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## SUMMARY

### of answers to the CCBE Professional Indemnity Insurance questionnaire 2009

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A questionnaire on professional indemnity insurance was circulated to CCBE member countries in 2006 and 2009 in order to have a better understanding of the national situation for lawyers in Europe. The questionnaire was circulated a second time with an additional commentary to clarify the data provided by the delegations so far.

This summary compiles the main results of answers given and include the responses received during the two cycles of the questionnaire's distribution. All CCBE member/associate/observer countries received the questionnaire (excluding Switzerland)<sup>1</sup>. 11 out of 41 CCBE member/associate/observer countries did not respond to the questionnaire (Albania, Bulgaria, Croatia, Iceland, FYRO Macedonia, Malta, Moldova, Montenegro, Spain, Turkey, Ukraine)<sup>2</sup>.

The questionnaire addressed three different sections:

1. Data on Liability law (specific or general rules for lawyers concerning professional liability)
2. Professional Indemnity Insurance schemes (collective vs individual, compulsory vs. voluntary, mixed insurance schemes)
3. Client compensation funds ( a fund which may help persons who have suffered loss as a result of a lawyer's dishonesty or who are suffering hardship as a result of a lawyer's failure to account for money he or she has received. This loss is not covered by professional indemnity insurance).

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<sup>1</sup> At present there is no obligation for PI Insurance in Cyprus. However the Bar Association is now promoting an amendment to the Advocates law introducing the Compulsory PI Insurance (2009). The amendments provide the collective scheme.

<sup>2</sup> Serbian Bar is working on a new draft law on the Bar, which will include articles on PII topic.

## I. Data on liability law

### **1. Do specific rules on liability for lawyers exist in your country, apart from general liability rules which apply to all citizens? If liability rules for lawyers exist, please specify if the responsibility refers to means (accuracy, diligence) or to results.**

In the overall majority of countries no specific rules on liability exist.

However, in some countries, it does exist, for example:

In Czech Republic, the responsibility refers to results (damages).

In Estonia, the responsibility concerns direct pecuniary loss caused in connection with the provision of legal services.

In Greece it refers to the liability of lawyers for in-court activity and presupposes fraud or gross negligence of the lawyer.

In Latvia, liability is concerned when a lawyer permits in his law practice an infringement upon a right of a client which results in a damage/loss to the client.

In Lithuania, additional rules on liability exist; the responsibility refers more to the means than results.

In Poland (Polish Bar Council), Barristers are held responsible for such means as: accuracy, diligence, good conduct (including honour and dignity), the advocate's duty to act in the best interests of the client, etc. The rules are listed in the Code of Ethics and Conduct for Advocates. For the National Council of Legal Advisers, there are also specific rules on liability.

In Slovakia, the lawyer shall be liable to his client for any loss or damage caused in connection with the law practice.

### **2. Do these rules exist in statute law or in case law? Please state the relevant sources.**

In all these countries where specific rules on liability apply to lawyers, these rules exist in statute law.

### **3. Please briefly summarise these rules.**

In the majority of countries, the lawyer is liable for his action in all activity and s/he has to compensate all damages which s/he causes to her/his client.

In the majority of countries, the lawyer is also liable for her/his employees such as employed lawyers or trainees.

The liability of the lawyer also includes very often negligence.

Additionally, some particular rules exist concerning the company and common exercises in law firms.

### **4. Do the rules on liability apply differently depending on the type of work undertaken (e.g. contract/tort or property work which may be undertaken by a notary)?**

In the vast majority of countries the rules on liability do not apply differently.

Nevertheless, some exceptions exist in some countries:

In Belgium (Flemish Bar), the nature of the contract and the scope of the lawyer's duties towards her/his client influences the evaluation of the fault made by the lawyer.

Germany and Hungary noted as well that the rules on liability for notaries are different to those for lawyers and Hungary underlined that the minimum insurance scheme covers only activities reserved for lawyers.

Ireland specified that certain case law applies liability rules in the context of particular areas of legal practice.

Luxembourg underlined that the liability regime is independent from the type of work undertaken.

