to say they must assess all the applicant's abilities, knowledge and competences to carry out the professional role of "lawyer" in the host country. The context of the training received by an applicant can be taken into account. Qualifications should be assessed "having regard to the nature and duration of the studies and practical training" (Morgenbesser at para. 67-68). Member States are entitled to take account of objective differences in the context of training. In the case of lawyers, the different legal frameworks of the profession and the different fields of activity of the profession in the Member States of origin could be taken into account including the differences between the national legal systems (Morgenbesser at para.69).*

b) *The knowledge, learning and skills of applicants have to be taken as a whole, and there can be no prior requirement of equivalence of the academic stage of training.*[20]

c) *The competent authority must assess not only the academic and other stages of training but also the professional experience of the migrant. This has been a requirement since the Vlassopoulou*[21] *case whose ruling in this respect has since been incorporated into European secondary law.*

d) *The "professional qualification" of the migrant, wherever gained (at §58), must be taken into account.*

20 See case C-234/97, *Teresa Fernández de Bobadilla v Museo Nacional del Prado, Comité de Empresa del Museo Nacional del Prado and Ministerio Fiscal* (8 July 1999)

21 Case C-340/79, *Vlassopoulou* (7 May 1991), re-affirmed in case C-238/98, Hocsman (14 September 2000)

e) *National competent authorities should already have a "list of subjects" required in their own Member States. Normally, this list should be reduced to a smaller list of topics "knowledge of which is essential in order to be able to pursue the profession in the host Member State" (§2 of Article 3 (1) (h) of Directive 2005/36/EC). This is the yardstick against which the migrant applicant's professional qualification should be judged, taking into account objectively justified contextual differences mentioned in items (a) above and (f) below.*

f) *Objective differences in the context of training and legal practice, however, can be taken into account.*

Generally speaking, EU law does not compromise the Member States' ability to set their requirements for access to the profession, but obliges Member States to take into account the applicant's academic and other stages of training completed successfully as well as professional experience having regard to the different legal frameworks of the legal profession in the respective jurisdictions.

The relevant competent authority may be a Member State bar or law society or other competent authority (e.g. court, ministry, university etc.) – a significant practical hurdle can be for an applicant to find the relevant competent authority for the particular stage of training which has been reached[22]. Member States are required to provide a single contact point[23] to provide information and assistance to applicants seeking to qualify as lawyers and to help them find the appropriate competent authority.

If the competent authority which needs to determine the acceptability (or otherwise) of a *Morgenbesser* applicant already has at its disposal a list of essential competences, i.e. "outcome requirements" expected for domestic entrants to the profession of lawyer in their jurisdiction, such a list can be used as a yardstick against which the applicant's professional qualifications are to be judged.

However, in many Member States, the knowledge and skills required will be expressed in terms of education and training experience expected of someone seeking to join the legal profession through (one of) the prescribed national route(s). It may therefore be expressed in terms of having a particular type of law degree and of having followed a particular route of training defined in national (or sub-national) terms. Here the outcomes may not have been articulated separately but are assumed or implied from the familiar national training routes.

For these competent authorities, the *Morgenbesser* assessment is more onerous. At the same time, free movement would tend to be harder for the *Morgenbesser* applicants to achieve. In the absence of a detailed list of outcome requirements, the assessment of *Morgenbesser* applications is problematic for both applicants and competent authorities. This situation hinders free movement of future professionals.

In order to overcome these difficulties, the competent authorities concerned will have to compile a detailed list of competences required in order to be able to pursue the profession i.e. "outcome requirements" for entrants to the profession of lawyer in their jurisdiction specifically for the purpose of complying with the *Morgenbesser* case law.

The CCBE also has collated information on the national procedures of some Member States in dealing with *Morgenbesser* applications and on questions arising at a national level such as: the applicable law; the necessary procedural steps; the documents required; and the fee charged.

Finally, the CCBE's position on the impact of the *Morgenbesser* case on the free movement of lawyers may be found here.

