

## ***English***

### **JUDICIAL CODE**

#### **VOLUME III –BAR**

#### **FIRST TITEL**

#### **GENERAL PROVISIONS**

##### **SECTION I**

##### **LAWYERS**

**Article 428** - No one may bear the title of lawyer or practise as a lawyer if he is not a Belgian national or a national of a Member State of the European Union, or if he does not hold a degree of doctor or licentiate of law, or if he has not taken the oath referred to in Article 429, and is not registered as a member of the Bar Association or as a trainee lawyer.

The condition of nationality may be derogated from in the cases stipulated by the King on the recommendation of the Flemish Bar Association and the French- and German-speaking Bar Association.

Except in the cases provided for by law, no further specification may be added to the title of lawyer.

**Article 428bis** - Furthermore, nationals of a Member State of the European Union who meet the following conditions may also bear the title of lawyer and practise as a lawyer:

1°. Holder of a degree, certificate or other title referred to in Article 1, a), of the European Directive of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, and which shows that the holder has the requisite qualifications to be allowed to practise as a lawyer;

2°. Submission of:

a) a certificate of good character;

b) a certificate evidencing that the candidate has never been bankrupt;

c) a certificate showing that the candidate has never performed acts that may result in the suspension or prohibition to practise as a lawyer, such as serious professional misconduct committed while practising as a lawyer, or a criminal offence;

d) the list of subjects on which the candidate was examined with a view to obtaining his degree, certificate or other title referred to under 1°, as well as proof of professional experience, where appropriate;

3°. Having passed an aptitude test organized by the Flemish Bar Association or the French- and German-speaking Bar Association, depending on which Bar the candidate asks to be registered with, if the training received encompasses fields that differ substantially from those covered by the Belgian degree of licentiate of law, unless the knowledge which the candidate has acquired in his professional experience is such as to wholly or partially overcome those substantial differences.

Without prejudice to Article 428*nonies*, candidates who satisfy the above conditions shall be authorized to take the oath of lawyer. They shall be exempt from the traineeship obligations that are imposed by Belgian law and may ask to be registered as a member of the Bar Association on condition that they have completed a traineeship in a Member State of the European Union that entitles them to be registered with a Bar in that State. They shall also be exempt from the traineeship obligations if the law of the State where the degree was obtained or the State of which the candidate is a national does not impose such obligations. In the other cases, the candidates who satisfy the above-mentioned conditions shall be entitled to take the oath of lawyer and to request registration as a trainee lawyer, without prejudice to Article 428*nonies*. They shall be subject to all traineeship obligations deriving from the law, the regulations of the Flemish Bar Association or the French- and German-speaking Bar Association, depending on which Bar the candidate asks to be registered with, and the by-laws of the Bar with which the candidate wishes to be registered.

**Article 428ter** - §1. The Flemish Bar Association or the French- and German-speaking Bar Association, depending on which Bar the candidate asks to be registered with, are the authorities empowered to:

1°. receive the applications;

2°. investigate whether the candidate satisfies the conditions to be admitted to the aptitude test required by Article 428*bis*, first paragraph, 1° and 2°;

3°. on the basis of the list referred to in Article 428*bis*, first paragraph, 2°, d), and the list referred to in Article 428*quater*, §2, decide whether the training which the candidate has received or his professional experience encompasses fields that differ substantially from those covered by the Belgian degree of licentiate or master of law;

4°. notify the candidate of the decision concerning the admissibility of his request, and if it is admissible, notify the candidate that he must take the aptitude test.

§2. The documents which the candidate shall send to the Flemish Bar Association or the French- and German-speaking Bar Association must:

1°. have been issued by the competent authorities of the candidate's home Member State, more particularly the public authorities, the educational establishments and the professional associations comparable to the Belgian institutions;

2°. be submitted in the form of either the original or a certified true copy issued by the said authorities.

In the event that all or some of the above-mentioned documents are not issued in the home Member State, they shall be replaced by a certificate issued by the latter Member State evidencing that the candidate has made a sworn or solemn statement in lieu of the documents defined in the previous paragraph. This oath or statement must have been made before a competent judicial or administrative authority or, where appropriate, before a notary public or a competent professional association of the home Member State.

§ 3. The request and the documents must be drawn up in Dutch, French or German, or be accompanied by a certified true translation in one of those languages.

§ 4. When submitting his request, the candidate may be asked to pay a registration fee. This fee must be paid to the Flemish Bar Association or the French- and German-speaking Bar Association. The size of the fee is determined by the Minister of Justice and must not exceed the average cost of processing the requests.

§5. If the application file is incomplete, the Flemish Bar Association or the French- and German-speaking Bar Association shall notify the candidate within fifteen days after receipt of the documents and shall specify which documents are still lacking.

Once the application file is complete, the Flemish Bar Association or the French- and German-speaking Bar Association shall notify the candidate thereof within fifteen days after receipt of the last document.

Thereupon the Bar Association shall examine the documents in order to verify whether the requirements set out in Article 428*bis*, first paragraph, 1° and 2° are satisfied.

Within four months after submission of the complete application file, the Flemish Bar Association or the French- and German-speaking Bar Association shall notify the candidate of its reasoned decision. If the candidate is required to take the aptitude test, the Bar Association shall inform him which of the subjects referred to in Article 428*quater*, § 2, are concerned.

The absence of a decision shall count as admission to the aptitude test. In that case, the candidate shall decide for himself which subjects he shall take and shall notify the Flemish Bar Association or the French- and German-speaking Bar Association thereof.

§ 6. The candidate may lodge an appeal with the Appeal Board against an inadmissibility decision concerning his request, against a decision admitting him to an aptitude test on subjects that do not differ significantly from the subjects he took during his training, or against a refusal to exempt him from the aptitude test.

Appeals shall be lodged by registered letter sent to the Belgian National Bar Association within thirty days after notification of the decision.

§ 7. There are two appeal boards: a French-speaking one and a Dutch-speaking one.

Each appeal board is composed of:

1°. a justice or emeritus justice of an appeal court. He is the president of the Board;

2°. a president or former president of a Bar Association. He is the chief secretary of the

Board;

3°. a professor or emeritus professor of law at a Belgian university, who must not be a lawyer.

§ 8. If the candidate is refused admission to the German-language aptitude test, he may lodge an appeal in German.

The president may demand that all or part of the documents be translated. The costs thereof shall be borne by the candidate.

§ 9. The justices and professors who are members of the above-mentioned appeal boards are appointed by the Minister of Justice. The Bar Association presidents or former Bar Association presidents who are members of the above-mentioned appeal boards are appointed by the Minister of Justice on the recommendation of the Flemish Bar Association and the French- and German-speaking Bar Association respectively.

If the appeal is brought in German, the Bar Association president or former Bar Association president must be from the Bar of Eupen.

The members shall each have two deputies who are appointed in the same manner.

§10. (...)

**Article 428quater** - § 1. The Flemish Bar Association shall organize for nationals of the European Union Member States the aptitude test established by Article 428bis, first paragraph, 3°, in Dutch.

The French- and German-speaking Bar Association shall organize for nationals of the European Union Member States the aptitude test established by Article 428bis, first paragraph, 3°, in French or in German.

The aptitude test concerns only the candidate's professional knowledge and serves to verify whether he has the requisite competence to practise as a lawyer in Belgium.

The test shall comprise a written and an oral part.

The candidate shall have passed a subject if he has obtained a score of at least 60%.

Unsuccessful candidates may take up to three re-sits during the next three exam sessions in the subjects for which they failed to obtain a score of 60%.

§ 2. The aptitude test covers the following subjects:

1°. Written part:

- Civil law, including law of civil procedure;
- Criminal law, including law of criminal procedure;
- One of the following subjects, to be chosen freely by the candidate: public law, administrative law, tax law, commercial law or social law.

2°. Oral part:

Deontology and the subjects for which the candidate did not pass the written examinations

§ 3. Two examination boards shall be set up, a French-speaking one and a Dutch-speaking one, which shall examine the candidates and determine whether they have passed the aptitude test. Each examination board shall be composed of:

1°. a judge or emeritus judge of a court of first instance. He is the president of the examination board;

2°. two lawyers registered with the Bar. The lawyer last registered shall be chief secretary of the examination board;

3°. a professor or lecturer of law at a Belgian university, who must not be a lawyer.

§ 4. The German-language aptitude test shall be administered by the French-speaking examination board.

In that case, the examination board shall be composed as follows:

1°. a judge or emeritus judge of the court of first instance in Eupen. He is the president of the examination board;

2°. two lawyers registered with the Bar, one of whom with the Bar Association of the judicial district of Eupen. The latter shall be chief secretary of the examination board;

3°. a professor or lecturer of law at a Belgian university, who must not be a lawyer.

§ 5. The judges and professors or lecturers who are members of the above-mentioned examination boards are appointed by the Minister of Justice. The lawyers who are members of the above-mentioned examination boards are appointed by the Minister of Justice on the recommendation of the Flemish Bar Association and the French- and German-speaking Bar Association respectively, depending on which examination board to which they need to be appointed.

The members shall each have two deputies who are appointed in the same manner.

**Article 428quinquies** – The Flemish Bar Association and the French- and German-speaking Bar Association shall make available to the Appeal Boards and the Examination Boards the staff, secretariat, offices, documentation and equipment needed for the fulfilment of their mission.

**Article 428sexies** – The Appeal Boards shall meet at least twice a year to take note of the appeals brought by virtue of Articles 428ter and 428septies. The president decides the frequency and date of those meetings.

The Appeal Boards shall meet at the seat of the Flemish Bar Association and of the French- and German-speaking Bar Association respectively or at any other place appointed by the president.

The petitioner shall receive notice of the meeting at least fifteen days before the meeting.

During that time the file shall be kept at his disposal at the seat of the Flemish Bar Association or of the French- and German-speaking Bar Association.

The petitioner may be represented by a lawyer and may submit a statement of the grounds of his appeal along with any documents which he may consider useful. If the appeal concerns subjects that have to be examined in the aptitude test, the petitioner shall arrange for the relevant documents to be made available that concern the foreign law which needs to be consulted in order to judge whether substantial differences exist. If the Appeal Board is of the opinion that the documents that have been submitted do not suffice, it shall ask the petitioner to submit additional documents by registered letter with recorded delivery.

