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## **CCBE RESPONSE TO THE COMMISSION'S CONSULTATION ON THE PROFESSIONAL QUALIFICATIONS DIRECTIVE**

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## CCBE response to the Commission's consultation on the Professional Qualifications Directive

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The Council of Bars and Law Societies of Europe (CCBE) represents around 1 million lawyers through its member Bars and Law Societies from 31 full member countries and 11 further associate and observer member countries. The CCBE responds regularly on behalf of its members on policy issues which affect European citizens and lawyers.

The CCBE welcomes the opportunity to participate in the evaluation process of the Professional Qualifications Directive even though the profession of lawyer is only partly covered by the Directive, due to the specific regime created by the lawyers' Directives as explained below.

The CCBE remains at the Commission's disposal to further discuss the issues raised in the consultation paper.

**Question 1:** Do you have any suggestions for further improving citizen's access to information on the recognition processes for their professional qualification in another Member State?

**Question 2:** Do you have any suggestions for the simplification of the current recognition procedures? If so, please provide suggestions with supporting evidence.

The CCBE would like to underline that lawyers are covered by two specific Directives, i.e. Directive 77/249 on services and Directive 98/5 on establishment (the lawyers' Directives). The combination of the lawyers' Directives provides a model of a liberalised market for professional services in the EU. The complementary nature of these two directives was recently reaffirmed by the Court of Justice in its Ebert judgment (3 February 2011, C-359/09). The system which has been created is simple, unbureaucratic and very liberal and has therefore led to a high level of cross-border mobility of lawyers.

The lawyers' Services Directive 77/249 allows lawyers to cross borders within the European Union, and provide temporary services, including advocacy services in local courts. It has permitted lawyers, in essence, to follow their clients across borders in individual cases without prior notification or registration with the host Bar. Only in connection with court procedures Member States may require lawyers to be introduced to the presiding judge and to the President of the relevant Bar, and to work in conjunction with a local lawyer or with an "avoué" or "procuratore".

The Establishment Directive 98/5 is a radical, liberalising instrument which permits lawyers from one Member State to go and establish themselves in another Member State under their home title, without integrating themselves into the local profession. Moreover, an established EU lawyer can acquire the local title by practising local law, including Community law, for a period of three years. Therefore, by being established and practising local law for three years, lawyers can forego the necessity to take an aptitude test and can acquire the local title more or less automatically.

The regime created by these Directives is working very well and the CCBE believes that it could be used as a model for other professions.

**Question 3:** Should the Code of Conduct become enforceable? Is there a need to amend the contents of the Code of Conduct? Please specify and provide the reasons for your suggestions.

The CCBE considers that the decision to make the guidelines binding for interpretation and application of the Directive - so-called "Code of Conduct" – should be left to the Member States. This issue should be addressed at national level as a way to implement the objectives of the Directive within the

meaning of section 288, third paragraph of Article 288 of the Treaty on the Functioning of the European Union.

**Question 4:** Do you have any experience of compensation measures? Do you consider that they could have a deterrent effect, for example as regards the three years duration of an adaptation period?

**Question 5:** Do you support the idea of developing Europe-wide codes of conduct on aptitude tests or adaptation periods?

**Question 6:** Do you see a need to include the case-law on “partial access” into the Directive? Under what conditions could a professional who received "partial access" acquire full access?

As regards compensation measures, the Professional Qualification Directive provides the same derogation for lawyers as the previous Diploma Directive 89/48, i.e. the host Member State may stipulate either an adaptation period or an aptitude test. The choice is left to the Member State, not to the applicant.

This is justified by the specificity of the profession of lawyer which requires precise knowledge of national law and the fact that different legal systems apply in the various Member States.

Almost all the Member States have opted for the aptitude test. To the CCBE’s knowledge, only Denmark has opted for the adaptation period. No major problems have been reported to the CCBE by Bars/Law Societies or individual lawyers in the application of the aptitude test or the adaptation period.

The CCBE does not see the need for Europe-wide codes of conduct on aptitude tests or adaptation periods for the legal profession. Lawyers who want to establish and to be entitled to use the host Member State professional title usually integrate through the regime of Directive 98/5 EC rather than aptitude test.

