

# CCBE comments on the Commission recommendation on the recognition of qualifications of third-country nationals

27/02/2025

## EXECUTIVE SUMMARY

In this document, the CCBE wishes to comment on the Commission's recommendation regarding the recognition of qualifications of third-country nationals, published on 15 November 2023. The CCBE recalls that Member States are competent to set their own rules with regard to the access to the legal profession, and the recognition of qualifications of TCNs (under the rules of General Agreement on Trade in Services). With reference to the recognition of the lawyers' qualifications, the CCBE wishes to highlight that the approach recommended by the Commission would not appear appropriate for several reasons. From the perspective of the quality of legal services provided to citizens in defence of rights within individual legal systems, the profession of a lawyer requires extensive knowledge of national provisions. This requirement is confirmed within the EU framework on the provision of cross-border legal services and the free movement and establishment of lawyers, which justifies and acknowledges the importance of the profession for the functioning of justice, highlighting the negative impact that an automatic recognition of the qualifications of third-country lawyers could have on the legal systems of Member States and, primarily, on EU citizens. In this respect, the CCBE underscores the need to ensure high-quality services and the protection of citizens, which is the main reason why any recognition of third-country qualifications requires caution.

## 1. Introduction

The objective of this paper is to react to the [European Commission's recommendation](#) on the recognition of qualifications of third-country nationals (TCNs) of 15 November 2023, adopted as part of the Skills and Talent Mobility package.

The CCBE notes that the recognition of qualifications seems to feature high on the Commission agenda which translated into several initiatives, such as the [Action Plan on skills](#)<sup>1</sup> or the [political guidelines](#) for

<sup>1</sup> Mentioning that the Commission will "Update the recommendations for Member States on how to reform the access to regulated professions" and "contributing to the creation of an EU transparent and harmonised framework to facilitate the recognition of professional third-country skills and qualifications."

the next Commission<sup>2</sup>. The written answers of the Commissioner-designate in charge of skills also indicated upcoming work on developing “rules on recognition of qualifications of TCNs, simplifying procedures and removing unnecessary barriers”.<sup>3</sup>

The Commission’s approach might indeed be relevant for several sectors that face the need to recruit third-country professionals. Nevertheless, the CCBE doubts whether the approach is appropriate for lawyers. Above all, there is no evidence that in general, Member States suffer shortages of lawyers. In its communication "Better Regulation for Better Results – An EU Agenda" (COM (2015) 215 final) of 19 May 2015, the European Commission has emphasised the importance of ensuring that both European and national regulations are accompanied by impact assessments - covering economic, social, regulatory, and legal dimensions. This approach should highlight, inter alia, the tangible benefits to EU citizens. The CCBE wishes to observe that the Commission’s recommendation of 15 November 2023 does not provide such indication, particularly for legal services.

Moreover, the CCBE observes that regulated professions need a more specific attention and that there are significant differences between different regulated professions (e.g. the health sector does not have the same needs as the legal sector).

The considerations below explain that due to the specificity of the EU legal framework for lawyers, their role in the society, the need for their reliability and public confidence in their duties, and the deontological requirements they should be subject to, the general approach of the Commission and an EU framework for the recognition of third-country qualifications might not be adequate for this profession.

The CCBE invites the Commission to consult with the CCBE as one of the stakeholders if any consultation process is launched.

## 2. CCBE general comments about the recognition of lawyers’ qualifications from third countries

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### A. Current practices and challenges

The CCBE recalls that Member States are competent to set their own rules with regard to the access to the legal profession and the recognition of qualifications of TCNs (under the rules of General Agreement on Trade in Services – “GATS”). These national rules are usually intertwined with the organisation and functioning of the judicial system of a given country. Starting from academic training, lawyers are closely connected to the positive law experiences of the individual Member States and therefore, they are rooted in their respective national legal systems, which are often profoundly different from one another. Hence, Member States remain competent to set the conditions for accessing and exercising the legal profession.<sup>4</sup>

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<sup>2</sup> Action on attracting the right talent with harmonised rules on the recognition of qualifications was mentioned in the political guidelines for the next Commission. Improving the recognition framework within the EU as set by the Professional Qualifications Directive was also addressed in the recent [report of the European Court of Auditors](#).

<sup>3</sup> Answers of the Commissioner-designate, Roxana Minzatu, Executive Vice-President for People, Skills and Preparedness, to the questionnaires, [available here](#).

<sup>4</sup> CCBE preliminary comments on the proposal for a Long-Term Residents Directive, available [here](#).