The grounds of recusal referred to in Articles 828 to 830 of the Judicial Code shall apply to the members of the Appeal Board. Members who are aware that grounds of recusal exist with respect to themselves must abstain. A petitioner who wishes to recuse a member of the Appeal Board must do so before the deliberation. The motion for recusal shall be filed with the Supreme Court.

The proceedings before the Appeal Board shall take place in open court, unless the petitioner requests a session behind closed doors.

The Appeal Board can only deliberate validly if all the members or the deputies of absent members are present. The Appeal Board shall deliberate behind closed doors. Decisions shall be adopted by majority vote.

The decision shall be reasoned and shall be made public, unless the petitioner expressly waives this. A record shall be drawn up of all the deliberations of the Appeal Board and shall be signed by the president and secretary of the Board. The record shall specify the decision that has been adopted and the grounds underlying that decision.

The president or secretary of the Appeal Board shall notify the candidate of the decision within fifteen days.

The candidate shall have one month after notification in which to appeal to the Supreme Court the decision of the Appeal Board in accordance with the procedure for appeals in civil cases. If the decision is annulled, the Supreme Court shall refer the case to the Appeal Board, which shall be composed differently.

If the decision of the Appeal Board annuls an inadmissibility decision, the Flemish Bar Association or the French- and German-speaking Bar Association shall declare the application admissible and shall admit the applicant to the next aptitude test. Furthermore, the Flemish Bar Association or the French- and German-speaking Bar Association shall inform the applicant which of the subjects referred to in Article 428*quater*, § 2, 1<sup>o</sup>, he has to take.

If the decision of the Appeal Board amends a decision to admit the applicant to an aptitude test by dropping one or several of the subjects imposed on the applicant, the Flemish Bar Association or the French- and German-speaking Bar Association shall admit the applicant to the next aptitude test for the subjects designated by the Appeal Board.

**Article 428*septies*** - The Examination Boards shall meet at the seat of the Flemish Bar

Association and of the French-and German-speaking Bar Association respectively or at any other place appointed by the president, who also decides the frequency and date of those meetings.

The grounds for recusal referred to in Articles 828 to 830 of the Judicial Code shall apply to the members of the Examination Board. Members who are aware of grounds for their own recusal must abstain. A petitioner who wishes to recuse a member of the Examination Board must do so before the deliberation. The motion for recusal shall be filed with the Appeal Board.

The Examination Board can only deliberate validly if all the members or the deputies of absent members are present. The Examination Board shall deliberate behind closed doors. In the event of a tie, the president shall have the casting vote. The deliberation shall conclude the examination procedure.

A record shall be drawn up of all deliberations on the aptitude test and shall be signed by the president and secretary of the Examination Board. The record shall specify the results obtained by the candidates.

The president of the Examination Board shall communicate the results to the President of the Flemish Bar Association or the President of the French- and German-speaking Bar Association, who shall inform the candidates thereof within a month following the conclusion of the examination procedure.

An action for annulment may be brought before the Appeal Board against the decision of the Examination Board within a month following notification thereof. Such action shall only concern the lawfulness of the decision of the Examination Board. If the decision is annulled, the Appeal Board shall refer the case to the Examination Board, which shall be composed differently, and before which the candidate can take the examination.

**Article 428octies** - No one can be a member of the Examination Board and of the Appeal Board at the same time.

The lawyers who are members of the Examination Board and the Bar Association presidents who are on the Appeal Board and are also members of the Council of the National Bar Association, which decides on the registration of the candidates with the Bar or with the National Bar Association, or of the Appeals Council, which hears appeals against decisions of the Council of the National Bar Association, must abstain when those councils exercise their authority.

**Article 428nonies** - Article 432 shall apply to candidates who have been informed by the Flemish Bar Association or the French- and German-speaking Bar Association that they are exempt from the aptitude test or that they have passed the aptitude test.

**Article 428decies** - The notices and communications referred to in Articles 428bis to 428nonies shall be sent to the candidates at the address they have given, by registered letter with recorded delivery.

**Article 429** - The lawyer shall take the oath at a public session of the Court of Appeal, on

the recommendation of a lawyer who has been registered for at least ten years with a Bar of the judicial district, in the presence of the president of the National Bar Association at the seat of the Court of Appeal and on the demand of the public prosecutor.

The recipient shall take the oath with the following wording:

“I swear allegiance to the King, obedience to the Constitution and to the laws of the Belgian people, that I shall not deviate from the respect due to the courts and the public authorities, and that I shall not advise or defend any cause which to the best of my knowledge I do not hold to be just.”

The clerk of the court shall draw up a record of all this and shall certify on the back of the diploma that the formalities have been accomplished.

**Article 430** – 1. In the principal town of each judicial district, a list of members of the Bar Association, a list of lawyers practising under a professional title conferred by another Member State of the European Union and a list of trainee lawyers who have their office in the judicial district shall be drawn up each year by 1 December.

The above-mentioned lists shall be posted up or made public by the president of the Bar Association, who shall ensure that they are kept up to date.

2. In the judicial district of Brussels there are two Bar Associations: the French-speaking Bar Association of Brussels and the Dutch-speaking Bar Association of Brussels.

The French-speaking Bar Association of Brussels is composed of lawyers who have their office in the administrative district of Brussels-Capital and who are on the list of members of the Bar Association, the list of lawyers practising under a professional title conferred by another Member State of the European Union or the list of trainee lawyers.

The Dutch-speaking Bar Association of Brussels is composed of lawyers who have their office in the administrative district of Brussels-Capital and in the administrative district of Halle-Vilvoorde and who are on the list of members of the Bar Association, the list of lawyers practising under a professional title conferred by another Member State of the European Union or the list of trainee lawyers.

The French-speaking Bar Association of Brussels draws up the list of lawyers practising under a professional title conferred by another Member State of the European Union, as well as the list of trainee lawyers who have established their office in the administrative district of Brussels-Capital.

The Dutch-speaking Bar Association of Brussels draws up the list of lawyers practising under a professional title conferred by another Member State of the European Union, as well as the list of trainee lawyers who have established their office in the administrative districts of Brussels-Capital and Halle-Vilvoorde.

3. In the judicial district of Brussels, the opinions referred to in Articles 66, 88, §1, and 195 shall be delivered by the presidents of the two Bar Associations.

**Article 431** – The Bar Association is composed of lawyers who are on the list of members of

the Bar Association, on the list of lawyers practising under a professional title conferred by another Member State of the European Union, or on the list of trainee lawyers. The Bar Association has legal personality.

**Article 432** - The registration with the Bar Association, on the list of lawyers practising under a professional title conferred by another Member State of the European Union and for the traineeship shall be decided on by the Council of the Bar Association, which governs the list of members of the Bar Association, the aforementioned list and the list of trainees.

Any refusal of registration must be duly reasoned.

**Article 432bis** - Any person requesting registration or any person who has been struck off may appeal to the Disciplinary Appeals Council against the decisions taken by the Council of the Bar Association.

The appeal shall be brought to the notice of the president of the Disciplinary Appeals Council by registered letter sent within fifteen days after notification of the decision.

**Article 433** - Lawyers who were registered with the Bar Association and who, in accordance with Article 432, secure re-registration with that Bar Association or registration with a different Bar may be registered with the rank of their first registration.

The same shall apply for lawyers of the Bar in Brussels, including those who were already registered with the Bar Association in Brussels before two separate Bar Associations were set up in the judicial district of Brussels.

**Article 434** - In order to be registered with the Bar Association, a traineeship of three years must be completed, subject to Article 428bis, second paragraph; for persons on the list of lawyers practising under a professional title conferred by another Member State of the European Union, the conditions set forth in Article 477*nonies* must be satisfied.

**Article 435** - The Council of the Bar Association shall establish the traineeship obligations, without prejudice to the powers granted to the Flemish Bar Association and to the French- and German-speaking Bar Association under Article 495.

The traineeship shall not be interrupted or suspended, unless exemption is granted by the governing body of the Bar Association.

The Council of the Bar Association shall organize the training of the trainee lawyers. It shall oversee the compliance with all the obligations of the traineeship, the length of which may be extended, without prejudice to the right to refuse registration with the Bar Association.

Any trainee who five years after his registration on the list of trainees fails to demonstrate that he has complied with all the obligations imposed by his Bar may be struck off the list.

**Article 436** - The Council of the Bar Association may authorize doctors of law who have

been registered with the Bar Association for at least ten years and who no longer practise as lawyers to bear the title of honorary lawyer.

In exceptional circumstances, the required time period may be shortened.

Only the Council of the Bar Association in whose jurisdiction the person in question last practised as a lawyer may grant this authorization under the conditions stipulated in its regulations.

The list of honorary lawyers shall appear after the list of members of the Bar Association.

In case of failure to observe the rules of integrity and discretion, or failure to fulfil the conditions for granting the title, the Council of the Bar Association which authorized the bearing of the title of honorary lawyer may withdraw this authorization at any time, after having summoned and heard the person in question, who may be represented by a lawyer. There is no appeal against this decision.

**Article 437** - The profession of lawyer is incompatible with:

- 1°. the profession of active judicial officer, clerk of the court and public servant;
- 2°. the office of notary public and bailiff;
- 3°. engaging in trade or industry;
- 4°. all salaried occupations or activities in the public or private sector, unless they do not prejudice the independence of the lawyer or the dignity of the Bar.

If there are grounds of incompatibility, the Council of the Bar Association shall order that the lawyer in question be struck off the list of members of the Bar Association, the list of lawyers practising under a professional title conferred by another Member State of the European Union or the list of trainees, either at the request of the lawyer in question or ex officio, in the latter case in accordance with the judicial procedure in disciplinary cases.

**Article 438** - Lawyers who are members of one of the Legislative Chambers shall not be appointed as permanent lawyer of public authorities nor argue any case in court or act in the interest of the State or of one of the institutions referred to in Article 1, paragraphs A and B, of the Act of 16 March 1954 on the supervision of certain public institutions, nor offer advice or counsel in such cases, unless they do so without remuneration.