22 The European Commission's 'Regulated Professions database' contains the contact details of competent authorities.

23 Article 6 of the Services Directive 2006/123/EC requires a Single Point of Contact in each Member State and this is made clear by Article 57 of Directive 2005/36/EC as amended.

2. Professional Traineeships, Articles 3 (1) (j) and 55a of the Professional Qualifications Directive

According to Article 55a of Directive 2005/36/EC as amended, the competent authority of the home Member State is obliged to recognise - to a certain extent - a professional traineeship carried out in another Member State where access to the profession is conditional upon completion of such a traineeship[24]. Professional traineeships carried out in a third country have to be taken into account.

The competent authority can limit such recognition through setting limits on the permissible duration of such a traineeship and by issuing detailed guidelines 'on the organisation and recognition of professional traineeships carried out in another Member State or in a third country, in particular on the role of the supervisor of the professional traineeship.' Member States have to publish such guidelines, Article 55a (2) of the Professional Qualifications Directive as amended by Directive 2013/55/EU.

24 Article 3(1) of Directive 2005/36/EC as amended defines professional traineeship as: "without prejudice to Article 46(4), a period of professional practice carried out under supervision provided it constitutes a condition for access to a regulated profession, and which can take place either during or after completion of an education leading to a diploma".

VII. Cooperation between the bars

The Establishment Directive has provisions requiring the competent authorities to co-operate with each other, as follows.

1. Establishment – cooperation on registration and disciplinary matters (Articles 3 & 7 Establishment Directive)

Article 3(2) of the Establishment Directive requires the competent authority in the host Member State to inform the competent authority in the home Member State of the registration, once the European lawyer has been registered under his home Member State title.

Article 7 of the Establishment Directive deals with disciplinary proceedings.

If a lawyer established in another Member State fails to fulfil obligations in force in the host Member State, the rules of procedure, penalties and remedies provided for in the host Member State shall apply. Before initiating disciplinary proceedings against the lawyer, the competent authority in the host Member State must inform the competent authority in the home Member State as soon as possible, providing it with all the relevant details. If disciplinary proceedings are initiated by the competent authority in the home Member State against the lawyer, it must inform the competent authority of the host Member State(s) in the same way.

Both competent authorities are under a duty to co-operate with each other in these circumstances. In particular, the Directive says that the host Member State must take the measures necessary to ensure that the competent authority in the home Member State can make submissions to the bodies responsible for hearing any appeal.

The temporary or permanent withdrawal by the competent authority in the home Member State of the authorisation to practise the profession automatically leads to the lawyer concerned being temporarily or permanently prohibited from practising under home-country professional title in the host Member State (although it is not a prerequisite for the decision of the competent authority in the host Member State).

After the competent authority in the host Member State has made a decision, the competent authority in the home Member State shall decide what action to take, under its own procedural and substantive rules.

2. Establishment – the question of cooperation to facilitate the application of the Directive and to prevent circumvention of applicable rules (Article 13 of the Establishment Directive)

Generally, at the EU level, administrative cooperation is based on Article 197 TFEU (entitled "Administrative cooperation"). The aim of this provision is to ensure the effective implementation of EU law, by supporting Member States' national administrations through the exchange of information, training, and the mobility of officials.

The European model of administrative cooperation for exchange information has been developed through the Internal Market Information system (IMI – see below).

Moreover, Article 13 of the Establishment Directive contains a specific provision to develop cooperation among competent authorities by stating that they shall collaborate closely and give each other mutual assistance:

- in order to facilitate the application of the Directive;
- to prevent its provisions from being misapplied for the sole purpose of circumventing the rules applicable in the host Member State.

In practice, on-going dialogue between bars on a bilateral basis whenever issues arise with regard to the exercise of the freedom of establishment is required to facilitate the application of the Directive[25]. This provision also states that confidentiality of the information exchanged among competent authorities shall be preserved.

3. Temporary provision of services - notification of the home State (Article 7.2 of the Services Directive)

If a lawyer providing temporary services in another Member State does not comply with the obligations imposed in the Directive, the host competent authority shall decide in accordance with its own rules and procedures what shall happen to the lawyer concerned. To this end, it may obtain any appropriate professional information concerning the lawyer. However, it must notify the home competent authority of the lawyer of any decision taken. The Directive specifically says: 'Such exchanges shall not affect the confidential nature of the information supplied'.

