

## Interpretation issues in relation to free movement of lawyers

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1. The starting point is the origins of the 1998 Establishment Directive. In essence the members of the CCBE in the 1990s decided to take the initiative in facilitating free movement for lawyers in the EU. They debated, drafted and proposed the draft directive to the European Commission which led to the Establishment Directive (98/5).
2. Following the entry into force of the Directive, there was a strong logic for the draftsmen to assist in the interpretation of the Directive. This led to the agreement of [CCBE Guidelines](#) on the Directive which, in the form adopted by the CCBE on April 24th and 25th 1998 and further complemented during the standing committees of October 6th 1999, September 8th 2000, January 26th 2001 & October 12th 2001<sup>1</sup>, included the following paragraph:

### *“11. Difficulties in Interpretation of the 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.”*

3. Although the CCBE’s basic obligation to assist and offer the “advisory service” was towards its Members (National Bars and Law Societies who are the Members of the CCBE) and to other “competent authorities”, such as the European Commission, naturally it was not possible to avoid an approach or a request from an individual lawyer: see the examples recorded in the “*Overview of the Main Practical Cases*” (1999-2009). Indeed, receiving such request was always (and still is) of great interest for the respective member Bars and Law societies to know about them (if the lawyer who contacted the CCBE agrees to refer the matter to CCBE members).
4. In any event, where a request/complaint was received directly from an individual lawyer the matter was communicated to the National Bars and Law Societies concerned, usually through their delegates/members of the Committee or the CCBE information officer, and their views were sought. No attempt was made to pass judgment against a Member/National Bar in any individual case – CCBE has limited its work to interpretation of the law.
5. Furthermore, as appears from all the cases quoted in the “*Overview of the Main Practical Cases*”, every possible effort was always made to resolve every request/complaint received by an

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<sup>1</sup> *Guidelines on the implementation of the Establishment Directive (98/5/EC of 16th February 1998) issued by the CCBE for bars and law societies in the European Union, co-ordination of the guidelines adopted during the plenary session of April 24th and 25th 1998 and of the further guidelines adopted during the standing committees of October 6th 1999, September 8th 2000, January 26th 2001 & October 12th 2001.*

individual lawyer in a **spirit of cooperation, understanding and solidarity**, at the same time stating the Committee's reasoned, but not binding, opinion on the correct interpretation of the provisions of the Establishment Directive.

6. In that context, the CCBE secretariat usually answered the sender by clarifying the role of the CCBE, pointing out that the CCBE has no regulatory or disciplinary powers over individual lawyers, and that it does not have authority over national Bars and Law Societies. Then the CCBE normally offered to forward the request to the national Bars and Law Societies to receive their views, and when this was the case, transmitted any views that it received from its member Bars and Law Societies to the individual lawyer.<sup>2</sup>

To sum up, and in the context of free movement rights, the CCBE:

- a. Referred the request from the individual lawyer (or law firm) (once he/she agreed to forward such request in order to avoid any issue with personal data) to the National Bars and Law Societies concerned (home and host States) seeking their views, offering at the same time (whenever the President of the CCBE deemed necessary) the opinion of the Free Movement of Lawyers Committee who examined the request.
  - b. Examined the request within the Free Movement of Lawyers Committee through a delegate of the National Bar concerned by the request, in order to assist and offer "advisory service".
  - c. Used the experience thus acquired to develop ultimately the FML Guide on the CCBE website.
7. The issue was therefore thoroughly analysed and discussed as practical cases where members could learn from each other, share different points of views and subsequently, choose the best solution. Of the essence in this process has been a recognition by all member organisations that:
    - a. The CCBE has a legitimate interest in examining the true meaning of provisions of EU law on free movement of lawyers;
    - b. It is important to engage in cooperation with the CCBE and the member organisations on such matters.
  8. Ultimately, these practical examples were incorporated in the various chapters of the CCBE guidelines for Bars & Law Societies on Free Movement of Lawyers (FML Guide) within the European Union ([EN](#) / [FR](#)).
  9. Furthermore, the CCBE relied on the practice already described and the resultant CCBE positions on interpretation when the European Commission consulted on whether the Directive needed to be modified. In essence the CCBE's submission to the European Commission in response to the Maastricht/Panteia Report was that no modification was necessary given in particular the CCBE positions on various aspects of the Directive which promoted free movement (see [CCBE Position Evaluation of the Lawyers' Directives](#), 2014).

The established practice was even publicised and promoted by the CCBE to the European Commission in the context of a stakeholders' consultation which specially explains that the CCBE FML Committee "**intervenes very efficiently as a consultative body for home and host Bars, and resolves amicably and satisfactorily differences and disputes which have proven to be limited in**

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<sup>2</sup> This way of handling requests is also explained in the CCBE position adopted by the Standing Committee in May 2018 on the context of issues with the application of the CCBE Code of conduct : [Interpretation of the Principles and Rules of the CCBE Charter of Core Principles of the European Legal Profession, Code of Conduct for European Lawyers and Model Code of Conduct.paragraph "B. Brief overview of types of requests received at the CCBE \(...\)"](#)

***number and in substance***” [See 2006 CCBE responses to the questions of the European Commission on the future of internal market, Question 2 [EN](#)/[FR](#)].

10. It is appreciated that such modus operandi has made a significant contribution to goodwill from the European Commission and others which operates like a reserve of diplomatic capital which is of significant value in the work of the CCBE. Such a position is apparent for example when the CCBE visits the Commission (e.g. the meeting in January 2019 when the essential message remains that the Lawyers’ Directives are a success story in part due to the work of the CCBE).
  
11. Therefore, the EU Lawyers Committee proposes the following working method with regard to issues concerning the free movement of lawyers under EU law:
  - a. the EU Lawyers Committee will encourage CCBE members to share their queries, questions and experience within the committee meetings to facilitate discussion in order to build best practice and to provide support for bars facing questions of the EU law of free movement as confirmed in point 7 above;
  - b. where the CCBE Secretariat receives individual requests as described in point 4, they will be communicated to the Information Officers of the National Bars concerned and will be submitted to the EU Lawyers Committee for discussion;
  - c. where the EU Lawyers committee considers that the query raises new issues of interpretation,
    - i. these will be discussed at a general level to share learning and develop interpretations to the issue raised as set out at point 7; and
    - ii. if considered necessary in this context to provide a legal interpretation limited to the form and style which is suitable for inclusion in the FML Guide, such interpretation and inclusion to be subject to the approval of the Standing Committee;
  - d. if requested by one (or more) of the member organisations concerned in a case relating to free movement of lawyers, the EU Lawyers Committee may also consider the broad facts of a specific case. Before discussion in the EU lawyers committee, the Information Officers of the concerned National Bars will be given a reasonable opportunity to submit their views on the question submitted.

The EU lawyers committee may provide an informal view, which shall not be communicated to the individual lawyer(s) but shall be communicated to the member organisations and to the Standing Committee.
  - e. The CCBE may offer to mediate in accordance with Article 16 of the Statutes, subject to agreement of the member organisations concerned, where a difference of opinion in interpretation persists.