In Norway, the requirements for a lawyer's diligence may vary somewhat depending on the kind of assignment. The rules will be strictly applied when it comes to explicit rules of law as for example formal requirements for testaments.

In Poland (Polish Bar Council) an exception exists concerning the situation of legal advisers, who render their legal services exclusively under an employment contract. For employed lawyers, the responsibility has material limits up to the equivalent of three salaries.

In the UK (Law Society of England and Wales) the exception is that advocates have immunity from legal action when acting as an advocate in Portugal, rules on liability apply differently since the Portuguese Civil Code prescribes different types of civil liability. However, the selection of the specific type of responsibility does not depend on the type of work undertaken; in fact, the different types of civil liability correspond to the different nature of the error/omission committed by the lawyer and the level of guilt, regardless of the type of work performed.

## **5. Is there the possibility of limiting the liability?**

In several countries, it is not possible to limit the liability, namely Estonia, Hungary, Italy, Latvia, Poland (Polish Bar Council and National Council of Legal Advisers), and Slovakia.

In many countries such as Belgium, Czech Republic, Denmark, Finland, Germany, Greece, Ireland, Liechtenstein, Luxembourg, Norway, Portugal, Sweden, The Netherlands and the United Kingdom, it is possible.

Sometimes it is foreseen by specific contractual clause (Belgium, Greece, Luxembourg, Bar Council of England and Wales, Law Society of Scotland, Bar Council of Northern Ireland) or under legal exemption (Czech Republic, Lithuania, Liechtenstein, Norway).

Certain exceptions are also existed such as minimum amount of limitation of liability (Belgium (Flemish Bar), Finland, Liechtenstein, Portugal, Law society of Scotland).

### **a. If this is the case, which limitations exist regarding the scope of the lawyer's activity, e.g. geographical factors or court pleadings vs. consultations only?**

In the vast majority of countries, such limitations do not exist. In principle, no limitations regarding the scope of the lawyer's activity are allowed (Austria, Cyprus, Czech Republic, Estonia, France, Greece, Ireland, Italy, Latvia, Lithuania, Norway, Poland (National Council of Legal Advisers, Portugal, Slovakia, Slovenia, Law society if Northern Ireland).

However, in several countries, some exceptional limitations are allowed; limitations concerning the amount of money are possible in (Finland, Lichtenstein, Sweden, The Netherlands), the United Kingdom (Bar Council of England and Wales, Law Society of England and Wales, Bar Council of Northern Ireland) as well as Sweden are using the concept of "reasonableness" to determine the legality of such clauses.

In Germany limitations of liability are always possible no matter which activities the lawyer pursues.

In Hungary, the minimum insurance cover is valid for damages occurring in consequence of lawyer's activity in the territory of the Hungarian republic.

In Denmark and in Poland (Polish Bar Council), the scope can be limited (exclusion of counselling or concerning only material liability).

**b. What is the legal basis for the limitation – an agreement or law?**

- Law: Czech Republic, Poland (Polish Bar Council), Portugal.
- Contract: Belgium, Ireland, Luxembourg, Norway, Sweden, the Netherlands, United Kingdom (Bar Council of England and Wales, Law Society of England and Wales, Bar Council of Northern Ireland).
- Law and contract: Austria, Germany.
- Bar instructions: Finland.

**c. What are the effects for client compensation funds if a lawyer is in breach of these limits?**

In many countries such funds do not exist: Cyprus, Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Lichtenstein, Luxembourg, Norway, Poland (Polish Bar Council and National Council of Legal Advisers), Portugal, Slovakia, Slovenia, Sweden, The Netherlands, United Kingdom, Bar Council of Northern Ireland).

In other countries even if this fund exists, it is not engaged in such cases, Denmark, Finland, United Kingdom ((Bar Council of England and Wales, Law Society of England and Wales, Law Society of Scotland).

**d. Are there formal requirements for the presentation of claims, e.g. limited periods for presenting the case?**

In the vast majority of countries, there are no formal requirements for a presentation of claims other than time limits (prescription).