It may be said that under the Services Directive the need for cooperation in disciplinary matters does not arise very often. There are very few complaints against a lawyer with respect to temporary provision of services.

25 The CCBE offers a consultative service to its Members (national bars and law societies) and to other "competent authorities", consisting in providing assistance for the interpretation and application of the Establishment Directive (in particular, through a group of experts of the CCBE EU Lawyers Committee). In this context, CCBE Members are invited to consult or to keep the CCBE informed of relevant issues to ensure effective application of the Directive.

4. Confidentiality and data protection in the exchange of information

The exchange of information among national bars must preserve the confidentiality and be carried out in compliance with Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).[26]

The CCBE's guidelines on the implementation of the Establishment Directive state the following about co-operation:

> *As envisaged under Article 13 of the Directive, co-operation between competent authorities in home and host Member States is of the utmost importance for the efficient working of the Directive, and the attached model registration form [already cited above] contains a declaration for the applicant lawyer to sign to the effect that such free exchange can take place in his or her case. Bars and law societies are encouraged (where their ethical rules do not already contain such a measure) to adopt provisions whereby it becomes a duty on their members who practise in another Member State to allow for such a free exchange of information between home and host competent authorities.*
>
> *The provisions of Article 7.2 to 7.4 and of Article 13 of the Directive shall apply so far as possible not only to the position of a registered lawyer practising under home title in another Member State under Article 2 of the Directive, but also to that same lawyer once integrated into the host title of the Member State under Article 10 of the Directive.*

Frequently asked questions

How can contact be made with the competent authority in another Member State?

Bars and law societies may for their respective notifications use all means of communication. A growing number of bars and law societies have direct access to the IMI. The IMI is a very structured system and has many advantages, including the probative value of the information exchanged. However, not all bars have direct access to the IMI and this could create some difficulty in promoting the cooperation among bars (some bars should exchange the personal information concerning lawyers through other authorities, such as the Ministry of Justice). The contact details of the National IMI Coordinators are published on the European Commission's website.

As regards the registration of bars in IMI, according to the information we received, 53 bars are registered, which represents 17 EU Member States (along with the UK) : Austria, Belgium, Bulgaria, Czechia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Netherlands, Poland, Romania, Slovenia, Spain, Sweden (some countries also registered regional bars or bars of federal states).

In this respect, if the respective bars or law societies on both sides are involved in the IMI system, IMI is a satisfactory tool. If not, all other means of communication equally suitable for the exchange of confidential information may be used. The CCBE encourages its members to make use of IMI.

The CCBE already has a list of disciplinary contact points in the Member States. This also briefly describes the disciplinary process used in each jurisdiction.

What if the competent disciplinary authority in another Member State does not reply to correspondence, or there is other lack of co-operation?

The CCBE will always attempt to conciliate between the disciplinary authorities in two Member States.

26 Available here.

Useful links

1. CCBE documents

- Guidelines on the Implementation of the Establishment Directive 985 EC of 16th February 1998 issued by the CCBE for Bars and Law Societies in the European Union (November 2001)
- CCBE position Evaluation of the Lawyers' Directives (12 September 2014)
- Charter of core principles of the European legal profession and Code of Conduct for European lawyers (17 May 2019)
- Minimum standards for European Lawyers' Professional Indemnity Insurance (30 January 2004)
- Model of a questionnaire on Professional Indemnity Insurance for lawyers requesting registration (30 January 2004)
- Terms of Difference in Conditions Cover (30 January 2004)
- Insurance terminology (30 January 2004)
- Social security organisations within the EEE - A Practical Guide for EU Lawyers (28 February 2005)
- CCBE Guidelines with a view to a homogeneous application of the principles present in regulation 1408/71/EC by social security organisation (28 February 2005)
- CCBE resolution on continuing legal education (29 November 2013)
- CCBE position on the Morgenbesser case law (11 September 2015)
- Summary of disciplinary proceedings and contact points in the EU and EEA Member States (31 March 2011)
- Chronology (I), Analysis (II) and Guidance (III) to Bars and Law Societies regarding case C-313/01 Christine Morgenbesser v Consiglio dell'ordine degli avvocati di Genova, 5th Chamber (13 November 2003)
- Information on the national procedures of some Member States in dealing with Morgenbesser applications and on questions arising at a national level
- Study on the Evaluation of the Legal Framework for the Free Movement of Lawyers (Panteia/ Maastricht University)
- Interpretation issues in relation to free movement of lawyers (20 February 2020)

