

**CCBE contribution to the IMCO Public Hearing :  
“Impact of restrictions imposed during the COVID-19 crisis on the free movement of  
professionals and way forward” - 28 February 2022**

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**The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers.**

- The COVID-19 outbreak has had a considerable impact on the functioning of Justice systems in Europe and on the European legal profession. The Justice sector, like any, was not prepared to cope with a crisis of such a scale and to ensure citizens a continued access to justice.
- The free movement of persons and workers are essential principles in the EU. In this regard, the special position of lawyers, in view of the core values of the legal profession, is specified in two specific directives<sup>1</sup> which govern the provision of cross border services and establishment on the basis of the professional title. Through the work of its EU Lawyers Committee, the Council of Bars and Law Societies of Europe (CCBE) monitors and supports the free movement of lawyers, which has been a great achievement for the mobility of lawyers in the EU<sup>2</sup>.

**What kind of restrictions have lawyers faced during the lockdown ?**

- Lawyers have been affected by the sudden restrictions to the free movement, as a result of which certain essential services could no longer be provided, such as Like any other professionals with the need to perform their work in presence and to providing legal aid to individuals in situ, visiting clients (sometimes) located abroad, or in prison, going to courts, accessing documents etc..
- At the outset of the crisis, the CCBE started several initiatives to alert the public to the situation of lawyers during the Covid-19 outbreak<sup>3</sup>. On the basis of a survey among our Bar members, we noted that confinement measures and restrictions affecting the Justice sector and the legal profession were varying amongst Member States<sup>4</sup> (and even regionally and locally) thus impacting on the capability of lawyers to perform their duties. In some countries, lawyers were designated as “essential profession”/ “key workers” / “of systemic relevance” (depending on the terms used). However, this status of “key workers” was not endorsed in all Member States (although by the majority)<sup>5</sup>.
- Lawyers, as key critical sector, were therefore subject to less stringent confinement and travel restrictions (although cross-border travel for lawyers, like everyone else, for a significant while

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<sup>1</sup> Council [Directive 77/249/EEC](#) of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services and [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.

<sup>2</sup> In this field, please see the [CCBE Guidelines for bars & law societies on free movement of lawyers within the European union](#) (2021)

<sup>3</sup> See, for example, CCBE newsletter [March – April- May 2020](#) and [CCBE Survey Exchanges of experiences and best practices](#) between Bars

<sup>4</sup> See [CCBE Survey 18 June 2020](#), responses to Question Q1C

<sup>5</sup> See [CCBE Survey 18 June 2020](#), responses to Question Q1A

was nearly impossible everywhere in Europe, halting temporarily the principle of free movement of lawyers).

- The functioning of courts and tribunals has been disrupted – in the beginning of the crisis even sometimes totally interrupted – and lawyers were faced with contingency measures and needed to adapt to changes of rules and proceedings. This has, for example, been particularly the case with the European courts in Luxembourg<sup>6</sup> where lawyers and parties were not able to travel, and experienced a change of working methods and procedures by the use of videoconferencing for online hearings (with practical difficulties for parties to attend), the replacement of hearings by written questions etc.<sup>7</sup>
- Depending on the availability of appropriate resources and online tools, urgent cases have been dealt with, mostly by using video conferencing capabilities for organising non-physical meetings, remote hearings, interrogations and other stages of proceedings, etc.

### **What are the solutions for the future? The key role of digitalisation and the status of “critical workers”**

- The existence of fundamental public interests in lawyer activities must be taken into account. In general, the legal profession – as with many other professions – has been heavily impacted by the COVID-19 crisis around Europe. This is due to the important social and economic role lawyers play in the market, being inevitably affected by the measures taken by Member States in connection with the COVID-19.
- Considering the possibility that a similar crisis might occur, it is very important to prepare for such a situation by setting out a coherent framework of measures that need to be taken both at national and EU level to facilitate as much as possible the provision of essential cross-border legal services. For example, lawyers, considering their central role in the administration of justice, should be recognised as key “critical workers” in all Member States during (any future) crisis/emergency situations, exempting them from travel restrictions where travel is required for them to carry out their duties. It is important that lawyers are considered essential services not only for their in-court work but also for out of court-activities.
- Apart from general travel restrictions, there might also have been issues for lawyers to have access to the e-justice tools of another Member States for e-filing, online hearings (videoconferencing), service of documents (due to a lack of recognition of e-ID’s etc) although those aspects are not necessarily related to the COVID-19 measures. **In this context, the future development of the e-CODEX infrastructure, which seeks to interconnect the different electronic justice systems of the EU Member States, is very important for facilitating the provision of cross-border legal services.**
- The CCBE therefore believes that in bringing Europe up to speed with digital proceedings through the e-CODEX system, the focus should not be concentrated solely on facilitating exchanges between State authorities and courts. **It should also include the digitalisation of processes that can be used by citizens, and their lawyers, with the view of facilitating the dealing of cross border cases, for example in the area of family law, when these cases are of**