In France and in Luxembourg, the rule of Procedure of the bar submits any plan of summons to the preliminary visa of the president of the French bar (which only concerns the format but not the legitimacy of the claim).

In the Netherlands, the formal requirements are subject to the respective insurance scheme.

**e. Which traditions exist for lawyers limiting their liability by a contract?**

In the majority of countries no traditions exist for lawyer limiting their liability. The rare existing traditions are such already mentioned previously, for example concerning the amount of money

**6. Do limits for the presentation of claims or the amount of compensations exist in your country?**

In several countries there is no limit for the presentation of claims. It is the case in Austria<sup>3</sup>, Czech Republic, Denmark, Finland, Germany, Greece, Ireland<sup>4</sup>, Latvia, Lithuania<sup>5</sup>, Poland (Polish Bar Council), Slovakia, Sweden, Netherlands and UK (Bar Council of England and Wales, Law Society of England and Wales, Law Society of Scotland<sup>6</sup>, Bar Council of Northern Ireland).

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<sup>3</sup> Even if a limitation below of 400.000 Euros is not possible by law.

<sup>4</sup> However there is a limit of 700.000 Euros per claim with regard to the claims made on the compensation Fund.

<sup>5</sup> However non-pecuniary damages are limited by law to certain specific cases.

<sup>6</sup> The Law society of Scotland noted that there is a minimum insurance level required by the Law Society and it is possible for the client and solicitor to come to agreement about additional levels of insurance above the minimum required claim.

In other countries, there are often some time limits which follow the time of the contractual prescription such as Belgium (5 years), Cyprus (6 years), France, Hungary (10 years), Italy (10 years), Luxembourg, Norway (3 years)<sup>7</sup> and Portugal.

Finally there are also some countries where there are minimum amounts of insurance coverage such as Estonia (1 million Kroons/ 64 000 Euros), Hungary (5.000.000 forints/ 19.000 Euros for each damages and 10.000.000 forint/38.000 Euros in one year calendar), Ireland (700.000 Euros per claim), Liechtenstein (1 million Euros per claim), Poland (90.000 Euros) and Law Society of England and Wales (2 million £ for unincorporated law firms and 3 million £ for incorporated law firms).

## **II . Professional indemnity insurance schemes**

### **1. Is the PI insurance scheme in your country voluntary or obligatory? If the PI insurance scheme is compulsory, what is the minimum coverage?**

In 21 countries (Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Lithuania, Lichtenstein, Luxembourg, Norway, Poland, Portugal, Slovakia, Slovenia, Sweden, the Netherlands, UK) it is obligatory to be included in the PI insurance scheme and in 4 countries the PI insurance scheme is voluntary (Cyprus, Greece, Italy, Latvia). Cyprus has not yet adopted the legal amendments of the Advocates Law, but it aims to establish a compulsory scheme. Ireland applies different schemes: professional indemnity insurance cover is obligatory for solicitors in private practice, except solicitors providing legal advice to their employers. Solicitors in the full-time service of the State are exempt from having insurance.

The minimum coverage varies from 19.000 EUR (Hungary, for each loss) to tort liability-physical damage cases to 6.200.000 EUR (Belgium-OVB). The minimum coverage is paid by individual lawyers or limited liability companies (law firms) for loss/damage cases on a yearly basis.

### **2. Does your country have a collective or an individual PI insurance scheme for lawyers?**

Individual scheme:

The individual scheme is applicable in 12 Bars/Law societies ("Belgium (OBFG), Denmark, Estonia, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Lichtenstein, UK –Bar Council and Law Society of England & Wales).

Collective scheme:

The collective scheme is applicable in 6 Bars/Law societies (Luxembourg, Slovakia, Slovenia, Sweden, UK- Law Society of Scotland and Bar Council of Northern Ireland). Cyprus has not yet adopted the legal amendments of the Advocates Law, but it aims to establish a collective PI insurance scheme.

Mixed schemes:

There are 10 countries which have a mixed scheme of PI insurance (Austria, Belgium (OVB), Czech Republic, France, Ireland, Italy, Norway, Poland, Portugal, the Netherlands). In Austria the basic contract is purchased by single lawyers and the extension is managed by the regional bars and paid by individual lawyers.