2. External links

- ‘Find-A-Lawyer’ Directory
- Internal Market Information System
- Establishment Directive in all official languages of the EU
- National Implementing Measures (NIM) communicated by the Member States concerning Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained
- Survey on the use of electronic tools in Member States’ Courts” published by the Council (10 September 2019)
- Survey on the use of electronic tools in Member States’ Courts” published by the Council (21 January 2020)
- Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes
- Regulation EC 593/2008 on the law applicable to contractual obligations (Rome I)
- Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts
- Directive 2005/36/EC on the recognition of professional qualifications as amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013
- Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

3. Case law

COURT OF JUSTICE OF THE EUROPEAN UNION

- Case 2/74, Jean Reyners v. State of Belgium (21 June 1974)

  Freedom of establishment - restrictions - abolition - transitional period - expiry - rule on equal treatment with nations - direct effect

- Case 33/74, Johannes Henricus Maria van Binsbergen v. Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid (3 December 1974)

  Services - freedom to provide services - restrictions - condition of residence - prohibition - particular services - persons assisting administration of justice - professional rules - observance of such rules - requirement of professional establishment - objective necessity - lawful requirement

- Case 71/76, Jean Thieffry v. Conseil de l’ordre des avocats de Paris (28 April 1977)

  Freedom of establishment - national of a Member State - exercise of a professional activity in another Member State - profession of advocate - diploma obtained in the country of origin - recognition of equivalence with the national diploma of the country of establishment - absence of community Directives - requirement of the diploma of the country of establishment - restriction incompatible with the treaty

- Case 107/83, Ordre des avocats au Barreau de Paris v. Onno Klopp (12 July 1984)

  Free movement of persons - freedom of establishment - advocates - access to the profession - enrolment refused because of maintenance of chambers in another Member State - incompatibility with the treaty

- Case 292/86, Claude Gullung v. Conseil de l'Ordre des avocats du Barreau de Colmar et de Saverne (19 January 1988)

  Free movement of persons - freedom of establishment - lawyers access to the legal profession - requirement of registration at a bar - permissibility

- Case 427/85, Commission of the European Communities v. Federal Republic of Germany (25 February 1988)

  Freedom to provide services - lawyers' Directive77/249 - implementation - obligation to work in conjunction with local lawyers - territorial restriction of the right to plead applicable to local lawyers

- Case C-340/89, Irène Vlassopoulou v. Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg (7 May 1991)

  Free movement of persons - freedom of establishment - lawyers - access to the profession - obligation to Member State to examine the correspondence between the diplomas and the qualifications required by national law and those obtained in the Member State of origin - obligation to give reasoned decision open to challenge in legal proceedings

- Case C-294/89, Commission of the European Communities v. French Republic (10 July 1991)

  Freedom to provide services - lawyers - Directive 77/249 - implementation - persons covered - exclusion of nationals practising as lawyers in another Member State - not permissible - obligation to work in conjunction with a local lawyer - scope - procedures - rule applicable to local lawyers concerning the territorial exclusivity of the right to plead - not applicable to a lawyer providing services

- Case C-19/92, Dieter Kraus v. Land Baden-Württemberg (31 March 1993)

  Use of a post-graduate academic title - legislation of a Member State - requiring authorisation for the use of academic titles awarded in another Member State

- Case C-20/92, Hubbard/Hamburger (1 July 1993)

  Reference for a preliminary ruling - freedom to provide services - principle of non-discrimination

- Case C-55/94, Reinhard Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano (30 November 1995)

