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## **CCBE POSITION ON THE COMMISSION'S PROPOSAL FOR A DIRECTIVE AMENDING DIRECTIVE 2005/36/EC**

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### **I. Introduction**

The Council of Bars and Law Societies of Europe (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.

On 19 December 2011, the European Commission adopted a legislative proposal for modernising [Directive 2005/36/EC](#) on the recognition of professional qualifications<sup>1</sup>. The present objective of the Commission is to further facilitate mobility of professionals across the EU.

This proposal follows a consultation and a green paper launched by the Commission in 2011 to which the CCBE responded.

Due to the specificity of the legal profession, which requires comprehensive knowledge of national law and practice, and due to the differences between jurisdictions of the various Member States, the CCBE considers that certain proposals to amend Directive 2005/36/EC require modifications or clarifications.

These issues are the following: (1) European Professional Card, (2) remunerated traineeship, (3) recognition of remunerated traineeship and (4) partial access to the profession.

For each issue, the CCBE proposes amendments to the Commission's proposal:

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<sup>1</sup> [Proposal for a Directive amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation on administrative cooperation through the Internal Market Information System.](#)

## II. CCBE amendments proposals

### 1. European Professional Card

Commission Proposal	CCBE amendments proposals
<p><i>(5) The following Articles 4a to 4f are inserted:</i></p> <p><i>“Article 4a</i></p> <p><i>European Professional Card</i></p> <p><i>6. The Commission shall adopt implementing acts specifying European Professional Cards for specific professions, establishing the format of the European Professional Card, the translations necessary to support any application for issuing a European Professional Card and details for the assessment of applications, taking into account the particularities of each profession concerned. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 58.</i></p>	<p><i>(5) The following Articles 4a to 4f are inserted:</i></p> <p><i>“Article 4a</i></p> <p><i>European Professional Card</i></p> <p><i>6. The Commission shall adopt implementing acts specifying European Professional Cards for specific professions, <b>which had requested their introduction</b>, establishing the format of the European Professional Card, the translations necessary to support any application for issuing a European Professional Card and details for the assessment of applications, taking into account the particularities of each profession concerned. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 58.</i></p>
<p><b><u>Justification:</u></b></p> <p>The Commission expressed on different occasions that the European Professional Card will be implemented on a voluntary basis solely. The detailed explanation about the proposed amendments to Directive 2005/36/EC is in line with the Commission’s intention as it states in point 4.1.1. that “the introduction of the European Professional Card will depend on whether the professions request its introduction”. However, Article 4a does not reflect this. It is therefore necessary to refer to the wording of the explanation and to introduce a short reference to the fact that the professions have to request the introduction of the European Professional Card.</p>	

## 2. Remunerated traineeship

Commission Proposal	CCBE amendments proposals
<p>(2) In Article 2, paragraph 1 is replaced by the following:</p> <p>"1. This Directive shall apply to all nationals of a Member State wishing to pursue a regulated profession or a remunerated traineeship in a Member State, including those belonging to the liberal professions, other than that in which they obtained their professional qualifications, on either a self-employed or employed basis."</p>	<p>(2) In Article 2, paragraph 1 is replaced by the following:</p> <p>"1. This Directive shall apply to all nationals of a Member State wishing to pursue a regulated profession or a <b>remunerated</b> traineeship in a Member State, including those belonging to the liberal professions, other than that in which they obtained their professional qualifications, on either a self-employed or employed basis."</p>
<p>(3) Article 3 is amended as follows:</p> <p>(a) Paragraph 1 is amended as follows:</p> <p>(i) Point (f) is replaced by the following:</p> <p>"(f) 'professional experience': the actual and lawful full-time or equivalent part-time pursuit of the profession concerned in a Member State;"</p> <p>(ii) The following points are added:</p> <p>"(j) 'remunerated traineeship': the pursuit of supervised and remunerated activities, with a view to access to a regulated profession granted on the basis of an examination;</p>	<p>(3) Article 3 is amended as follows:</p> <p>(a) Paragraph 1 is amended as follows:</p> <p>(i) Point (f) is replaced by the following:</p> <p>"(f) 'professional experience': the actual and lawful full-time or equivalent part-time pursuit of the profession concerned in a Member State;"</p> <p>(ii) The following points are added:</p> <p>"(j) '<b>remunerated</b> traineeship': the pursuit of supervised <b>and remunerated</b> activities, with a view to access to a regulated profession granted on the basis of an examination;</p>
<p><b>Justification:</b></p> <p>We understand that the Commission's proposal is restricted to remunerated traineeships due a lack of competence to regulate non-remunerated activities. This situation however should not have consequences to the detriment of not remunerated trainees. There are Member States where trainees are not paid. According to the Commission's proposal, those traineeships are left out, although they have the same purpose and the activity is the same. Un-examined traineeships should still be counted as experience / competence - as per the Vlassopoulou (C-340/89) /Morgenbesser (C- 313/01) cases.</p> <p>The CCBE considers that the legal principle stated in the Morgenbesser decision is not just about remunerated traineeships. They are not the base of the legal reasoning of the Court of Justice.</p> <p>Moreover, the proposed definition of remunerated traineeship in Article 3 (j) is problematic as it does not clarify what remuneration means. In some Member States remuneration is not the rule or a traineeship is not paid, but some trainees get some kind of tip. Is that remuneration according to the proposal? In other Member States (e.g. Germany) remuneration is paid by the competent authority</p>	

but not by clients or law firms. The remuneration has the function of enabling maintenance of trainees during their legal education. Does this remuneration correspond to the definition?