There is the freedom of choice basis and no master policy in Ireland, the obligation is applicable to firms of solicitors.

In Norway, there is the individual insurance, but in addition to the individual insurance, the Bar Association negotiates a collective guarantee and insurance available to all members; the individual lawyer may choose up to NOK 20 million within the collective scheme.

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<sup>7</sup> Nevertheless, the complication is the question of whether claims against lawyer are regulated by the rules for limitation periods applying to contractual liability or for torts to know when the limitation period starts).

In Poland (Polish Bar Council), the National Bar Association negotiates in the name of individual advocates, and signs the terms and conditions of obligatory legal insurance with the insurance companies, but individual lawyers are free to buy additional insurances.

### 3 . Please give a short description of it<sup>8</sup>

The Law Societies and Bar Associations replied that the system is paid collectively, individually and by Limited liability law firms. The PI Insurance insures lawyers against liability imposed upon them for damages arising out of the professional acts, errors, and omissions. It is usually paid yearly.

Bar Associations/ Law Societies gave different and specific responses to the questions:

There are different insurers in Austria. The group insurance is managed by the Bar. There are no listed or pre-agreed rates used to calculate the premium. Individual lawyers are insured for the minimum coverage individually. Terms of protection have to be agreed by the local bar. The coverage is on a failure committed basis.

In Belgium, the obligatory PI insurance policy (first rank) applies to all lawyers (contractual and tort liability). The Orde van Vlaamse Balies has also concluded a collective PI insurance policy (second rank), to which lawyers who wish to do so, can adhere. Moreover, every lawyer and law firm can insure its professional liability by concluding a contract on an individual basis for higher amounts.

In Czech republic, a limited liability company and a limited partnership company must be insured, from the moment of their registration in the Commercial Register until the date of their dissolution Where a lawyer practices law in a consortium, lawyers practicing law in that consortium shall be responsible jointly and separately (?) together with a lawyer who caused clients damage.

In Denmark and Estonia, the insurance must cover liability caused by ordinary and gross negligence, pecuniary loss caused in connection with the provision of legal services by the management of the law office or an advocate, regardless of the place of provision of legal services.

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<sup>8</sup> Law Society of England and Wales:

The main features of the current arrangements are:

- A Firm carrying on a private practice from offices in England and Wales is required to have a policy of "Qualifying Insurance".
- Qualifying Insurance is available through "Qualifying Insurers". The insurers have to offer policies which meet set Minimum Terms; to participate in an "Assigned Risks Pool" (see below); and to report suspected dishonesty to the Compliance Directorate of the Law Society.
- Firms that cannot get cover on the commercial market can apply to be covered, for a limited period, through an "Assigned Risks Pool". Premiums for the ARP are high. Firms in the ARP are subject to monitoring visits and can be required to implement special measures to reduce the risks of claims.
- There is no fixed level of self insured retention or excess. Excesses are a matter for negotiation between each law firm and its insurer.

The key minimum terms and conditions include:

- Cover is for all civil liability arising from Private Legal Practice, with only limited permitted exclusions.
- The Insured includes the Firm (and any Prior Practice) together with any current or former Principal, Employee or consultant.
- Cover extends to the practice as a whole including anybody corporate.
- Cover extends to all activities arising out of the private practice of a solicitor in England and Wales.
- The minimum sum insured is exclusive of defence costs which are covered in addition without financial limit.
- Qualifying Insurers are prohibited from avoiding or repudiating the insurance on any grounds whatsoever including non-disclosure, misrepresentation and failure to pay premium (although they may have rights of reimbursement against each insured).
- The dishonesty exclusion only applies to the dishonest member(s) of the Firm so that innocent partners are covered. If all the principals of the Firm have been dishonest then the claim falls to be dealt with by the Law Society's Compensation Fund.

If a Firm ceases without successor practice then the policy is automatically extended by 6 years to provide run-off cover.