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<sup>6</sup> In this regard, see [“COVID-19 and the Courts. The Case of the Court of Justice of the European Union \(CJEU\)”](#)

<sup>7</sup> See Curia Website re. Covid-19 information : [https://curia.europa.eu/jcms/jcms/p1\\_3012064/en/](https://curia.europa.eu/jcms/jcms/p1_3012064/en/)

**direct interest to citizens.** Therefore, citizens and practitioners need to be at the centre of digitalisation efforts - or at least not be overlooked.<sup>8</sup>

- Regarding the use of videoconferencing, the CCBE published a [Guidance on the use of remote working tools by lawyers and remote court proceedings](#). In this document, the CCBE analyses the main risks and challenges posed by the use of remote working tools by lawyers, especially in relation to fundamental rights, professional secrecy and legal professional privilege, and GDPR compliance. The CCBE furthermore provides recommendations to be implemented in the context of remote court proceedings in order to ensure that the right to a fair trial is respected.
- The CCBE recalls that all technologies used should be equally capable of delivering a fair trial. Any perceived need to reduce backlogs or costs should not sacrifice the consistent delivery of justice at least as well as that delivered by traditional means. The CCBE understands that the use of videoconferencing systems provides several advantages. However, there are potential risks and drawbacks that must be considered before generalising the adoption of videoconferencing in judicial proceedings. Its use should not undermine fundamental principles of a fair trial especially with respect to defence rights or with respect to witness testimonies (examination of witnesses) in civil law cases. Judicial authorities must look beyond convenience alone to determine whether in the circumstances of the individual case, the use of videoconferencing is, on balance, beneficial to the overall fair and efficient administration of justice. In cross-border cases, particularly where the parties might not be native speakers and will be subject to different cultural influences, the investigative judge, prosecutor or opposing counsel might not be able to examine so easily the nuances of the parties' or witnesses' appearances and responses through a video-link. Moreover, judicial authorities might have a tendency to ask fewer questions and be less likely to interrupt an argument, which might not be a beneficial outcome for the parties.
- Furthermore, it is important to develop mandatory minimum standards as to the technical arrangements that should be in place for the use of videoconferencing to ensure as much as possible a true-to-life hearing experience including full communication/interaction of all the parties to the procedure with the examined person. Technical arrangements must also ensure that the videoconferencing is protected from improper access (hacking). Such mandatory minimum standards should also ensure protection of professional secrecy and legal professional privilege during the videoconferencing session. Specific safeguards should be in place to ensure the possibility for lawyers to participate in a hearing conducted through videoconference in order to defend their clients' interests.
- Finally, the COVID-19 pandemic has also resulted in systemic risks for the rule of law in Europe – which have to be avoided or at least mitigated in future crises: *When responding to the COVID-19 threats, many countries have understandably taken emergency measures and enacted legislation to contain the risk of mass infection, to safeguard the medical capacity to deal with infections and to address the economic consequences of the crisis. In its statement about the systemic risks for the rule of law in times of the pandemic, the CCBE expressed its*

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<sup>8</sup> For more details, please see the recent CCBE contributions in the area of digitalisation of proceedings :

- [CCBE Position paper on the e-Codex proposal](#)
- [CCBE comments on the Communication on Digitalisation of justice in the European Union](#)
- [Public consultation on digitalisation of cross border judicial cooperation](#)

*concerns<sup>9</sup> in relation to emergency measures, in the light of de facto absence of Parliamentary monitoring and judicial review. The CCBE has therefore called upon member states not to abuse such 'State of Emergency' provisions or 'Special Powers' granted to the Executive. The CCBE pleaded for adequate sunset clauses for such measures and legislation as foreseen in the constitutional and fundamental laws of most European countries.<sup>10</sup>*

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<sup>9</sup> CCBE [Statement](#) about systemic risks for the Rule of Law in times of the pandemic (15 May 2020)

<sup>10</sup> [CCBE Contribution for the Rule of Law Report 2021](#) (26 March 2021)