The same prohibition applies for provincial councillors and municipal councillors with respect to cases brought on behalf of the province or on behalf of or against the municipality where they have been elected.

## SECTION II

### RIGHTS AND DUTIES OF LAWYERS

**Article 439** - Lawyers registered with the Bar Association, on the list of lawyers practising under a professional title conferred by another Member State of the European Union or on the list of trainees may plead in any court in the Kingdom, without prejudice to the special provisions concerning the Supreme Court.

**Article 440** - Only lawyers shall have the right to plead in any court, barring the exceptions provided for by law.

The lawyer shall appear as authorized agent of the party, without having to furnish any proof of power of attorney, unless the law requires a special authorization.

**Article 441** - The lawyers shall wear the attire prescribed by the King during the practice of their profession.

**Article 442** - In the cases provided for by law, they shall be summoned to stand in for judges and officers of the public prosecution; they shall not be entitled to refuse without reason for exemption or for inability to appear.

**Article 443** - The Council of the Bar Association can oblige the lawyers registered with the Bar Association, the lawyers practising under a professional title conferred by another Member State of the European Union, the trainee lawyers and the honorary lawyers to pay the contributions it determines.

It shall oversee observance of the laws and regulations governing the payment of the contributions to the provident funds of the Bar.

**Article 444** - The lawyers shall practise their profession freely in the defence of justice and truth.

They shall refrain from adducing any serious offence against the honour and reputation of persons, except where this is absolutely essential to the case, subject to disciplinary prosecutions and the application of Article 445 where appropriate.

**Article 445** - If, in his pleadings or in his writings, a lawyer maliciously attacks the Monarchy, the Constitution, the laws of the Belgian people or the public authorities, the court or tribunal before which the case is pending may instruct the clerk of the court to make a record of this and to refer the incident to the Council of the Bar Association under whose jurisdiction the lawyer in question falls.

**Article 446** - A lawyer who has been appointed ex officio shall not refuse to accept his appointment without having his reasons for exemption or inability to appear approved by the authority that has designated him.

If a party cannot secure the counsel of a lawyer in a civil case, the head of the Bar Association shall appoint a lawyer ex officio where appropriate.

**Article 446bis** - The lawyers shall offer first-line legal aid at the legal surgeries referred to

in Article 508/5.

They shall offer the second-line legal aid referred to in Article 508/7.

Under the conditions set out in Article 508/19, the Kingdom shall pay the lawyers a fee for their legal aid work.

**Article 446ter** – The lawyers shall set their fees with the modesty that may be expected from their position. Any clause in that connection that is exclusively linked to the outcome of the lawsuit is prohibited.

If the fee has not been set with reasonable moderation, it shall be reduced by the Council of the Bar Association, taking into account the importance of the case and the nature of the work, subject to any repayment it orders, if there are grounds for doing so, all of this without prejudice to the right of the party to appeal to the court if the case is not submitted to arbitration.

If the case is brought before the court, it shall be heard in open court, unless the parties unanimously request that it be heard in chambers.

Moreover, the court may, at the request of either party, order by reasoned decision that the case be heard in chambers for all or part of the proceedings, in the interest of public decency or public order, if the interests of minors or the protection of the privacy of the parties in the lawsuit so require, or, insofar as the court considers this strictly necessary under certain circumstances, if the public nature would prejudice the interests of a proper administration of justice.

### SECTION III

#### PRESIDENT AND COUNCIL OF THE BAR ASSOCIATION

**Article 447** – The president is the head of the Bar Association.

He convenes the general meeting of the lawyers and the Council of the Bar Association and presides over it.

If the president dies or is absent, he shall be provisionally replaced in the manner set out in the regulations of the Council of the Bar Association, or by the earliest appointed president who is a member of the Council, or, failing whom, by the most senior member of the Council present.

**Article 448** – A Council of the Bar Association shall be constituted for each Bar. For the Bar in Brussels, however, the two Bar Associations referred to in Article 430, 2° shall each have their own Council.

If the Council of the Bar Association has not been legally constituted or renewed by the reopening of the courts and tribunals, its proceedings shall temporarily be conducted by the outgoing Council of the Bar Association.

**Article 449** – The Council of the Bar Association shall be composed of its president and:

Sixteen members, if five hundred or more lawyers are registered with the Bar Association, on the list of lawyers practising under a professional title conferred by another Member State of the European Union and on the list of trainee lawyers;

Fourteen members, if this number is one hundred or more;

Eight members, if this number is fifty or more;

Six members, if this number is thirty or more;

Four members, if this number is fifteen or more;

Two members, if this number is less than fifteen.

**Article 450** - The Council members shall be elected directly by the meeting of the Bar Association, to which all lawyers registered with the Bar Association, all lawyers on the list of lawyers practising under a professional title conferred by another Member State of the European Union and all lawyers on the list of trainees shall be called.

The president and members of the Council of the Bar Association shall be elected from among the members of the Bar registered with the Bar Association or on the list of lawyers practising under a professional title conferred by another Member State of the European Union.

The president and members of the Council shall be elected by simultaneous yet separate list vote, the president by absolute majority and the Council members by relative majority, at the date and time appointed by the Council of the Bar Association and in accordance with the rules established by the Council.

After the voting has been declared closed, the results shall be announced at the general meeting by its president.

If a member of the Bar is elected both president and member of the Council of the Bar Association, the latter election shall be considered non-existent and the lawyer who received the most votes after him shall be declared elected in his stead.

The results of the Council election shall be announced after the election of the president.

If no absolute majority vote is obtained for the election of the president, a second ballot shall be held immediately or at a later meeting between the two candidates who received the greatest number of votes.

If the candidates receive an equal number of votes at the second ballot, the candidate earliest registered with the Bar Association shall be elected.

If, in the elections for the Council of the Bar Association, there is a tie for the last post to be filled, the most senior ranking member of the Bar Association shall be elected.

A record shall be drawn up of the election proceedings.

If a member of the Council of the Bar Association is unable to complete his term of office, he shall be replaced by the lawyer who at the latest elections received the greatest number of votes after the elected members.

**Article 451** - The Council of the Bar Association may decide how and under which conditions the candidates for the presidency and for the council can be nominated.

It may decide that one of the positions on the Council should be assigned in accordance with the rules that have been laid down for the nomination and election of the president.

The votes that are cast for that position shall not be appropriated for the election to another position on the Council of the Bar Association.

**Article 452** - The secretary of the Council shall also exercise the office of secretary of the Bar Association.

**Article 453** - The Council of the Bar Association shall only deliberate and decide if the majority of its members are present.

**Article 454** - The Councils of the Bar Association shall be renewed before the end of each judicial year so that their members can take up office immediately at the beginning of the new judicial year.

The list of members of the Council shall be sent to the Attorney General at the Court of Appeal of the judicial district within eight days after the elections.

**Article 455** - The mission of the Council of the Bar Association shall be to uphold the honour of the Bar Association and to enforce the principles of dignity, integrity and discretion that underlie the legal profession and are intended to ensure a proper practice of the profession.

**Article 455bis** (...)

#### SECTION IV

#### DISCIPLINE

#### PART I

#### DISCIPLINARY COMMITTEES

**Article 456** - At the seat of each court of appeal, a disciplinary committee shall be set up for the purpose of penalizing all infringements of the dignity, integrity and discretion that form the basis of the legal profession and that are intended to ensure a proper practice of the profession, as well as all violations of the regulations, without prejudice to the jurisdiction of the courts, where appropriate.

Two disciplinary committees shall be set up in the judicial district of the Court of Appeal in Brussels, one for the Dutch-speaking Bar Associations and one for the French-speaking Bar Associations.

These disciplinary committees shall have jurisdiction over the lawyers belonging to the Bar Associations of the judicial district of the Court of Appeal in question.

With regard to the president, the chamber presidents, the assessors and deputy assessors, the

secretaries and deputy secretaries of the disciplinary committee and the lawyers who are members of the disciplinary appeals council, and with regard to the presidents and members of the Councils of the Bar Association, the disciplinary procedure in the first instance shall fall within the jurisdiction of the disciplinary committee of a different judicial district, to be designated by the president of the disciplinary appeals council. In that case, the disciplinary investigation shall be conducted by the president of the Bar Association, or by the president of the disciplinary committee of the judicial district in question, where appropriate.

**Article 457** - §1. The disciplinary committee shall be composed of one or several chambers.

§2. The disciplinary committee shall have a president, whose duty it shall be to bring the case before the disciplinary committee. The president shall not sit on the disciplinary committee.

The president of the disciplinary committee shall be elected for a period of three years by the Bar presidents who are members of the Flemish Bar Association or of the French- and German-speaking Bar Association.

§3. The disciplinary committee shall have one secretary and two deputy secretaries.

§4. The Councils of the Bar Association of each Bar that falls within the judicial district in question shall each appoint at least two active members and two deputy members to the disciplinary committee.

The president and the chamber presidents shall be elected from among the former Bar Association presidents

The assessors shall be elected from among the former members of the Bar Association Councils.

Every three years, at the start of the judicial year, the Bar Association presidents of the judicial district of the court of appeal shall draw up the list of active and deputy chamber presidents and assessors. They shall also designate the secretary and the deputy secretaries.

The rank of the presidents and assessors registered on the lists shall be determined on the basis of a fair balance between the Bars of the judicial district and of the number of their members.

The terms of office of president, chamber president, assessor and secretary and their deputies shall be renewable.

§5. The disciplinary committee shall hold its sessions with a chamber president, four assessors and a secretary, who shall not take part in the deliberations. The disciplinary committee shall have at least one member of the Bar to which the lawyer belongs against whom disciplinary proceedings have been instituted.

The disciplinary committee of the Court of Appeal in Liège has a chamber composed of at least two members who know French and German and who are not members of the Bar of Eupen.

§6. The secretary shall constitute the chambers. The president and the assessors shall, except

in case of absence, be called in order of their rank.

**Article 457bis** - The judicial procedure before the disciplinary committee shall be conducted in the language of the Bar Association to which the indicted lawyer belongs.

Without prejudice to Article 457, §5, second subparagraph, all members of the seat must know the language of the judicial procedure.