Law Society of Scotland:

The new scheme is organised as follows:-

- The Society sets the principles for the Master Policy and appoints the insurance brokers.
- The Insured (which is the firm of solicitors, rather than the individual solicitor) arranges cover with the Brokers.

The Insurers provide the underwriting and have sole responsibility for the management of claims.

Additionally, in Germany, within certain insurance conditions, insurance cover is provided for certain cases of negligent mistakes regarding the use of money.

In Norway, the guarantee covers 3<sup>rd</sup> party loss caused by the lawyer's negligence or purpose in the execution of his work as a lawyer.

The protection in Poland (PBC) is obligatory civil liability insurance (the insurance company covers up to the guaranteed amount of insurance, the advocate up the real damage), disciplinary responsibility of the barrister.

In Slovenia, the insurance covers the damage caused by serious negligence, mistake or suspension of professional obligations of the insured person and the persons employed to pursue his activities.

In Sweden, all members of the Swedish Bar Association and the staff employed by them are included in: 1. Compulsory liability insurance for pure economic loss, 2 Compulsory insurance exists for crimes against property, such as crimes of stealing, dishonesty, or breach of trust, caused by the law firm's staff. The liability insurance for pure economic loss covers liability for pure economic loss caused to a client or a third party by the insured or her/his employees through error or neglect.

In Finland, if advocacy is practised in company form, the insurance may be taken out by the company. An assistant at law offices is not personally obliged to take out general liability insurance. Advocates who are public legal aid attorneys are not obliged personally to take out general liability insurance in their primary occupation. General liability insurance shall cover all acts of advocacy. However, the general liability insurance policy may be restricted not to apply to damages caused by the insured party in very specific cases. The insurance company shall notify the Finnish Bar Association of the expiry of an advocate's financial loss cover. The Finnish Bar Association shall be given an opportunity to maintain an advocate's financial loss cover. The Board of the Finnish Bar Association may decide about the minimum requirements of an advocate's financial loss cover.

In France the law of 31 December 1971 foresees that the lawyer should be covered by the insurance of civil professional liability and representation of funds. The insurance should be paid collectively or individually<sup>9</sup>.

In Germany, each individual lawyer must obtain PI insurance cover for a minimum level, The lawyer is admitted to the bar only if s/he proves a valid PI insurance policy. The bar has to revoke the admission if the PI insurance contract is terminated.

In Hungary, the PI insurance scheme is run by a non- profit organisation founded by the Hungarian Bar Association exclusively for this aim, it is called "Insurance and Support Association of Hungarian Lawyers" ('MUBSE'). This organisation provides for the PII of about 98% of Hungarian lawyers, whereas it is still possible to take out insurance by any other insurance company if the minimum requirements are respected and the policy is equal or more beneficent for the client than the conditions of MUBSE.

In Italy and Ireland it is a claims made scheme.

There is a duty imposed on the sworn advocates to inform the client if he or she is not insured in Latvia.

The Norwegian Bar Association has been able to negotiate an outside director's indemnity insurance which is available to all members who are board members of external companies. The Bar Association as from 2009 has negotiated indemnity insurance for administrators of bankruptcy estates who almost always are lawyers.

In Poland, the scheme is arranged and managed by the Polish Bar Council. It approves the conditions after possible comments coming from the barristers; each year terms and conditions are negotiated with

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<sup>9</sup> The French Bar, where from 2000 onwards, an insurance company (société de courtage) with capital from the Bars was set up. The insurance covers two main aspects: first, funds management, and second, civil liability. From 2000 onwards, the premiums have considerably decreased. This system helps to defend the interests of the Bars against the interests of the insurance companies. Profits are redistributed to the Bars.-draft minutes of the Standing Committee in 16 October 2009.

insurance companies; the minimum or maximum premiums or deductibles / retentions depend on negotiations between the Bar Council and the Insurance Company. The National Council of Legal Advisers concludes an insurance agreement with an insurance company (a general agreement). The general agreement is carried out by the Councils of Regional Chambers of Legal Advisers, which, on a quarterly basis, pay insurance fees to the insurance company regardless of whether an individual legal adviser has paid his or her insurance fee to the Council of the Regional Chamber of Legal Advisers. The insurance covers one calendar year.