**Question 7:** Do you consider it important to facilitate mobility for graduates who are not yet fully qualified professionals and who seek access to a remunerated traineeship or supervised practice in another Member State? Do you have any suggestions? Please be specific in your reasons.

**Question 8:** How should the home Member State proceed in case the professional wishes to return after a supervised practice in another Member State? Please be specific in your reasons.

The CCBE takes into account the complementarity of sectoral lawyers’ directives and the Professional Qualifications Directive, as was recently reaffirmed by the Court of Justice (Ebert case C-359/09 on the previous Diploma Directive). In this context, the CCBE identifies the particular situation of graduates who are not yet fully qualified. Moreover, the Court of Justice case law has developed to cover these situations, as shown in the consultation document, namely the Pešla and Morgenbesser judgments.

Following the Morgenbesser case, the CCBE has developed a [guidance](#) document for the Bars and Law Societies in order to stress the main import of the judgment for the legal profession and highlight the duties of the competent authorities in relation to the comparative evaluation of qualifications and experience.

The CCBE considers that the assessments for each applicant have to be made on a case by case basis, in the light of the case law of the Court of Justice. The CCBE does neither see the need nor the feasibility for general rules in this area.

**Question 9:** To which extent has the requirement of two years of professional experience become a barrier to accessing a profession where mobility across many Member States in Europe is vital? Please be specific in your reasons.

**Question 10:** How could the concept of "regulated education" be better used in the interest of consumers? If such education is not specifically geared to a given profession could a minimum list of relevant competences attested by a home Member State be a way forward?

The CCBE considers that questions 9 and 10 are not relevant for lawyers.

**Question 11:** What are your views about the objectives of a European professional card?

Should such a card speed up the recognition process? Should it increase transparency for consumers and employers? Should it enhance confidence and forge closer cooperation between a home and a host Member State?

**Question 12:** Do you agree with the proposed features of the card?

**Question 13:** What information would be essential on the card? How could a timely update of such information be organised?

**Question 14:** Do you think that the title professional card is appropriate? Would the title professional passport, with its connotation of mobility, be more appropriate?

The CCBE would like to point out that the legal profession is already well advanced in developing its own professional identity card. The CCBE professional identity card was created in 1978. The CCBE produces the card, but does not issue it to the individual lawyer. The card is delivered to the national bar or to the national, regional or local professional authority, according to the conditions fixed in each Member State. The national bar or professional authority in question then issues it to the registered lawyers, according to the requests which it receives. Although the CCBE produces the cards, national Bars/Law Societies are the issuing authority in the CCBE's name. National Bar/Law Societies should ensure that proper verification procedures have been followed to establish that the applicant is a lawyer currently authorised and registered.

The card facilitates access to courts and institutions for lawyers active outside their home jurisdiction. It identifies the card holder in the official languages of the CCBE, as an admitted lawyer in the country concerned. The card is also recognised by the Court of Justice and the Civil Service Tribunal.

In general, the card is well used by the CCBE member Bars/Law Societies. Some use it as their domestic lawyer identity card; others use it in combination with their domestic card. The use of technology on the chip is growing. Many Member States are now developing their own e-justice systems whereby chip technology is or will be used to file documents with the court and undertake electronic transactions. The CCBE is involved in two projects to this effect: the PenalNet project, run by the Spanish Bar, which uses the CCBE card for the purposes of secure communications between criminal lawyers; and the recently launched e-CODEX project which will ensure interoperability between the national e-justice systems (including an element of secure cross-border electronic identity for lawyers). Both these projects are funded by the European Commission (please see summary of the two projects in annex).

The CCBE has reservations about being part of a possible future European professional card covering all professions. As explained above, the legal profession already has its own card; The use of which is growing and which takes into account the specificity of the legal profession (among other things, the fact that the mutual trust between Member States is based on the title of lawyer and not linked with the Qualifications Directive).

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However, the CCBE is keen to continue to participate in and contribute to the work of the steering group on a European professional card.

**Question 15:** What are your views about introducing the concept of a European curriculum – a kind of 28th regime applicable in addition to national requirements? What conditions could be foreseen for its development?

The CCBE considers that the concept of a European curriculum is not feasible for the legal profession. The case law of the Court of Justice should apply in this area, in particular the Pešla judgment.

