



**CCBE SUBMISSION TO THE PUBLIC HEARING ON
“ETHICAL LIMITS OF COOPERATION AND ASSOCIATION
BETWEEN FOREIGN LEGAL CONSULTANTS FIRMS
AND BRAZILIAN LAW FIRMS.”**

CCBE submission to the Public Hearing on “Ethical limits of cooperation and association between foreign legal consultants firms and Brazilian law firms.”

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.

The CCBE wishes to make the following submission to the Federal Council of the Brazilian Bar Association regarding the public hearing on “*Ethical limits of cooperation and association between foreign legal consultants firms and Brazilian law firms*”.

The CCBE believes continuing cooperation and association between foreign and Brazilian lawyers in Brazil provide many benefits for both home country law firms and foreign law firms. This is the case with regard to the European Union where cooperation has taken place for many years without giving rise to any ethical difficulties.

The CCBE believes that it may be of assistance to set out the situation that exists within the European Union regarding joint practice:

(a) Joint practice within the European Union between EU lawyers

Within the European Union, a system has existed since 1998 whereby EU lawyers are allowed to establish themselves in another EU Member State. This system under Directive 98/5/EC facilitates practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained. This Directive works extremely well.

Of interest is Article 11 of the Directive which sets out the provisions regarding joint practice:

Article 11 - Joint practice

Where joint practise is authorised in respect of lawyers carrying on their activities under the relevant professional title in the host Member State, the following provisions shall apply in respect of lawyers wishing to carry on activities under that title or registering with the competent authority:

(1) One or more lawyers who belong to the same grouping in their home Member State and who practise under their home-country professional title in a host Member State may pursue their professional activities in a branch or agency of their grouping in the host Member State. However, 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.

(2) Each Member State shall afford two or more lawyers from the same grouping or the same home Member State who practise in its territory under their home country professional titles access to a form of joint practice. If the host Member State gives its lawyers a choice between several forms of joint practice, those same forms shall also be made available to the aforementioned lawyers. The manner in which such lawyers practise jointly in the host Member State shall be governed by the laws, regulations and administrative provisions of that State.

(3) *The host Member State shall take the measures necessary to permit joint practice also between:*

(a) several lawyers from different Member States practicing under their home-country professional titles;

(b) one or more lawyers covered by point (a) and one or more lawyers from the host Member State. The manner in which such lawyers practice jointly in the host Member State shall be governed by the laws, regulations and administrative provisions of that State.

(4) A lawyer who wishes to practise under his home country professional title shall inform the competent authority in the host Member State of the fact that he is a member of a grouping in his home Member State and furnish any relevant information on that grouping.

(5) Notwithstanding points 1 to 4, a host Member State, insofar as it prohibits lawyers practising under its own relevant professional title from practising the profession of lawyer within a grouping in which some persons are not members of the profession, may refuse to allow a lawyer registered under his home-country professional title to practice in its territory in his capacity as a member of his grouping. The grouping is deemed to include persons who are not members of the profession if $\frac{3}{4}$ the capital of the grouping is held entirely or partly, or $\frac{3}{4}$ the name under which it practises is used, or $\frac{3}{4}$ the decision-making power in that grouping is exercised, de facto or de jure, by persons who do not have the status of lawyer within the meaning of Article 1(2).

Where the fundamental rules governing a grouping of lawyers in the home Member State are incompatible with the rules in force in the host Member State or with the provisions of the first subparagraph, the host Member State may oppose the opening of a branch or agency within its territory with out the restrictions laid down in point (1).

The CCBE wishes to point out that the provisions of Article 11 apply across the 27 Member States of the European Union and within the 27 Member States there exist many different languages, different cultures and different legal traditions. With this in mind the above-mentioned joint practice provisions have not given rise to any ethical difficulties or challenges and CCBE Members Bars are very pleased with the working provisions of the Directive.

(b) Joint practice within the European Union with non- EU lawyers

Having regard to joint practice provisions within the European Union for non-EU lawyers, the CCBE has agreed a position which provides that the foreign legal practitioner may associate with host country lawyers and may be employed by host country lawyers, to the extent permitted by host country law, for the joint exercise of the profession. (the term "home country" represents a Non-EU Member State and the term "host country" represents an EU Member State).

The CCBE is not aware of any ethical difficulties that have emanated from joint practice between non-EU lawyers and EU lawyers within the European Union and this remains true having regard to the growing number of foreign law firms (including law firms the main office of which is located outside the European Union) that are in joint practice with host country lawyers throughout the European Union.

Conclusion

In the CCBE's experience, the issue of "ethical limits" is not a matter that has been highlighted by CCBE member Bars when it comes to discussions regarding associations between EU and non-EU lawyers.

The CCBE hopes the contribution is of assistance.