Terms of insurance policies are supervised by the Portuguese Insurance Institute ('ISP - Instituto dos Seguros de Portugal'), the Portuguese official authority that controls and supervises the business of insurance and reinsurance, pension, funds and brokerage.

#### **4. Does the bar run the PI scheme in your country?**

In 6 bars/law societies, the Bar Association/law society runs the PI scheme (Belgium (OBFG), Luxembourg, Poland (PBC), Sweden, UK Law Society of England and Wales, Bar Council of Northern Ireland). The Portuguese Bar is the policyholder, but it does not run the scheme. In the Czech Republic, Sweden, the bar manages the collective scheme, the PI individual scheme is operated by individual lawyers.

Most of the associations, (18) (Belgium (OVV), Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy Latvia, Lithuania, Lichtenstein, Norway, Poland NCLA, Portugal, UK Bar Council of England and Wales, UK Law Society of Scotland) run the scheme independently from the national Bar. In most of the countries there are private companies that run the system.

The Austrian Regional Bar associations manage the group insurance, basic insurance is individually managed by the single lawyer. The same situation is in Czech Republic, where the Czech Bar Association manages collective scheme insurance by a concrete insurance company up to a basic amount (minimum coverage). PI individual insurance scheme is operated by insurance companies. The Slovak Bar Association operates the same as in Austria or Czech Republic. A mix system is found in the Netherlands.

The Law Society of Scotland sets the principles under which the PII scheme operates.

The Norwegian Bar Association negotiates a collective guarantee and PI insurance scheme which is available to all members but not compulsory for the members. In the Netherlands, the bar developed an insurance scheme, but lawyers can opt for a different insurance scheme and the insurance shall be taken out with an insurance company which meets reasonable solvency requirements.

#### **5. Do the insurance schemes or their terms need approval from any authorities at all?**

The insurance scheme or their terms do not need any approval from any authority at all, as 14 Bars/Law societies answered.

The scheme or the terms need approval from the authorities Bar Association or State authority as reported from 11 Bars/law societies.

The Bar Associations of Austria, Czech republic and the OVB have a mixed system of PI insurance and if there is a collective system applicable then the system needs approval,. However, if lawyers are insured individually then there is no need for any approval by any authority.<sup>10</sup>

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<sup>10</sup> Slovenia and the Netherlands did not provide full information



**6. What are the average costs involved for the individual lawyer to participate in the PI insurance scheme? What are the typical costs for minimum cover?**

9 Bar Associations/law societies could not indicate precise amounts for costs. The reasons are because the Bar is not able to indicate any answer, since it does not collect this data and the insurance companies are independent in this activity. Other features make it impossible to answer this question since it depends on rates of the companies, size of law firm, areas of practice and risk assessment etc. The costs are evaluated on a yearly basis.

However, the delegations have provided various figures regarding the cost of participation in the scheme or for the minimum cover. The cost for a practicing individual lawyer can reach the amount of 8000 Euros. These amounts depend on the coverage of the PII scheme; the average however is 300 Euros (considering the data from all the delegations).

**7. What is the result if a lawyer does not pay his/her contributions to the professional indemnity insurance?**

There are 5 results in case a lawyer does not pay his/her contributions to the professional indemnity insurance:

1. Prohibition to practice/membership condition/ no renewal of the license/disbarment/ are the consequences in 11 Bars/Law societies (Austria, Belgium (OVB) Cyprus, Finland, Hungary, Ireland, Norway, Portugal, Slovakia, UK Bar Council of England and Wales, UK Law Society of Scotland).
2. Disciplinary proceedings may take place in 5 Bars/Law Societies (Estonia, Lithuania, the Netherlands, UK Law Society of England and Wales).
3. Disciplinary proceedings and disbarment of the lawyer is possible in 7 Bars/law Societies (Czech Republic, Denmark, France, Polish Bar Council, Sweden, UK Bar Council of Northern Ireland).
4. In relation to consequences for the client, 4, countries (Germany, Ireland, Polish Bar Council, Sweden) provide protection for the client, after the insurance contract is terminated, in Germany the lawyer is covered as long as the insurance company has not notified the bar about the termination of the contract and even one month more after the termination of the contract has taken place. In Portugal this takes place only in cases of collective insurance.
5. There is no effect in case the lawyer does not pay the contributions to the PII scheme in 7 bars/Law Societies (Belgium (OBFG), Greece, Italy, Latvia, Luxembourg, Polish National Council of Legal Advisers, Slovenia),