If disciplinary proceedings have been brought against a German-speaking lawyer, the latter may express himself in German.

**Article 458** - §1. The president of the Bar Association shall receive and investigate the complaints against the lawyers of his Bar Association. Under penalty of nullity, complaints must be lodged in writing, signed and dated, and must bear the full name of the complainant. The president may also institute an investigation ex officio or upon written notification from the Attorney General.

The president shall conduct the investigation or appoint an investigator, whose duties and powers he shall define. The complainant and the lawyer being investigated shall be notified in writing of the institution of the investigation.

The complainant shall have the right to be heard during the investigation and may supply additional information and evidence if necessary.

A record shall be made of the statements of the complainant, the lawyer and the witnesses. The persons being heard shall be given a copy of the record of their statements at their request.

The lawyer being subjected to a disciplinary inquiry may be assisted during the investigation by a lawyer of his choice, but cannot have himself represented.

§2. If, after the investigation, the president of the Bar Association believes that there are reasons to have the lawyer appear before the disciplinary committee, he shall pass on the case together with his reasoned decision to the president of the disciplinary committee, so that the latter can convene the disciplinary committee in accordance with the provisions of Article 459. He shall notify the complainant and the lawyer of this.

If the Bar Association president believes that the complaint is inadmissible, unfounded or insufficiently serious, he shall inform the complainant and the lawyer of this in writing. The complainant shall have three months in which to challenge this decision by registered letter addressed to the president of the disciplinary committee.

The lawyer or the complainant may also appeal to the president of the disciplinary committee within the same time limit and in the same manner if the Bar Association president fails to take a decision either to drop or to press charges within six months after the complaint has been lodged.

§3. The president of the disciplinary committee before whom the case is brought by the

lawyer or the complainant may do the following within a period of three months after the case has been brought:

1°. If he finds that the investigation by the Bar Association president has not been instituted yet, he may either request the Bar Association president to complete this investigation within a time limit to be set by him, or investigate the complaint himself, or appoint an investigator whose duties and powers he defines. In the latter case, the Bar Association president shall hand over the case and pass on the file immediately to the president of the disciplinary committee;

2°. By a duly reasoned and written decision, where appropriate after an inquiry, he may refuse to consider complaints that are inadmissible, unfounded or insufficiently serious;

3°. He may, where appropriate after an inquiry, decide that the lawyer must appear before the disciplinary committee, in which case Article 459 shall apply.

The Bar Association president, the lawyer and the complainant shall in any case receive a copy of this decision, which shall not be appealable.

**Article 459** - §1. The disciplinary committee shall take cognizance of the disciplinary cases submitted to it by the lawyer's Bar Association president or, in the case referred to in Article 458 §3, first subparagraph, 3°, by the president of the disciplinary committee.

The president of the disciplinary committee shall summon the lawyer, ex officio or at the request of the president of the Bar Association, by registered letter to appear before the disciplinary committee. The summons shall state the charges that are brought against the lawyer. On pain of nullity, the period of summons shall be at least fifteen days.

The president shall notify the complainant of the date and place of the session.

§2. The disciplinary committee shall hear the case in open court, unless the lawyer concerned requests that the case be heard in chambers.

The disciplinary committee may also hear the case in chambers for all or part of the proceedings, in the interest of public decency or public order, if the interests of minors or the protection of the privacy of the indicted lawyer so require, or, insofar as the disciplinary committee considers this strictly necessary under certain circumstances, if the public nature would prejudice the interests of a proper administration of justice.

The complainant may ask to be heard at the session and may, if necessary, be confronted with the lawyer in question.

The investigator shall present his report at the session.

**Article 460** - The disciplinary committee may, by reasoned decision, issue a warning or

reprimand or order a suspension for a period of up to one year or the striking off the list of members of the Bar Association, the list of lawyers practising under a professional title conferred by another Member State of the European Union or the list of trainee lawyers.

Any lawyer who is suspended a second time may, by virtue of the same decision, be struck off the list of members of the Bar Association, the list of lawyers practising under a professional title conferred by another Member State of the European Union or the list of trainee lawyers.

In case of a reprimand or suspension, the disciplinary committee may also prohibit the lawyer from taking part in the ballot referred to in Article 450 for up to three years in case of reprimand and for up to five years in case of suspension, and may even bar him for the same period from being elected as president or member of the Council of the Bar Association or as a member of the general meeting or the governing body of the Flemish Bar Association or the French- and German-speaking Bar Association.

The disciplinary committee shall decide, stating its reasons, whether or not it should publicize the suspension or striking off and, if so, in what manner this should be done.

The disciplinary committee may, under the special conditions it has stipulated, suspend the pronouncement of the judgment or postpone the enforcement of the disciplinary sanction. In the event of failure to comply with the stipulated conditions, the president shall, ex officio or at the request of the Bar Association president, summon the lawyer in accordance with Article 459 to appear at a session of the disciplinary committee in order to hear the imposition of a disciplinary penalty or the lifting of the suspended judgment.

The disciplinary committee may order the indicted lawyer to pay the costs of the investigation and of the hearing.

**Article 461** – §1. The suspension or striking off shall be mentioned next to the name of the indicted lawyer in a register that is kept at the office of the Flemish Bar Association or the French- and German-speaking Bar Association, which may be consulted by the lawyers.

§2. Within eight days after pronouncement, the secretary of the disciplinary committee shall communicate each decision in disciplinary cases to the lawyer, his Bar Association president and the Attorney General by registered letter.

The Bar Association president, or if he brought the case before the disciplinary committee, the president of that committee, may supply the complainant, if the latter so requests, verbally or in writing, any information which he deems appropriate concerning the decision that has been taken and of the legal remedies that are instituted against it.

A copy of all the decisions shall be communicated to the Flemish Bar Association or to the French- and German-speaking Bar Association.

They may, if they so deem useful, entirely or partially publicize the decisions, without mentioning the name of the lawyer concerned.

**Article 462** – If the judgment has been given by default, the lawyer shall have fifteen days

from the notification to lodge an objection against the judgment.

Any objection that is lodged after that time limit shall be dismissed, unless the disciplinary committee grants suspension of expiry of the time limit, a decision which the disciplinary committee shall take entirely at its own discretion and which shall not be appealable.

Objections shall be addressed to the president of the disciplinary committee by registered letter.

The president shall summon the objecting lawyer, in the manner and within the time limit of the original summons, to appear before the disciplinary committee. The disciplinary committee shall pass judgment, even in the objecting lawyer's absence. The decision shall, in any case, be considered as having been pronounced in a defended action.

**Article 463** – The lawyer, the Bar Association president or the Attorney General may appeal the judgment passed by the disciplinary committee.

The appeal shall be brought to the knowledge of the president of the disciplinary committee by registered letter within fifteen days after notification of the judgment.

The president of the Disciplinary Appeals Council shall give notice of the appeal to the president of the disciplinary committee and, as appropriate, the lawyer concerned, the president of the Bar Association of which he is a member, or the Attorney General.

The Attorney General, the Bar Association president and the lawyer may lodge a counter-appeal by registered letter within one month from the main appeal.

## PART II

### DISCIPLINARY APPEALS COUNCILS

**Article 464** – Appeals against decisions of the Dutch-speaking disciplinary committees shall be lodged with the Dutch-speaking disciplinary appeals council.

Appeals against decisions of the French- and German-speaking disciplinary committees shall be lodged with the French- and German-speaking disciplinary appeals council.

The seat of the disciplinary appeals councils is established in Brussels.

**Article 465** – §1. Each disciplinary appeals council shall be composed of one or several chambers. It shall be chaired by a president of the Court of Appeal.

§2. Each chamber shall hold its sessions with a president, four assessors-lawyers and a secretary-lawyer. The chairmanship shall be assumed in turns by the presidents of the courts of appeal or by the chamber president appointed by the appeal court president. The presidents of the courts of appeal in Antwerp, Brussels and Ghent shall sit on the Dutch-speaking disciplinary appeals council; the presidents of the courts of appeal in Brussels, Mons and Liège shall sit on the French- and Dutch-speaking disciplinary appeals council.

If the disciplinary proceedings concern a lawyer with the Bar of Eupen, the appeals chamber

of the disciplinary committee shall be composed of at least two members who speak German and French and who are not members of the Bar of Eupen.

§3. The Attorney General of the court of appeal in Brussels or an Advocate General appointed by the Attorney General shall act as public prosecutor.

§4. Every Bar Association that is part of the Flemish Bar Association or of the French- and German-speaking Bar Association shall appoint at least two assessors and two deputy assessors from among the former members of the Council of the Bar Association. The assessors shall be proposed from among the former members of the Bar Association Councils by the Bar Association Councils concerned.

§5. Every three years, at the start of the judicial year, the governing bodies of the Flemish Bar Association and of the French- and German-speaking Bar Association, under the chairmanship of the president of the Court of Appeal in Brussels, shall draw up the list of assessors and deputy assessors. They shall also appoint the secretaries and deputy secretaries.

The ranking of the lawyers registered on the lists shall be determined on the basis of a fair balance between the Bars that make up the Flemish Bar Association and the French- and German-speaking Bar Association and of the number of members.

§6. They shall be appointed for a renewable term of office of three years.

§7. The secretary shall compose the chambers in the order of priority stated on the lists.

**Article 466** - The judicial procedure before the Disciplinary Appeals Council shall be conducted in the language of the decision being appealed. Without prejudice to Article 457, §5, second subparagraph, all members of the council must know the language of the legal proceedings.

If, however, the disciplinary proceedings involve a German-speaking lawyer, the latter may speak German.

**Article 467** - The proceedings before the Disciplinary Appeals Council shall be conducted in the manner prescribed by Article 459, §2.

**Article 468** - §1. The secretary shall notify the lawyer concerned, the president of the Bar Association of which he is a member and the Attorney General by registered letter of the decision of the Disciplinary Appeals Committee. He shall send a copy of the judgment to the Flemish Bar Association or the French- and German-speaking Bar Association.

§2. Opposition by the indicted lawyer to judgments of the Disciplinary Appeals Council given by default shall be lodged in the same manner and within the same time limit as the motion for appeal. The objection shall be heard and adjudicated in accordance with the rules that have been applied in the first instance.