**Question 16:** To what extent is there a risk of fragmenting markets through excessive numbers of regulated professions? Please give illustrative examples for sectors which get more and more fragmented.

**Question 17:** Should lighter regimes for professionals be developed who accompany consumers to another Member State?

The CCBE does not see a risk of fragmentation as regards the legal services market.

The profession of lawyer already benefits from a very light regime arising out of the combination of the lawyers' Directives on services 77/249 and establishment 98/5 (see response to Questions 1 and 2).

**Question 18:** How could the current declaration regime be simplified, in order to reduce unnecessary burdens? Is it necessary to require a declaration where the essential part of the services is provided online without declaration? Is it necessary to clarify the terms "temporary or occasional" or should the conditions for professionals to seek recognition of qualifications on a permanent basis be simplified?

**Question 19:** Is there a need for retaining a pro-forma registration system?

**Question 20:** Should Member States reduce the current scope for prior checks of qualifications and accordingly the scope for derogating from the declaration regime?

The above mentioned sectoral Lawyers Directives 77/249 EEC and 98/5 EC have already reduced registration burdens to a minimum.

**Question 21:** Does the current minimum training harmonisation offer a real access to the profession, in particular for nurses, midwives and pharmacists?

**Question 22:** Do you see a need to modernise the minimum training requirements?

Should these requirements also include a limited set of competences? If so what kind of competences should be considered?

**Question 23:** Should a Member State be obliged to be more transparent and to provide more information to the other Member States about future qualifications which benefit from automatic recognition?

**Question 24:** Should the current scheme for notifying new diplomas be overhauled? Should such notifications be made at a much earlier stage? Please be specific in your reasons.

The CCBE considers that questions 21 to 24 are not relevant for lawyers.

**Question 25:** Do you see a need for modernising this regime on automatic recognition, notably the list of activities listed in Annex IV?

**Question 26:** Do you see a need for shortening the number of years of professional experience necessary to qualify for automatic recognition?

The CCBE considers that questions 25 and 26 are not relevant for lawyers.

**Question 27:** Do you see a need for taking more account of continuing professional development at EU level? If yes, how could this need be reflected in the Directive?

The CCBE considers continuing professional education to be of utmost importance. The CCBE, through its Training committee, has undertaken work in this area and will continue to do so. It has, among other things, published [recommendations](#) on continuing training.

However, the CCBE considers that there is no need to include this aspect in the Directive.

**Question 28:** Would the extension of IMI to the professions outside the scope of the Services Directive create more confidence between Member States? Should the extension of the mandatory use of IMI include a proactive alert mechanism for cases where such a mechanism currently does not apply, notably health professions?

**Question 29:** In which cases should an alert obligation be triggered?

The CCBE considers that IMI is a useful tool but it is not yet very much used in practice by Bars/Law Societies. One problem raised by the Bars/Law Societies is the issue of the validity of documents exchanged by this platform, which requires further analysis. The CCBE is not opposed to the extension of IMI to other instruments, but it is felt that more time is needed to enhance and improve its use before taking a decision on a possible extension.

The idea of a proactive alert mechanism should be analysed further by the CCBE, as it might raise issues of data protection. However, the CCBE would like to stress that substantial work has already been undertaken as regards cross-border co-operation in disciplinary matters. A list of [contact points](#) in the different Member States has been created so that Bars know whom to contact in case of disciplinary problems with a cross-border dimension. This database also includes a summary of

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disciplinary proceedings in the various Member States. The CCBE furthermore established a working group on co-operation in disciplinary matters some years ago in order to enhance co-operation between Bars/Law Societies and solve possible problems. However it appeared that there are very few problems in relation to cross-border cooperation between Bars/Law Societies. In most cases, cross-border co-operation is operating smoothly.

**Question 30:** Have you encountered any major problems with the current language regime as foreseen in the Directive?

The CCBE is not aware of any major problem in relation to the language regime of the Directive.

Case law of the Court of Justice, especially *Wilson* C-506/04, has made it clear that within the scope of the sectoral Lawyers Directives no formal language requirements can be introduced by Member States. Thus even the responsibility for a possible lack of proficiency in the host Member States court languages and possible means to compensate such lack lies with the European Lawyer himself.