**8. Please describe the advantages/disadvantages of the professional indemnity scheme in your country.**

The responses of the delegations were included into two groups; advantages and disadvantages:

Advantages:

1. In case of a “failure committed basis”, the insurers are obliged to cover the damage even if the lawyer has retired and the contract has formally ended. In case of a public scheme, the client knows that lawyers are insured (publicity of the system).
2. In the Czech republic, it is an obligatory scheme provided by law. The minimum amount of PI insurance is set up by the Bar Association (Czech Republic). The collective refers to matters occurred in the Czech Republic as well as in the EU; a claim can be submitted even after the termination of this insurance. The individual insurance is above the minimum limit paid at the same insurance company, where the collective insurance is made.
3. Strong cooperation between the bars and the insurance companies.

4. Possibility to choose appropriate insurers for a professional liability insurance contract.
5. The system leads to competition and extensive protection of the insured persons and consumers.
6. Companies operate in an open market, free competition is guaranteed.
7. The scheme ensures minimum insurance coverage for all legal advisers in the country, as long as they pay their fees for the insurance are correct in their payments in the scheme.
8. It offers good security to clients.
9. All lawyers have the opportunity to have discretion to increase or not increase the minimum insurance cover.
10. It is set up for the benefit of the insured as well as the insurer. It can be flexible to meet changing needs.
11. Run-off covers for ceased and failed firms and unlimited cover in time.
12. The profession has an interest in developing a comprehensive risk management policy to reduce global premiums.
13. Administration costs of running the master policy and administrative burden on firms are able to be kept to a minimum.
14. The scheme allows new firms access to insurance on good/neutral terms when commencing business.
15. The policy has been extended free of charge to cover Pro Bono and Direct Access work.

#### Disadvantages:

1. The Bars cannot force a lawyer to enter into a better suitable insurance scheme.
2. Sometimes the minimum amount of insurance needs still to be raised to the level required by CCBE in order to further protect the consumers of legal services.
3. The run-off cover should be enforced on a solicitor retiring or ceasing practice. Impossibility to ensure that a solicitor has no gap in his/her cover during the annual renewal of cover each year. This could result in difficulties for a client if a solicitor is not covered when a claim is notified, as cover is provided on a claim made basis.
4. A very limited choice of insurance products from insurance companies.
5. If the barrister exercises his profession in the form of law firm (partnership with its own legal entity), the insurance of individual barrister does not cover the damages made by the partnership. In such a case the company shall buy the additional insurance.
6. The Collective Scheme implies a considerable financial effort for the Bar Association.
7. The minimum cover could be insufficient if many concurrent claims are directed towards one lawyer.
8. It is important to emphasise that two insurance companies with precisely the same wording may not pay the same claim.
9. There is no centralised source of information about claims against the profession.
10. Risk of an insurer becoming insolvent.
11. Increased volatility of premiums for some firms.
12. There is no freedom of choice for an individual firm how to arrange for Insurance.

### **III. Client compensation funds**

#### **1 Do client compensation funds exist in your country?**

The client compensation fund exists in 10 Bars/law societies (Austria, Belgium (OVB), Denmark, Finland, France, Ireland, the Netherlands, UK Law Society of England and Wales, UK Law Society of Scotland and UK Law Society of Northern Ireland). The client compensation fund is not existent in these countries: Belgium (OBFG), Cyprus, Czech Republic, Germany, Greece, Iceland, Italy, Latvia, Lithuania, Lichtenstein, Luxembourg, Norway, Poland, Romania, Slovakia, Slovenia, Sweden, UK Bar Council of England and Wales and UK Bar Council of Northern Ireland.