§3. The lawyer, the president of the Bar Association of which he is a member and the Attorney General may, within one month from the notification, submit the decision of the Disciplinary Appeals Council to the Supreme Court in the manner of appeals in civil cases.

Unless the decision says otherwise, the appeal shall have suspensive effect.

If the decision is annulled, the Supreme Court shall refer the case to the Disciplinary Appeals Council in a different composition.

### PART III

#### MISCELLANEOUS PROVISIONS

**Article 469** - The disciplinary committee shall be empowered to rule on disciplinary actions that have been instituted for offences committed before the decision whereby the lawyer has been struck off the list of members of the Bar Association, the list of lawyers practising under a professional title conferred by another Member State of the European Union or the list of trainee lawyers, if the investigation was initiated, at the latest, one year after that decision.

If a lawyer requests and obtains registration with a different Bar Association, and this registration is accompanied by the striking off of the lawyer from the first list, the investigation referred to in Article 458, §1 shall be conducted by the president of the Bar Association where the lawyer has last been registered, without the date or place of the offences imputed to the lawyer being taken into account.

Under the same circumstances, the Bar Association president, if he is already conducting an investigation, shall hand over the case to the president of the Bar Association where the lawyer has last been registered.

If a change of Bar Association results in a transfer to the jurisdiction of a different Court of Appeal, the same rules as above shall apply to the president of the disciplinary committee.

If, however, at the time of change of Bar Association, the lawyer has already been summoned in accordance with Article 459, §1, the disciplinary committee applied to shall remain competent.

The disciplinary committee that is competent to hear the disciplinary action against a lawyer who is registered with a different Bar Association from the one of which he was a member at the time when the offences imputed to him were committed shall be the one to which the lawyer belongs at the time when the decision is taken to refer him to the disciplinary committee.

**Article 469bis** – (...)

**Article 470** - The Attorney General shall ensure the enforcement of decisions to suspend and strike off.

**Article 471** - Suspended lawyers shall refrain from all professional activity during the period of their penalty.

**Article 472** - §1. A lawyer who has been struck off can only be registered with the Bar

Association, or on the list of lawyers practising under a professional title conferred by another Member State of the European Union or on a list of trainee lawyers after a period of ten years after the decision to strike him off has become final and conclusive and if extraordinary circumstances so justify.

Registration shall only be justified following a reasoned opinion from the Bar Association of which the lawyer was a member.

Any refusal of registration shall be duly reasoned.

§2. A lawyer who has been suspended may ask the disciplinary committee or the disciplinary appeals council which pronounced the suspension to rehabilitate him after a period of six years from the delivery of the judgment. Any refusal to grant rehabilitation must be duly reasoned. Such a decision shall not be appealable. A request for rehabilitation may be filed again every six years.

§3. Lighter disciplinary penalties shall be wiped out *ipso jure* after a period of six years from the delivery of the judgment.

§4. Re-registration, rehabilitation or wiping out of the penalty shall entail the cancellation of the entries specified in Article 461, §1.

**Article 473** – If, on account of the offences that have been imputed to a lawyer, it is to be feared that his later professional activities may cause prejudice to third parties or to the reputation of the Bar Association, the president of the Bar Association may take any such protective measures as are demanded by caution and, in particular, ban the lawyer from entering the court building for a period of three months at the most.

This period may be extended at the request of the Bar Association president by a reasoned decision of the council of the Bar Association after due hearing of the lawyer in question.

The lawyer in question may appeal to the Disciplinary Appeals Council against a prohibition to enter the court building and against an extension of the period of the ban, decisions which are provisionally enforceable.

Such an appeal shall be notified by registered letter to the president of the said Council, who shall convene the Council forthwith.

The Disciplinary Appeals Council shall take a decision after having heard the Bar Association president and the indicted lawyer.

**Article 474** – On pain of limitation, the disciplinary proceedings shall be instituted within twelve months after the disciplinary authority that has jurisdiction to institute those proceedings has taken cognizance of the charges.

**Article 475** – All summonses and notifications referred to under this title shall be validly served at the lawyer's office or place of residence.

**Article 476** – (...)

**Article 477** - No mention shall be made of disciplinary proceedings or of any elements thereof in criminal, civil or administrative proceedings.

## TITLE IBIS

### PRACTICE OF THE LEGAL PROFESSION IN BELGIUM BY LAWYERS WHO ARE NATIONALS OF A MEMBER STATE OF THE EUROPEAN UNION

#### SECTION I

##### FREE PROVISION OF SERVICES

**Article 477bis** - §1. Persons who are nationals of a Member State of the European Union and are entitled there under Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of the freedom to provide services to practise with a professional title corresponding to that of lawyer may use this title in Belgium.

The persons referred to under the first paragraph are those who in their home Member State are authorized by the competent authority to practise their profession there under a professional title corresponding to that of lawyer, after having completed professional education and training or having performed all the formalities with an equivalent effect which the law of that Member State may impose.

§ 2. The persons referred to in the first paragraph shall, when providing a service in Belgium, use their professional title expressed in the language or one of the languages of the Member State where they are established, and shall also mention the professional association of which they are a member or the judicial authority to which they are admitted under the law of that Member State.

During the provision of those services, they may be asked to prove their title of lawyer.

**Article 477ter** - § 1. The persons referred to in Article 477bis may carry out the same professional activities in Belgium as members of Belgian Bars.

For acts of representation and defence in court, however, they must:

- 1°. work in conjunction with a lawyer who is registered with the Bar Association;
- 2°. before the court proceedings be introduced by that lawyer:
  - a) to the president of the Bar at the court in question;
  - b) to the president of the court where they shall be acting.

§ 2. Without prejudice to the obligations that are imposed on them in their home Member State, the persons referred to in Article 477bis shall exercise their professional activities in accordance with the rules, irrespective of which authority issued them, that apply to the profession in Belgium, with the exception of any conditions of residence or registration.

With respect to other activities than representation and defence in court, those persons shall, without prejudice to the professional conditions and rules of the home Member State, be subject to the rules referred to in the first paragraph, on condition that:

1°. a lawyer not established in Belgium can comply with them;

2°. this is objectively justified as guarantee for the proper exercise of the professional activities of a lawyer, for the dignity of the profession and for the observance of the rules concerning incompatibility.

§ 3. The exercise of the profession of lawyer by the persons referred to in Article 477*bis* shall be incompatible with all salaried occupations or activities in the public or private sector, unless they do not prejudice the independence of the lawyer or the dignity of the Bar.

**Article 477*quater*** - §1. Articles 437, first paragraph, 445 and 761 and the provisions of Section IV, except Article 472, §1, of Title I of Volume III apply to the persons referred to in Article 477*bis*, without prejudice to the professional rules and rules of conduct to which they are subject in the home Member State.

The persons referred to in Article 477*bis* who, in the practice of their professional activity in a particular judicial district, fail to observe the disciplinary rules, may be banned from representing the parties and from pleading in the courts that are established in that judicial district. This ban, which shall not last longer than three years, shall be pronounced after the person in question has been summoned. The decision shall be open to objection and appeal.

With regard to those persons, the penalty of striking off shall be replaced by the prohibition to practise as a lawyer in Belgium. After a period of ten years has expired from the day on which the ban became final and conclusive, those persons may ask for the ban to be lifted.

§ 2. The disciplinary committee of the judicial district where the offences were committed that are punishable by a disciplinary penalty shall have jurisdiction in those cases.

The disciplinary committee may ask the authority of the Member State where the person liable for a disciplinary penalty is established directly for all professional information about that person. It shall notify the authority of every decision. Those notifications shall be confidential.

## SECTION II

### FREEDOM OF ESTABLISHMENT

**Article 477*quinquies*** - § 1 Persons who are nationals of a Member State of the European Union and in accordance with 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 are entitled to practise under a professional title corresponding to that of a lawyer may practise this profession in Belgium on a permanent basis under their home-country professional title.

The persons referred to in the first subparagraph are those who, in their home Member State,

are authorized by the competent authority of that Member State to practise there under a professional title corresponding to that of lawyer, after having completed professional education and training or having performed all the formalities with an equivalent effect which the law of that Member State may impose.

§ 2. The persons referred to in the first paragraph must:

- 1°. be registered in accordance with Article 432 and submit to the Bar Association a certificate of their registration with the competent authority of the home Member State;
- 2°. maintain their registration with the competent authority of the home Member State;
- 3°. practise the profession under their home-country professional title.

The certificate referred to in the first subparagraph, 1°, shall not be more than three months old at the time of its submission and shall mention any disciplinary proceedings that have been instituted in the home Member State.

The Council of the Bar Association shall notify the competent authority of the home Member State of the registration.

§ 3. All documents, including those in electronic format, which the lawyer concerned uses for the purposes of his professional activity, shall contain the following information:

- a) the Bar with which he is registered;
- b) his home-country professional title;
- c) the professional association in the home Member State of which he is a member or the judicial authority to which he is admitted under the law of the home Member State.

The home-country professional title and the information referred to in the first subparagraph shall be drawn up in the official language or in one of the official languages of the home Member State and at least in the language or languages of the judicial district where the Bar is established with which the lawyer is registered.

**Article 477sexies** – § 1. The persons referred to in Article 477quinquies may carry out the same professional activities in Belgium as members of Belgian Bars.

For acts of representation and defence in court, however, they must work in conjunction with a lawyer who is registered with the Bar Association. Before the court proceedings they must be introduced by that lawyer to the president of the court where they shall be acting.

§ 2. Without prejudice to the professional rules and rules of conduct to which they are subject in the home Member State, the persons referred to in Article 477quinquies shall exercise their professional activities in accordance with the professional rules that apply in Belgium, irrespective of which authority issued them.

§ 3. The Council of the Bar Association may, under the conditions which it specifies, oblige the persons referred to under Article 477quinquies to have their professional liability

covered by a professional liability insurance policy.

Where appropriate, the existence of an insurance policy or of a guarantee in accordance with the rules of the home Member State shall be taken into account if it offers equivalent cover to that referred to in the first subparagraph.

