

Sen. Prof. Mario Monti
President of the Council of Ministers
Palazzo Chigi
Piazza Colonna n. 370
00187 Rome
ITALY

Brussels, 24 January 2012

Dear President of the Council of Ministers,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE). The CCBE is the representative organisation of around 1 million European lawyers through its member bars and law societies from 31 full member countries, and 11 further associate and observer countries.

The Italian Bar Association - Consiglio Nazionale Forense - has recently brought to the CCBE's attention the new Stability Law No 183/2011 which provides for a number of changes of relevance for the legal profession. We understand that these changes have been introduced in circumstances related to the financial stability and the economic development of the country.

Please be assured that the CCBE is aware of the difficult times that countries are facing, including Italy, and also of the need for economic and financial reforms. The CCBE has however difficulties in understanding the link that governments, including the Italian, make between the lawyers' profession and the economic crisis in their countries. Lawyers are included within financial and economic reforms despite their having nothing to do with their country's economic plight and public debt. Furthermore, many of the governmental reforms which affect the lawyers' profession - including those now in Italy - are based on a purely economic approach, without taking into account the role of lawyers within society and the administration of justice, which are essential to any democratic society, and without analysing thoroughly the impact of such proposals on the administration of justice.

After a first analysis, the CCBE believes that the changes within the Stability Law raise fundamental questions in the light of European and international professional standards, including the Council of Europe [Recommendation](#) on the freedom of exercise of the profession of lawyer of 2002 and the United Nations [Basic Principles](#) on the Role of Lawyers

of 1990, which provide for an independent legal profession as a critical component of a well-functioning judiciary and cornerstone of a democratic society based on the rule of law. The Stability Law also raises questions in light of European jurisprudence.

The CCBE's concerns relate in particular to the Law's provisions concerning alternative business structures. We understand that these provisions would allow for external ownership, i.e. for non-professionals to control business structures with a majority share of the company. The Law it seems does not provide for any safeguard of the core values of the lawyers' profession (independence, avoidance of conflict of interest, confidentiality).

The CCBE strongly believes that there are overriding non-economic reasons which clearly argue against the introduction of such business structures. Non-lawyers are not *per se* bound by the same duties as lawyers. The difference of duties which lawyers and non-lawyers would be subjected to can lead to conflicts, with lawyers being put under pressure to comply with certain tasks imposed by the outside owners which would be contrary to their core principles and which could eventually be to the detriment of clients. Lawyers' duties to maintain independence, to avoid conflicts of interest and to respect client confidentiality are particularly endangered when lawyers exercise their profession within an organisation which, factually or legally, allows non-lawyers a relevant degree of control over the affairs of the organisation (see also CCBE [position](#) of 2005).

We would like to recall in this context the Court of Justice [decision](#) in the case of Wouters (C-309/99) where the Court had to decide about the compatibility with the Treaty of the Dutch rules prohibiting multi-disciplinary partnerships between lawyers and accountants. The Court - referring back to the core values mentioned above - held that *"it was reasonable for the Netherlands rules to impose binding measures, despite the effects entailed which are restrictive of competition, because those measures are necessary for the proper practice of the legal profession."*

We would also like to note that other Member States may oppose the opening of such business structures on their territory. In accordance with Article 11 of Directive 98/5/EC concerning the permanent establishment of lawyers in other Member states than their own, they can do so: *"where the fundamental rules governing that grouping in the home Member State are incompatible with the fundamental rules laid down by law, regulation or administrative action in the host Member State, the latter rules shall prevail insofar as compliance therewith is justified by the public interest in protecting clients and third parties"*.

Most jurisdictions in Europe prohibit business structures from providing legal services where persons who do not have the status of lawyer hold entirely or partly the capital of the grouping, use the name under which it practises, or exercise *de facto* or *de jure* the decision-making power. Some European jurisdictions allow for legal disciplinary partnerships, multi-disciplinary partnerships or external ownership, but only under certain strict conditions. In some jurisdictions, for instance, non-lawyers may become partners of a law firm but only if they are members of a regulated profession whose professional code of conduct is comparable to that of the legal profession.

We urge you therefore to take into account the above-mentioned considerations in the next legislative steps, and to ensure that the core values of the profession – which are of paramount importance to a democratic society based on the rule of law – can be safeguarded.

I am happy to discuss any of these issues with you or your officials in person, since they are a matter of great concern to our organisation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Prunbauer-Glaser', with a long, sweeping tail extending downwards and to the right.

Marcella Prunbauer-Glaser
CCBE President