The CCBE therefore considers that the qualifier “remunerated” is not helpful. It might cause the amendment to be inapplicable for many unremunerated traineeships even though they must be followed for access to the regulated profession.

### 3. Recognition of remunerated traineeship

Commission Proposal	CCBE amendments proposals
<p><i>In Title IV the following Article 55a is inserted:</i></p> <p><i>"Article 55a</i></p> <p><i>Recognition of remunerated traineeship</i></p> <p><i>With a view to grant access to a regulated profession, the home Member State shall recognise the remunerated traineeship pursued in another Member State and certified by a competent authority of that Member State."</i></p>	<p><i>In Title IV the following Article 55a is inserted:</i></p> <p><i>"Article 55a</i></p> <p><i>Recognition of <b>remunerated</b> traineeship</i></p> <p><i>With a view to grant access to a regulated profession, the home Member State shall recognise the <b>remunerated</b> traineeship pursued in another Member State and certified by a competent authority of that Member State."</i></p> <p><i><b>For 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" in the sense of Article 14 paragraph 3 Member States may restrict recognition of traineeships pursued in another Member State to a limited period, whereas recognition of a traineeship in the sense of paragraph 1. as a whole is subject to Member State regulation in compliance with Article 14 3 of this Directive"</b></i></p>

#### Justification:

In the case of professions described in Article 14 paragraph 3 such as lawyers and notaries, an obligation of Member States to recognise traineeships in other Member States has to be restricted to temporary mobility, i.e a minor part of the whole traineeship period.

Both access to traineeship in a Member State other than the Member State in which the qualification to become a trainee has been obtained (the Pesla case) as well as recognition of traineeship in a Member State other than the Member State where full qualification is sought must stay subject to Article 14. This should be clarified in Article 55a, although this derives from the fact that Article 2 paragraph 1 is a general provision, subject to detailed regulation in titles II and III.

#### 4. Partial access

Commission Proposal	CCBE amendments proposals
<p><u>Article 4f</u></p> <p><i>Partial access</i></p> <p>1. <i>The competent authority of the host Member State shall grant partial access to a professional activity in its territory provided that the following conditions are fulfilled:</i></p> <p>(a) <i>differences between the professional activity legally exercised in the home Member State and the regulated profession in the host Member State as such are so large that in reality the application of compensatory measures would amount to requiring the applicant to complete the full programme of education and training required in the host Member State to have access to the full regulated profession in the host Member State;</i></p> <p>(b) <i>the professional activity can objectively be separated from other activities falling under the regulated profession in the host Member State. For the purposes of point (b), an activity shall be deemed to be separable if it is exercised as an autonomous activity in the home Member State.</i></p>	<p><u>Article 4f</u></p> <p><i>Partial access</i></p> <p>1. <i>The competent authority of the host Member State shall grant partial access to a professional activity in its territory provided that the following conditions are fulfilled:</i></p> <p>(a) <i>differences between the professional activity legally exercised in the home Member State and the regulated profession in the host Member State as such are so large that in reality the application of compensatory measures would amount to requiring the applicant to complete the full programme of education and training required in the host Member State to have access to the full regulated profession in the host Member State;</i></p> <p>(b) <i>the professional activity can objectively be separated from other activities falling under the regulated profession in the host Member State. <del>For the purposes of point (b), an activity shall be deemed to be separable if it is exercised as an autonomous activity in the home Member State.</del></i></p>
<p>2. <i>Partial access may be rejected if such rejection is justified by an overriding reason of general interest, such as public health, it would secure the attainment of the objective pursued and it would not go beyond what is strictly necessary.</i></p>	<p>2. <i>Partial access may be rejected if such rejection is justified by an overriding reason of general interest, <del>such as public health</del>, it would secure the attainment of the objective pursued and it would not go beyond what is strictly necessary.</i></p>
<p>3. <i>Applications for establishment in the host Member State shall be examined in accordance with Chapters I and IV of Title III in case of establishment in the host Member State.</i></p>	<p>3. <i>Applications for establishment in the host Member State shall be examined in accordance with Chapters I and IV of Title III in case of establishment in the host Member State.</i></p>
<p>4. <i>Applications for provision of temporary services in the host Member State concerning professional activities having public health and safety implications shall be examined in</i></p>	<p>4. <i>Applications for provision of temporary services in the host Member State concerning professional activities having public health and safety implications shall be examined in accordance</i></p>

<i>accordance with Title II.</i>	<i>with Title II.</i>
5. <i>By derogation from the sixth subparagraph of Article 7(4) and Article 52(1), the professional activity shall be exercised under the professional title of the home Member State once partial access has been granted.”</i>	5. <i>By derogation from the sixth subparagraph of Article 7(4) and Article 52(1), the professional activity shall be exercised under the professional title of the home Member State once partial access has been granted.”</i>
<p><b><u>Justification:</u></b></p> <p><u>Partial access</u></p> <p>As regards article 4f 1. (b) the last sentence should be deleted. The fact, that an activity exercised as an autonomous activity in one Member State does not justify the assumption that the activity is separable in other Member States. Consumers in the home Member State are used to existing professions and their scope of activities, whereas in other Member States such separation may lead to confusion of consumers and misunderstandings to their detriment.</p> <p><u>Overriding reason of general interest</u></p> <p>As regards Article 4 f 2. it is better not to give any example, otherwise other overriding reasons of general interest such as “the sound administration of justice” should also be added.</p>	