It is existent in Austria only for damages caused by fraud.

The Danish Bar and Law Society masters a fund to ensure the possibility of receiving compensation for losses caused by a practising lawyer in circumstances where the insurance does not cover the claim e.g. because the minimum cover is exceeded etc.

In Finland the fund covers the cases of theft only.

In Ireland there are two funds, which protect from theft and from mistakes/negligence and all solicitors contribute to the Compensation Fund on an annual basis as part of their practising certificate fee.

In Sweden, the client compensation fund was replaced in 1987 by compulsory liability insurance for pure economic loss and compulsory insurance for crimes against property.

In the Netherlands a client can get compensation for loss as a result of a lawyer's failure to account for money he or she has received.

The Law Society of England and Wales created the Compensation Fund as a statutory fund with the object of enabling the Law Society to make payments to those persons who have suffered loss by reason of the dishonesty of a solicitor's or his/her employee or the solicitor's failure to account for money received. Payment is made at the discretion of the Law Society. An applicant does not have to have been the solicitor's client. If compensation is paid, a further payment may also be made as a sum in place of lost interest and for costs incurred by the applicant when making the application to the Fund.

A fund is established and run by the Council of the Law Society of Scotland and provides consumer protection for losses by the clients of Scottish solicitors in the case of dishonesty. It is funded by obligatory contributions from Scottish Solicitors in private practice on an annual basis. Payment of the relevant sum is a requirement for issuing of an annual practising certificate. Cover is, in principle, unlimited.

A client compensation fund is not available in 22 Bars/Law societies.

**Please note that the following questions are only answered by those CCBE members which have some kind of scheme resembling client compensation funds**

5 Bars/Law Societies (Belgium (OVB), Denmark, Finland, Ireland, and the Netherlands) replied to the questions:

- A formal hearing process takes place for uncontested claims in 3 countries.
- In case when the claim is rejected there are provisions for rehearing in 2 countries and appeal in one country.
- The standard claim form is made in 3 countries and for rehearing/judicial review cases.
- Clients can earn interest on trust account balances in 3 countries.
- The re-insurance arrangements exist only in Ireland.
- Fund assets have been inadequate to pay claims only in OVB-Belgium.
- The maximum payment limits for one claim is variable in OVB-Belgium starting from 125.000 Euro per loss until 2.500.000 Euro per insurance year; it reaches up to 700.000 Euro in Ireland.
- There is a maximum amount that the fund will pay in respect of any lawyer in 3 countries and it varies from 181.500 Euro in the Netherlands up to 1.435.000 Euro in Denmark.
- A claimant can be a client or a third person, as long as the person has suffered a loss.
- The compensation is payable to foreign clients in all countries. In the Netherlands the fund is only available to clients of a Dutch lawyer. .
- Fund administrators are not automatically advised of disciplinary actions against a lawyer in 3 countries, this is not the case in Belgium (OVB) and Ireland.
- Claimants must conclude civil action against a lawyer accused of dishonest or negligent conduct, before a claim will be paid in Denmark.
- Disciplinary action is required against a lawyer before paying a claim in Belgium (OVB)
- Fund administrators are personally protected from civil action against them by dissatisfied lawyers or claimants in Denmark and Ireland.
- The fund annual report is published in three countries; two countries do not publish it.
- Two countries support an IBA-sponsored training package or short course, to assist in meeting identified needs.
- All the countries, that answered consider that enough money is available for indemnity claims.
- There is a www address for funds in two countries. Belgium (OVB) [www.ethias.be](http://www.ethias.be) and in Ireland [www.lawsociety.ie](http://www.lawsociety.ie)
- Additional remarks

All Dutch lawyers have professional indemnity insurance, so clients will be compensated by the insurance company. In very few cases and under very limited conditions (if the insurance company does not pay), a client can get compensation by the fund for the loss as a result of a lawyer's failure to account for money he/she has received.