If the cover is only partially equivalent, the Council of the Bar Association may, with respect to the elements that are not covered by an insurance policy or guarantee taken out in the home Member State, demand an insurance policy or, if the person so requests, an additional guarantee.

§ 4. The exercise of the profession of lawyer by the person referred to in Article 477*quinquies* shall be incompatible with all salaried occupations or activities in the public or private sector, unless they do not prejudice the independence of the lawyer or the dignity of the Bar.

**Article 477septies** – The provisions of Sections IV and V of Title I of Volume III shall apply to the persons referred to in Article 477*quinquies*, without prejudice to the professional rules and rules of conduct to which they are subject in the home Member State.

Before instituting disciplinary proceedings against any of the aforementioned persons, the president of the Bar Association with which they are registered, or the president of the disciplinary committee shall give notice thereof as soon as possible to the competent authority of the home Member State, and shall supply the Member State all useful information in writing, in particular, about the disciplinary case in question, the applicable procedural rules and the time limits for lodging an appeal, and shall make the necessary arrangements to allow the competent authority to communicate its comments to the appeal bodies. The president shall notify the competent authority in writing of every decision.

Any temporary or permanent prohibition to exercise the profession of lawyer in the home Member State shall automatically entail the temporary or permanent prohibition to exercise that profession in Belgium.

**Article 477octies** – § 1. One or more persons registered on the list of lawyers practising under a professional title conferred by another Member State of the European Union and members of one and the same group in the home Member State may carry out their professional activities in Belgium in a branch office. If, however, the basic rules that apply to that group in the home Member State are incompatible with the basic rules that ensue from the Belgian laws or regulations, the latter laws and regulations shall apply insofar as the observance thereof is justified by the public interest involved in the protection of the client and of third parties.

§ 2. Two or more persons from one and the same group or from one and the same home Member State who are registered on the list of lawyers practising under a professional title conferred by another Member State of the European Union may exercise their profession as a group under the conditions stipulated for lawyers registered with a Belgian Bar Association.

§ 3. Paragraphs 1 and 2 shall also apply to professional group practices in Belgium

composed of:

- a) several persons exercising their profession under their home-country professional title and coming from several Member States;
- b) one or several persons referred to under a) above and one or several lawyers registered with a Belgian Bar Association.

§ 4. Any person who wishes to practise under his home-country professional title shall notify the Bar Association with which he requests registration in accordance with Article 477*quinquies* of the fact that in the home Member State he is a member of a group and shall supply all useful information about that group.

§ 5. Notwithstanding paragraphs 1 to 4, the Council of the Bar Association where the person is registered or requests registration on the list of lawyers practising under a professional title conferred by another Member State of the European Union may deny him the right to exercise the profession of lawyer in Belgium as a member of a group which includes persons who are not lawyers.

The group referred to in the first subparagraph shall consist of persons who are not lawyers if at least one of the following conditions is fulfilled:

- 1°. all or part of the capital of the group is held by persons who are not lawyers for the purposes of the provisions of the present Code;
- 2°. the name under which the group operates is used by the persons referred to under 1°;
- 3°. control over the group is exercised de facto or de jure by the persons referred to under 1°.

The Council of the Bar Association of each judicial district may also oppose the opening of a branch or agency of a group of lawyers who wish to registered on the list of lawyers practising under a professional title conferred by another Member State of the European Union if it turns out that this group of lawyers includes persons who are not lawyers within the meaning of the previous subparagraph.

§ 6. The persons registered on the list of lawyers practising under a professional title conferred by another Member State of the European Union who are members of a group may mention the name of the group to which they belong in the home Member State in all documents, including electronic files, which the persons in question use for the purposes of their professional activities. In that case they shall state the legal form of the group in the home Member State as well as, where appropriate, the names of the members of the group exercising the profession of lawyer in Belgium.

**Article 477nonies** – § 1. Besides the persons referred to in Articles 428*bis* et seq., the

persons referred to in Article 477*quinquies* who can prove to the Council of the Bar Association that they have effectively and regularly carried out an activity in the field of Belgian law, including Community law, for at least three years, may use the title of lawyer, exercise that profession and, to that effect, request registration with the Bar Association in accordance with Article 432, and take the oath referred to in Article 429. To this end, they shall supply the Council of the Bar Association with all the necessary information and documents concerning the number and nature of the cases they have handled.

The Council of the Bar Association shall verify whether the candidates referred to in the first subparagraph have carried out the activity effectively and regularly and shall request them to supply additional information verbally or in writing if necessary.

Activity effectively and regularly carried out shall mean the actual exercise of the activity without any interruptions other than those resulting from events of daily life.

§ 2. Besides the persons referred to in Articles 428*bis* et seq., the persons referred to in Article 477*e* who can prove that they have effectively and regularly carried out an activity in the field of law for at least three years, albeit for a shorter period as far as Belgian law is concerned, may also use the title of lawyer, exercise that profession and, to that effect, request registration with the Bar Association in accordance with Article 432, and take the oath referred to in Article 29, on condition that the Council of the Bar Association judges the matter favourably.

To this end, they shall supply the Council of the Bar Association with all the necessary information and documents, including those concerning the cases they have handled.

The Council of the Bar Association shall take into consideration the activity effectively and regularly carried out during the period referred to in the first subparagraph, the knowledge and professional experience in the field of Belgian law, and the courses or workshops on Belgian law that the candidates have attended, including those on professional rules and rules of conduct.

The activity effectively and regularly carried out in Belgium and the competence needed to continue this activity shall be assessed at an interview with the president of the Bar Association, who shall report on this interview to the Council.

Activity effectively and regularly carried out shall mean the actual exercise of the activity without any interruptions other than those resulting from events of daily life.

§ 3. The Council of the Bar Association shall be the competent authority to receive the requests from the candidates referred to in paragraphs 1 and 2.

The requests and documents referred to in paragraphs 1 and 2 shall be drawn up in the language or one of the languages of the judicial district where the Bar Association is established to which the candidates address their request, or shall be accompanied by a certified true translation in that language.

§ 4. Registration with the Bar Association shall only be refused if proof of fulfilment of the stipulated conditions is not furnished or if there is evidence of an infringement of public order, more particularly on account of disciplinary proceedings, complaints or incidents.

§ 5 The persons referred to in §§ 1 and 2 who have secured registration may use their home-country professional title alongside the title of lawyer if they maintain their registration with the competent authority of the home Member State. This title shall appear in the official language or one of the official languages of the latter State.

## TITLE II

### LAWYERS AT THE SUPREME COURT

**Article 478** - In civil cases before the Supreme Court, only lawyers who have the title of lawyer at the Supreme Court can practise and submit pleadings. The foregoing provision shall not apply to parties claiming damages in criminal cases. The number of lawyers shall be determined, on the recommendation of the Supreme Court, by the King, who appoints them from a list of three candidates proposed by the Board referred to in Article 478*bis*.

Candidates must have been registered with the Bar for at least ten years and must have passed the examination organized by the Bar Association of the Supreme Court.

Before taking up their office, the lawyers at the Supreme Court shall take the oath prescribed by Article 429 before the Court.

**Article 478*bis*** - §1. An Advisory Board shall be set up for the appointment of lawyers to the Supreme Court, referred to as “the Board” in this Title.

§2. The Board shall be composed as follows:

1°. A lawyer designated by the French- and German-speaking Bar Association;

2°. A lawyer designated by the Flemish Bar Association;

3°. A judicial officer from the seat of the Supreme Court, designated by the First President of the Supreme Court;

4°. A judicial officer from the Attorney-General’s Office at the Supreme Court, designated by the Attorney-General of the Supreme Court;

5°. Two lawyers registered with the Bar Association of the Supreme Court, designated by the Bar Association of the Supreme Court;

6°. A professor or lecturer of law, appointed at a university governed by the French-speaking Community, designated by the King by a decree adopted after deliberation in the Council of Ministers;

7°. A professor or lecturer of law, appointed at a university governed by the Flemish Community, designated by the King by a decree adopted after deliberation in the Council of Ministers.

The King shall determine the detailed rules for the implementation of this paragraph.

§3. The Board shall number as many French-speaking members as Dutch-speaking members.

A deputy member shall be designated for every active member.

The term of office of the active and deputy members shall be four years and shall be

renewable.

§4. The Board shall appoint from among its members for a two-year term its president and vice-president, who shall stand in for the president whenever necessary, as well as a secretary, on an alternating basis with Dutch-speaking and French-speaking incumbents.

The Board shall draw up its rules of procedure.

§5. The mission of the Board shall be to propose candidates for the position of lawyer at the Supreme Court.

§6. The majority of the Board members must be present in order to validly deliberate and decide. If an active member is absent or unable to attend, his deputy will stand in for him. The decisions shall be adopted by a three-fourths majority vote.

§7. The members of the Board shall be prohibited from delivering an opinion during a deliberation in which they have a personal or direct interest, or:

1°. if they have to deliver an opinion on a candidate with whom they have a family relationship;

2°. if a member is or was an employer, traineeship supervisor or colleague of a candidate, or if he has or had a professional position of authority with respect to said candidate.

§8. The King shall determine the administrative and financial resources to be allocated to the Board.

**Article 478ter** - §1. Within thirty days of a position of lawyer at the Supreme Court falling vacant, the president of the Bar Association of the Supreme Court shall notify the Minister of Justice, the First President of the Supreme Court and the Attorney General of the Supreme Court thereof.

§2. Within thirty days of this notification, the Minister of Justice shall publish this vacancy in the *Belgisch Staatsblad*.

§3. Applications shall be addressed to the Minister of Justice within ninety days from the date of publication of the vacancy in the *Belgisch Staatsblad*.

On the recommendation of the Bar Association of the Supreme Court, the form and content of applications, the attachments and the detailed rules for the submission of applications shall be determined by the King.

§4. After the time limit referred to in the previous paragraph has expired, the Minister of Justice shall transmit the applications to the Board.

§5. The Board shall have sixty days from the transmission of the applications by the Minister of Justice to propose a list of three candidates per vacancy.