  Directive 77/249 EEC - freedom to provide services - lawyers - possibility of opening chambers

- Case C-234/97, Teresa Fernández de Bobadilla v Museo Nacional del Prado, Comité de Empresa del Museo Nacional del Prado and Ministerio Fiscal (8 July 1999)

  Reference for a preliminary ruling - recognition of qualifications - restorer of cultural property - Directives 89/48/EEC and 92/51/EEC - concept of "regulated profession" - Article 48 of the EC Treaty

- Case C-238/98, Hocsman (14 September 2000)

  Reference for a preliminary ruling - freedom of movement for persons - freedom of establishment - restrictions arising from the legislation of the Member State of establishment on the exercise of certain activities - situation not regulated by a directive on mutual recognition of diplomas - obligation of the Member State to compare the diplomas and qualifications required by national law with those obtained by the person concerned

- Case C-168/98, Grand Duchy of Luxembourg v. European Parliament and Council of the European Union (7 November 2000)

  Freedom of establishment - mutual recognition of diplomas - harmonisation - obligation to state reasons - Directive 98/5/EC - practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was acquired

- Case C-309/99, Wouters (19 February 2002)

  Reference for a preliminary ruling - professional body - national Bar - regulation by the Bar of the exercise of the profession - prohibition of multi-disciplinary partnerships between members of the Bar and accountants - Article 85 of the EC Treaty - association of undertakings - restriction of competition - justification - Article 86 of the Treaty - undertaking or group of undertakings - Articles 52 and 59 of the EC Treaty - applicability - restrictions - justification

- Case C-145/99, Commission of the European Communities v. Italian Republic (7 March 2002)

  Failure by a Member State to fulfil its obligations - Articles 52 and 59 of the EC Treaty (now, after amendment, Articles 43 EC and 49 EC) - Directive 89/48/EEC - access to and practice of the profession of lawyer

- Case C-313/01, Christine Morgenbesser v. Consiglio dell'Ordine degli avvocati di Genova (13 November 2003)

  Reference for a preliminary ruling - freedom of establishment - enrolment in the register of praticanti - recognition of diplomas - access to regulated professions

- Case C-289/02, AMOK Verlags v. A and R Gastronomie (11 December 2003)

  Freedom to provide services - lawyer established in one Member State working in conjunction with a lawyer established in another Member State - legal costs to be reimbursed by the unsuccessful party in a dispute to the successful party - limitation

- Case C-506/04, Graham J. Wilson v. Ordre des avocats du barreau de Luxembourg (19 September 2006)

  Freedom of establishment - Directive 98/5/EC - practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained - conditions for registration with the competent authority in the host Member State - prior examination of knowledge of the languages of the host Member State - remedy before a court or tribunal in accordance with domestic law

- Case C-225/09, Jakubowska (2 December 2010)

  Reference for a preliminary ruling - European Union rules on the practice of the profession of lawyer - Directive 98/5/EC - Article 8 - prevention of conflicts of interest - national rules prohibiting the practice of the profession of lawyer concurrently with employment as a part-time public employee - removal from the register of lawyers

- Case C-118/09, Robert Koller v. Rechtsanwaltsprüfungskommission of the Oberlandesgericht Graz (22 December 2010)

  Court or tribunal within the meaning of Article 234 EC - recognition of diplomas –-Directive 89/48/EEC - lawyer - entry on the professional roll of a Member State other than that in which the diploma was recognised as equivalent

- Case C-359/09, Donat Cornelius Ebert v. Budapesti Ügyvédi Kamara (3 February 2011)

  Lawyers – Directive 89/48/EEC – Recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration – Directive 98/5/EC – Practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained – Use of the professional title of the host Member State – Conditions – Registration with the Bar Association of the host Member State

- Case C-565/08, European Commission v Italian Republic (29 March 2011)

  Failure of a Member State to fulfill obligations - Articles 43 EC and 49 EC - lawyers - obligation to comply with maximum fee tariffs - obstacle to market access - no obstacle

- Case C-424/09, Toki (5 April 2011)