Reacting to the European Commission Recommendation (EU) 2022/554 on the recognition of qualifications for people fleeing Russia's invasion of Ukraine, the CCBE provided support on the recognition of qualifications of Ukrainian lawyers, and this document remains valid.<sup>5</sup>

The profession of lawyer is fundamental for the proper functioning of the judicial system, the defence of the rule of law, and the rights and interests of citizens. This implies a genuine link and knowledge to and of the national legal system where the activity is performed.

In the EU, cross-border recognition, establishment and provision of lawyers' services have been regulated on the basis of mutual trust as well as shared and protected principles such as the rule of law - see European directives on the internal market concerning the recognition of professional qualifications and training courses, the freedom to provide services and the freedom of establishment of lawyers (Directive 2005/36/EC, "Professional Qualifications Directive", Directive 98/5/EC, "Lawyers' Establishment Directive", Council Directive 77/249/EEC, "Lawyers' Services Directive").

The Lawyers Establishment Directive ("LED") for example confers free movement rights on lawyers. For the purposes of this Directive, 'lawyer' means any person who is a national of a Member State and who is authorised to pursue their professional activities under one of the listed professional titles, i.e. *avocat*, *advogado*, etc. Therefore, there are two conditions to invoke the directive: nationality of a Member State and a title of lawyer of a Member State.<sup>6</sup> The importance of the approach of this directive lies in its implicit acknowledgment of a process of harmonisation of legal systems and the pathways to becoming a lawyer in the EU Member States.

## B. Reasons why automatic recognition of third-country qualifications might be problematic

The abovementioned framework applying to lawyers can be inadvertently and negatively impacted if the EU decided to introduce a new framework regarding recognition of third-country qualifications.

The experience of the Mutual Recognition Agreement (MRA) between Portugal and Brazil might serve as an illustration of the problems that might arise and as a lesson to build upon for any future initiatives both at national and EU level. This agreement recognised automatically lawyers coming from Brazil to Portugal (and the other way around) as able to practice in Portugal. After a certain period, concerns emerged from clients and judges as to the quality of the services provided by these lawyers in Portugal, and regarding the movement of these lawyers on to other Member States based on their Portuguese admission, that was difficult to control or limit.

It is therefore clear that there are risks to the quality of the services provided by lawyers if the recognition is automatic or almost automatic. Furthermore, the automatic recognition opens the way to misuse the EU rules on free movement of lawyers.

In light of this example, one understands better the necessity of the nationality condition of the Lawyers' Establishment Directive which impedes third-country lawyers from moving onwards to other Member States.

It should be however recognised that in case of dual nationals (nationality of an EU Member State and a third-country nationality) or people who acquire an EU nationality, this is no longer the case, unless they do not possess EU qualification and need to have recognition of their third-country qualification.<sup>7</sup>

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<sup>5</sup> CCBE recommendation on qualifications of Ukrainian lawyers, available [here](#).

<sup>6</sup> Article 1 par.2 of the Directive and see also CCBE guide on free movement of lawyers within the European Union, page 7, available [here](#).

<sup>7</sup> See CCBE guide on free movement of lawyers within the European Union, under Qualifications from third countries, available [here](#): "EU nationals may obtain a qualification in a third country which is then recognised by an EU State, e.g. a

In the latter scenario (i.e. EU citizen with a third-country qualification), they can benefit from Article 3(3) of PQD that eases the recognition in a second Member State.

Even if the nationality requirement to qualify for a lawyer in an EU country has been removed in several EU Member States, it remains an important element of the EU framework for the reasons stated above.<sup>8</sup>

The CCBE has always been open to work towards MRAs with individual trade partners.

Furthermore, in the absence of EU legislation regulating the recognition of a third-country lawyers' qualifications, Member States have full competence to regulate the access to the legal profession for third-country citizens. As a result, EU regulations on recognition of qualifications, freedom of movement, and freedom to provide services of lawyers are reserved for EU lawyers and thus cannot be extended to third-country lawyers. Moreover, the CCBE notes that recognition of professional qualifications could only be done in accordance with the rules and exceptions provided for in the GATS/World Trade Organisation (WTO).

For example, under GATS, the status of the Foreign Legal Consultant (FLC) is foreseen, which implies limited to out-of-court advice on the law of the country of origin and international law (excluding national and EU law). However, some EU Member States have expressed reservations about the liberalisation of services under GATS or have not adopted at the national level a regulation governing the status of the FLC. This implies that Member States do not have a similar approach to the recognition of the qualification of lawyers of a third country and on their access to the profession at national level.