If no proposal is forthcoming within the prescribed time limit, the Minister of Justice may give the Board notice by registered letter between the sixtieth day and the seventy-fifth day following the transmission of the applications to submit a proposal. The Board shall have fifteen days from the date of forwarding of the notice to submit a proposal.

If no proposal is forthcoming within the prescribed time limit or within the time limit that has

been extended pursuant to said notice, the Minister of Justice shall notify the candidates thereof by registered letter within fifteen days, and a new call for candidates shall be published in the *Belgisch Staatsblad*.

**Article 479** - In all cases that are brought before the Court, the lawyer at the Supreme Court shall validly represent the party without having to furnish proof of power of attorney.

The lawyers at the Supreme Court shall have the right to argue cases before all the courts of law in the Kingdom.

**Article 480** - If a party in civil cases cannot secure the assistance of a lawyer at the Supreme Court, the president of the Bar Association shall *ex officio* appoint a lawyer if there are grounds for doing so, without prejudice to the rules governing legal aid.

**Article 481** - The lawyers at the Supreme Court shall form the Bar Association of the Supreme Court, presided over by the head of the Bar Association, who shall bear the title of President. The Bar Association shall comprise a disciplinary committee, composed of five members, including the Bar Association president. The general meetings shall be convened by the Bar Association president or by the Attorney General.

**Article 482** - Each year, during the last month of the judicial year, the lawyers at the Supreme Court shall convene in a general meeting to elect, by separate votes, the Bar Association president by absolute majority and subsequently the members of the Council of the Bar Association by relative majority.

This meeting shall be chaired by the most senior lawyer in years, assisted by the most junior lawyer in years as secretary.

If no absolute majority vote is obtained in the election of the Bar Association president, a second ballot shall be held between the two candidates who received the highest number of votes.

If there is a tie in the second ballot, the candidate shall be elected who comes first in the list order.

The majority of the members must be present for a valid decision by the general meeting and by the disciplinary committee.

**Article 483** - Except for what is provided for in Article 482, the Bar Association president shall chair the general meeting of lawyers and the Council of the Bar Association.

If the Bar Association president has deceased or is unable to attend, he shall be provisionally replaced by the earliest registered member of the Bar Association Council.

**Article 484** - The list on which the lawyers at the Supreme Court are registered in the order in which they took the oath shall be sent each year to the Attorney General of the Supreme Court.

**Article 484bis** - In the relations between the lawyers at the Supreme Court and the members of the different Bars, the regulations that apply for the latter as referred to in Article 496 shall be observed.

In the relations among the lawyers at the Supreme Court, the rules and regulations established by the Bar Association of the Supreme Court shall apply.

**Article 485** - In disciplinary cases, the Council of the Bar Association may issue a warning, censure or reprimand.

The Attorney General may request a certified copy of all the deliberations of the general meeting and of all the decisions adopted by the Council of the Bar Association.

The right to suspend or strike a member off the list shall rest with the King.

**Article 486** - The Attorney General of the Supreme Court and the lawyer in question shall both have the right to appeal against a decision of the Bar Association Council within fifteen days from the day on which the decision was notified.

The appeal shall be brought before the Supreme Court by a petition addressed to the First President. A copy of the petition shall be sent to the Bar Association president within eight days. The parties involved shall be summoned by the Clerk of the Court to be heard in chambers. They may take cognizance of the judgment that has been delivered on appeal at the registry of the Supreme Court.

**Article 487** - The rules of Title I, insofar as the present Title does not depart there from, shall apply to the Bar Association of the Supreme Court.

### TITLE III

## FLEMISH BAR ASSOCIATION AND FRENCH-AND GERMAN-SPEAKING BAR ASSOCIATION

### SECTION I

#### GENERAL PROVISIONS

**Article 488** - The Bar Associations in Antwerp, Bruges, Dendermonde, Ghent, Hasselt, Ypres, Kortrijk, Leuven, Mechelen, Oudenaarde, Tongeren, Turnhout and Veurne shall, together with the Dutch-speaking Bar Association at the Bar in Brussels, constitute the Flemish Bar Association.

The Bar Associations in Arlon, Mons, Charleroi, Dinant, Tournai, Huy, Liège, Marche-en-

Famenne, Namur, Neufchâteau, Nivelles, Verviers and Eupen shall, together with the French-speaking Bar Association at the Bar in Brussels, constitute the French- and German-speaking Bar Association.

The Flemish Bar Association and the French- and German-speaking Bar Association shall have legal personality and shall be established in Brussels.

**Article 489** - The governing bodies of the Flemish Bar Association and the French- and German-speaking Bar Association are:

- 1°. the general meeting;
- 2°. the Council

**Article 490** - The president of the Bar Association at the Supreme Court or his representative, a member of the Council of his Bar Association, shall have an advisory vote in the general meetings of the Flemish Bar Association and of the French- and German-speaking Bar Association.

## SECTION II

### ORGANIZATION AND PROCEDURE

**Article 491** - The organization and procedure of the Flemish Bar Association and of the French- and German-speaking Bar Association shall be set out in rules of procedure that are discussed by the Bars that form part of the Bar Associations and adopted by the competent bodies referred to in Article 489 and, on the recommendation of the Attorney General of the Supreme Court, ratified by the King within 30 days.

The rules of procedure shall stipulate at least:

- 1°. the composition, manner of election, designation or appointment of the members of the governing bodies referred to in Article 489 and the terms of office;
- 2°. the procedure and manner of deliberation with due regard for the representation of the lawyers of the different Bars;
- 3°. the manner in which the rules are adopted;
- 4°. the manner in which the contribution that the Bars must pay each year is set;
- 5°. the rules for drawing up and appropriating the annual budget;
- 6°. the general organization of the secretariat;
- 7°. the manner in which the representatives in the legally established bodies are appointed.

**Article 492** - The rules of procedure shall stipulate how and by what majorities they may be amended.

**Article 493** – The Council shall represent its Bar Association in all acts in and out of court through its president. All acts in and out of court shall be performed in the name of the Bar Association.

**Article 494** – The presidents of the Councils shall represent the Flemish Bar Association and the French- and German-speaking Bar Association in their relations with the public authorities and the Bars.

### SECTION III

#### POWERS

**Article 495** – The mission of the Flemish Bar Association and the French- and German-speaking Bar Association, each for the Bars that form part of them, shall be to defend the honour, rights and common professional interests of their members and shall be in charge of legal aid, traineeships, professional training of trainee lawyers, and training of all lawyers belonging to the Bars that form part of them.

They shall take any initiatives and measures that may be useful in connection with training, disciplinary rules and loyalty of the profession and for the promotion of the interests of lawyers and litigants.

Either may make suggestions concerning those matters to the competent authorities.

**Article 496** – With respect to the powers set forth in Article 495, the Flemish Bar Association and the French- and German-speaking Bar Association shall adopt appropriate regulations.

With a view to the relations between the members of the different Bars that form part of them, they shall determine the rules and practices of the profession of lawyer and shall bring uniformity to those rules and practices. To this end they shall adopt appropriate regulations.

**Article 497** – The regulations referred to in Article 496 shall be published in the *Belgisch Staatsblad* from the moment they have been adopted in accordance with the applicable rules.

**Article 498** – The regulations that have been adopted in accordance with Article 496 shall apply to all the lawyers of the Bars that form part of either the Flemish Bar Association or the French- and German-speaking Bar Association, depending on which Bar Association adopted them.

**Article 499** – The Councils of the Bar Associations shall ensure that the regulations referred to in the previous Articles are enforced.

**Article 500** – All regulations adopted in the manner prescribed by the rules of procedure referred to in Article 491 shall be binding on the Bars that form part of the relevant Bar Association; the Bars may only adopt supplementary regulations with respect to such matters.

**Article 501** – § 1. The action referred to in Article 611 shall be instituted by the Attorney

General of the Supreme Court within three months after the publication referred to in Article 497.

It shall be brought to the notice of the Flemish Bar Association and the French- and German-speaking Bar Association.

The same action may also be instituted within the time limit stipulated in the first subparagraph by a lawyer of the Flemish Bar Association or the French- and German-speaking Bar Association or by any person who has the capacity and the interest to bring an action within the meaning of Articles 17 and 18. In this case, the action shall be initiated by a petition addressed by registered letter to the registry of the Supreme Court or filed with the registry. On pain of nullity, the petition shall contain the grounds of the action and shall be signed by a lawyer of the Supreme Court. The action shall be brought to the notice of the Flemish Bar Association and the French- and German-speaking Bar Association in advance by registered letter. Under penalty of nullity, proof of this notification shall be enclosed with the petition.

§ 2. During the period referred to in §1 and, if the Attorney General of the Supreme Court institutes the action referred to in Article 611, until the judgment is delivered, the application of a set of regulations and of the time limit referred to in Article 502, § 1, first subparagraph, for the institution of the action shall be suspended.

§ 3. When the action referred to in §1 has been instituted, the Flemish Bar Association and the French- and German-speaking Bar Association may intervene in the proceedings by means of a petition in accordance with Article 813. This intervention shall take place within two months after the notification referred to in § 1, second or third subparagraph.

In that case, the Flemish Bar Association and the French- and German-speaking Bar Association may adduce fresh grounds based on an exceeding of powers, conflict with the law or invalid adoption of the challenged regulations.

**Article 502** - § 1. Without prejudice to the prior consultation imposed by Article 505, the Flemish Bar Association and the French- and German-speaking Bar Association may bring an action for annulment against all regulations that have been adopted in accordance with Article 496. Such action shall be instituted before an arbitration tribunal composed of seven members, three of whom shall be appointed for a term of two years by the Flemish Bar Association, and three for a term of two years by the French- and German-speaking Bar Association. By common consent they shall appoint a seventh member, who shall act as president. If no consensus is reached, the arbitration tribunal shall be chaired by the president of the Bar Association of the Supreme Court or, in his absence, by his predecessor.

If an arbitrator has to be replaced, his successor shall only be designated to complete the original term of office.

The office of arbitrator shall be open to lawyers who have been members of the Bar for at least fifteen years, or who have been president or member of the Council of a Bar Association for at least three years, or who have been a member of the Council of the Bar Association of

the Supreme Court. The arbitrators must not have been involved in the adoption of the challenged decision.