  Directive 89/48/EEC - points (a) and (b) of the first subparagraph of Article 3 - recognition of higher education diplomas - environmental engineer - activity deemed to be a regulated professional activity - applicable mechanism of recognition - meaning of 'professional experience'

- Case C-101/10, Gentcho Pavlov, Gregor Famira v Ausschuss der Rechtsanwaltskammer Wien (7 July 2011)

  External relations - association agreements - national legislation excluding, before the accession of the Republic of Bulgaria to the European Union, Bulgarian nationals from inclusion on the list of trainee lawyers - compatibility of that legislation with the prohibition of all discrimination based on nationality, as regards working conditions, in the EC-Bulgaria Association Agreement

- Joined Cases C-58/13 and C-59/13, Angelo Alberto Torresi (C-58/13), Pierfrancesco Torresi (C-59/13) v Consiglio dell'Ordine degli Avvocati di Macerata (17 July 2014)

  Reference for a preliminary ruling - freedom of movement for persons - access to the profession of lawyer - possibility of refusing registration in the Bar Council register to nationals of a Member State who have obtained their professional legal qualification in another Member State - abuse of rights

- Case C-537/13, Birutė Šiba v Arūnas Devėnas (15 January 2015)

  Reference for a preliminary ruling - Directive 93/13/EEC - scope - consumer contracts - contract for the provision of legal services concluded between a lawyer and a consumer

- Case C-342/15, Piringer (9 March 2017)

  Reference for a preliminary ruling - freedom of lawyers to provide services - possibility for Member States to reserve to prescribed categories of lawyers the drafting of formal documents for creating or transferring interests in land - legislation of a Member State requiring that the authenticity of the signature on a request for entry in the land register be certified by a notary

- Case C-99/16, Lahorgue (18 May 2017)

  Reference for a preliminary ruling - freedom to provide services - Directive 77/249/EEC - Article 4 - practice of the legal profession - router for accessing the private virtual network for lawyers (RPVA) - router for RPVA access - refusal to issue to a lawyer registered at a Bar of another Member State - discriminatory measure

- Case C-297/16, Colegiul Medicilor Veterinari din România (1 March 2018)

  Reference for a preliminary ruling - Directive 2006/123/EC - services in the internal market - National legislation limiting the right to retail, use and administer veterinary medicinal, anti-parasitic and organic products to veterinary practitioners - freedom of establishment - requirement that the share capital of establishments retailing veterinary medicinal products be held only by veterinary practitioners - protection of public health - proportionality

- Case C-480/17, Frank Montag (6 December 2018)

  Reference for a preliminary ruling - freedom of establishment - direct taxation - income tax - deductibility of contributions to an occupational pension scheme and to a private pension scheme - exclusion of non-residents

- Case C-431/17, Monachos Eirinaios v. Dikigorilos Syllogos Athinon (7 May 2019)

  Reference for a preliminary ruling - Directive 98/5/EC - access to the profession of lawyer - monk who has obtained the professional qualification of lawyer in a Member State other than the host Member State - Article 3(2) - condition requiring registration with the competent authority of the host Member State - certificate attesting to registration with the competent authority of the home Member State - refusal to register - rules of professional conduct - incompatibility of the status of monk with practice of the profession of lawyer

- Case C-377/17, European Commission v. Federal Republic of Germany (4 July 2019)

  Failure of a Member State to fulfil obligations - services in the internal market - Directive 2006/123/EC - Article 15 - Article 49 TFEU - freedom of establishment - fees of architects and engineers for planning services - minimum and maximum tariffs

- Case C-384/18, European Commission v. Kingdom of Belgium (27 February 2020)

  Failure of a Member State to fulfil obligations - Article 49 TFEU - services in the internal market - Directive 2006/123/EC - Article 25(1) and (2) - restrictions on multidisciplinary activities of accountants

EUROPEAN COURT OF HUMAN RIGHTS

- Case 43757/05 Xavier da Silveira v France (21 January 2010)

  Raid on office of a Portuguese lawyer providing services in France – Found that the Portuguese lawyer is entitled to the same protection as a home lawyer (only available in French)