## C. Need to ensure high-quality services and protection of citizens

The CCBE would like to emphasise the need to maintain high standards for legal professionals to protect clients' interests and the integrity of legal services.<sup>9</sup> These standards are maintained through checks of qualifications, but also by additional ethics-related requirements, such as verifying the candidate's criminal record, professional conduct, and other aspects of their background to ensure they meet the ethical standards required to practice law.

At heart of the recognition processes is the interest and protection of citizens understood in the light of the special role of lawyers in the administration of justice, as recently confirmed by the Court of Justice.<sup>10</sup> This includes that lawyers as well as bars and law societies need to be independent from the

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*Portuguese national whose qualification as a Brazilian lawyer is recognised in Portugal. In that example, the Portuguese legal qualification would only have to be recognised by other Member States if the lawyer had three years' experience in Portugal: Article 3(3) of the Professional Qualifications Directive."*

<sup>8</sup> See OECD data, question Q8a.4.1 Is nationality or citizenship required for a lawyer to practice in your country? OECD PMR Sector Database (data based on OECD Services Trade Restrictiveness Index (STRI)), available [here](#).

<sup>9</sup> Regarding the quality of legal services, please see also the CCBE paper, available [here](#).

<sup>10</sup> See for example CJEU, 19.12.2024, Case C-295/23, par.65, also mentioning Case Wouters: "Those objectives are incontestably linked to the protection of recipients of services, in the present case legal services, and the sound administration of justice, which constitute overriding reasons relating to the public interest within the meaning of Article 4(8) of Directive 2006/123, read in conjunction in particular with recital 40 of that directive. In addition, since Article 4(8) of Directive 2006/123 does no more than codify the case-law of the Court of Justice, it must be noted that, when interpreting primary law, the Court has found the protection of litigants to be an overriding reason relating to the public interest". See also CJEU, 29.07.2024, Case C-623/22, par.116-117, regarding "the special position occupied by a lawyer in the judicial organisation of the Member States and to the fundamental task entrusted to him or her and which is recognised by all the Member States". See also Judgment of 17.12.2020, Onofrei, C-218/19, par.34: "the protection of consumers, in particular recipients of legal services provided by persons involved in the administration of justice, and, second, the proper administration of justice are objectives which feature among those which may be regarded as overriding reasons in the public interest capable of justifying restrictions both on the freedom to provide services ... as well as ... the freedom of establishment".

state and other third parties, this is a corner stone of the rule of law. This feature is generally guaranteed and protected regarding EU Member States through e.g. primary law, accession criteria, control by the ECJ, etc. Moreover, when citizens come to lawyers, citizens expect to face prepared and competent professionals – the bar issues the certificate that attests to this preparation. Lack of proper check of competences might lead to ill-prepared and incompetent lawyers providing legal advice and representation, hence creating risks for citizens and their rights. If a lawyer does not understand the procedures and the justice system, he/she cannot protect and defend clients properly.

Therefore, limitations on free movement exist and are justified also within the EU.<sup>11</sup> The special position of the lawyer, in view of the core values of the legal profession, can justify specific limitations on the free movement of services and the freedom of establishment, limitations that do not apply to other service providers.<sup>12</sup> Lawyers are different from for example doctors because legal proceedings are different in the EU Member States.

That being said, the CCBE is open to reflect with its member Bars and Law Societies regarding more harmonised mechanisms and best practices to verify the competence of third-country legal professionals. While supporting the requirements to practice as lawyers unchanged for third-country lawyers in order to maintain the quality of legal services, the CCBE encourages its members to explore solutions enabling them to perform auxiliary activities in different areas of legal practice (e.g. as intercultural mediators, jurists, foreign legal consultants, paralegal, etc.) as well as to clarify the pathways to becoming lawyers within their own jurisdictions.<sup>13</sup>

The CCBE also encourages Member States' national authorities to develop contacts and working relationship with their bars to foster knowledge and exchange information on the recognition of skills and qualifications of third-country nationals, as appropriate within their national frameworks.

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<sup>11</sup> In this regard, see also the Statement of the CCBE on the occasion of the 25<sup>th</sup> anniversary of the Lawyer's Establishment Directive and the 30<sup>th</sup> anniversary of the Single Market, 12.05.2023, available [here](#).

<sup>12</sup> CCBE statement on proportionality, available [here](#).

<sup>13</sup> This point was also made by the CCBE in its recommendation on qualifications of Ukrainian lawyers, available [here](#).