§ 2. An action referred to in §1 may be instituted against all regulations which are thought to:

- constitute an exceeding of powers, conflict with the law or have been invalidly adopted;
- prejudice the honour of the Bar Association and the enforcement of the principles of dignity, integrity and discretion that underlie the legal profession, as defined in Article 455, first paragraph, and in the international ethical codes.

When the action referred to in Article 611 is instituted, the arbitration tribunal shall not rule on grounds derived from an exceeding of powers, non-compliance with the law or the invalid adoption of the challenged regulations.

§ 3. The arbitration tribunal shall pass judgment in the first and the last instance. It may only entirely or partially annul a challenged regulation if five members declare themselves in favour of the annulment; a minority report may be enclosed with the arbitration award.

§ 4. For all that is not expressly provided for in the present volume, the provisions of the sixth part of this Code shall apply accordingly to the procedure.

§ 5. Notice of the action shall be given to the Attorney General of the Supreme Court and to the other Bar Association.

**Article 503** – The Federal Bar Council is composed of ten members of whom five are delegated for a term of two years, renewable once, by the Flemish Bar Association and five by the French- and German-speaking Bar Association. The Federal Bar Council is chaired by the president of the Bar Association of the Supreme Court.

The seat of the Federal Bar Council is established with the Bar Association of the Supreme Court and the secretariat is assumed by its staff, unless otherwise agreed between the respective Bar Associations.

If a delegated member has to be replaced, his successor shall only be appointed to complete the original term of office.

**Article 504** – § 1. Each Bar Association, each Bar that forms part of that Bar Association, and the Bar Association of the Supreme Court may bring matters before the Federal Bar Council in connection with the Bar in general and the proper administration of justice.

The procedure before the Federal Bar Council shall take the form of a procedure in contentious matters.

The Federal Bar Council shall deliver opinions that are adopted by at least three-fifths of the votes in each language group.

§ 2. The representation on the Council of Bars and Law Societies of the European Union shall be assumed by a committee of four members, of whom two are appointed by the Flemish

Bar Association and two by the French- and German-speaking Bar Association.

This committee shall carry out the assignments entrusted to it by the Federal Bar Council by virtue of a decision that has been adopted by a majority of at least three-fifths of the votes in each language group.

**Article 505** - Before instituting an action for annulment as referred to in Article 502, the Flemish Bar Association and the French- and German-speaking Bar Association shall bring the matter before the Federal Bar Council within three months after the publication referred to in Article 497.

The Federal Bar Council shall give notice of its opinion within one month after being seized of the matter. The action referred to in Article 502 shall be instituted within two months after the aforesaid notification or, failing such notification, within three months after the matter has been brought before the Federal Bar Council and without prejudice to Article 501, §§ 2 and 3.

#### SECTION IV

##### TRANSITIONAL PROVISIONS

**Article 506** - The Belgian National Bar Association shall be wound up. The last elected Dean and Vice-Dean shall jointly take care of the liquidation of this institution.

The assets or liabilities shall be divided among the Bars in proportion to the number of affiliated lawyers.

**Article 507** - Regulations that have been validly adopted by the Belgian National Bar Association shall remain binding on all lawyers until the competent authorities have laid down new regulations in accordance with Article 496, without prejudice to consultation with and consent of the Bar Association of the Supreme Court with regard to the amendment of regulations that concern it.

**Article 508** - Posts that have been assigned by the Belgian National Bar Association on committees and authorities that have been established by law shall remain valid and shall be deemed to be joint posts of the Flemish Bar Association and the French- and German-speaking Bar Association until they each appoint their own representatives in accordance with their own regulations and with the law.

#### VOLUME IIBIS

##### FIRST- AND SECOND-LINE LEGAL AID

#### SECTION I

##### GENERAL PROVISION

**Article 508/1** - For the purposes of this volume, the following definitions shall apply:

- 1°. First-line legal aid: legal aid that is offered in the form of practical information, legal information, a first legal opinion or a referral to a specialized authority or organization;
- 2°. Second-line legal aid: legal aid that is offered to a natural person in the form of a detailed legal opinion, aid whether or not in the context of legal proceedings, or aid in a lawsuit, including representation within the meaning of Article 728;
- 3°. Legal Aid Commission: the commission referred to in Article 508/2;
- 4°. Legal aid bureau: the bureau referred to in Article 508/7;
- 5°. Legal aid organization: any organization that offers first-line legal aid in a judicial district.

## SECTION II

### LEGAL AID COMMISSION

**Article 508/2 - § 1.** In each judicial district, there shall be a Legal Aid Commission. In the judicial district of Brussels, there shall be two Commissions: the Dutch-speaking Legal Aid Commission and the French-speaking Legal Aid Commission.

The Legal Aid Commission shall have legal personality and shall draw up its rules of procedure.

§ 2. The Commission shall have its seat in the principal town of the judicial district or in any other place which it designates.

§ 3. The Commission shall be equally composed of representatives of the Bar who shall be appointed by the Bar Association of the judicial district concerned and of representatives of the public welfare offices and recognized legal aid organizations.

The King shall decide by a decree submitted in the Council of Ministers the detailed rules for the recognition of legal aid organizations and for the composition and procedure of the Commission.

**Article 508/3** - The mission of the Legal Aid Commission shall be the following:

- 1°. Organize the legal surgeries for first-line legal aid and ensure that those services are decentralized if necessary;
- 2°. Promote consultation and coordination between the legal aid organizations and facilitate referral to specialized organizations, more particularly, by helping the conclusion of agreements;
- 3°. Ensure the dissemination of information about the existence of and the conditions for access to legal aid, in particular among the socially most vulnerable groups.

This information shall be disseminated in the places where legal aid is offered, as well as through court registries, public prosecutors' offices, bailiffs, local authorities and public welfare offices of the judicial district;

4°. Make any recommendations which it considers necessary, based on the reports referred to in Articles 508/6 and 508/11, and pass on those recommendations and reports to the Minister of Justice.

**Article 508/4** - The Kingdom shall grant a subsidy to the Legal Aid Commissions on the basis of objective criteria, established by a Royal Decree submitted in the Council of Ministers.

### SECTION III

#### FIRST-LINE LEGAL AID

**Article 508/5** - § 1. Without prejudice to the first-line legal aid offered by other legal aid organizations, the legal surgeries for first-line legal aid shall be held by lawyers.

Each year, the Bar Association shall draw up a list of lawyers who wish to provide first-line legal aid services.

The list shall specify each lawyer's preferred field of law, in which he must prove an aptitude or in which he undertakes to complete appropriate training organized by the Council of the Bar Association or by the authorities referred to in Article 488.

Any refusal of registration on the list shall be appealable in accordance with Article 432*bis*.

The Bar Association shall send the list of lawyers to the Legal Aid Commission.

§ 2. Without prejudice to the legal aid offered by other legal aid organizations, the lawyers shall not charge the recipient of legal aid any costs or fees.

§ 3. The applicant shall be informed immediately if referral to a legal aid organization or to second-line legal aid is advisable. The legal aid organization or legal aid bureau shall be notified thereof immediately.

§ 4. The Bar Association shall oversee the quality of the first-line legal aid services provided by the lawyers.

If the quality of the service is inadequate, the Council of the Bar Association may strike a lawyer off the list referred to in §1 by a reasoned decision and in accordance with the procedure set forth in Articles 458 to 463.

**Article 508/6** - Without prejudice to the rules governing professional secrecy, the lawyers who offer first-line legal aid shall send the Legal Aid Commission an annual report on the services they have provided in that respect, in accordance with the detailed rules established by the Minister of Justice in consultation with the authorities referred to in Article 488.

To the legal aid bureau, they shall submit a concise report on the consultations they have

given.

#### SECTION IV

#### PARTLY OR TOTALLY FREE SECOND-LINE LEGAL AID

#### PART I

#### ORGANIZATION

**Article 508/7** - The Council of the Bar Association shall set up a legal aid bureau at each Bar in accordance with the detailed rules and conditions which it has established.

One of the tasks of the legal aid bureau shall be to organize on-call services.

Each year, the Bar Association shall draw up a list of lawyers who principally or additionally wish to provide second-line legal aid services organized by the bureau.

The list shall specify each lawyer's preferred field of law, in which he must prove an aptitude or in which he undertakes to complete appropriate training organized by the Council of the Bar Association or by the authorities referred to in Article 488.

Any refusal of registration on the list shall be appealable in accordance with Article 432*bis*.

The bureau shall send the list of lawyers to the Legal Aid Commission.

**Article 508/8** - The Bar Association shall oversee the quality of the second-line legal aid services provided by the lawyers.

If the quality of the service is inadequate, the Council of the Bar Association may strike a lawyer off the list referred to in Article 508/7 by a reasoned decision and in accordance with the procedure set forth in Articles 458 to 463.

**Article 508/9** - § 1. For the purpose of obtaining second-line legal aid partly or totally free of charge, the persons offering second-line legal aid shall refer the applicant to the bureau.

The bureau shall appoint a lawyer whom the applicant has selected from the list referred to in Article 508/7. The bureau shall notify the lawyer of his appointment.

A lawyer whose name appears on the list and whom an applicant has approached without first applying to the bureau shall ask the bureau for permission to offer second-line legal aid to his client if he believes that the applicant is entitled to legal aid partly or totally free of charge. The lawyer shall send the documents referred to in Article 508/13 to the bureau.

In urgent cases, a person who has no lawyer may apply directly to the lawyer who is on call. This lawyer shall offer him legal aid and ask the bureau for confirmation of his appointment.

§ 2. A lawyer who acts pursuant to the present Section shall on no account directly approach the recipient with a view to obtaining payment of fees and costs, unless the bureau

authorizes him, in urgent cases, to request a retaining fee.

**Article 508/10** - If the recipient of legal aid does not speak the language of the legal proceedings, the legal aid bureau shall, insofar as possible, propose a lawyer who speaks his language or another language which he understands or, failing which, an interpreter. The interpreter's fee shall be borne by the Kingdom. This fee shall be set in the manner stipulated in the general regulations governing legal costs in criminal cases.

**Article 508/11** - The lawyers shall regularly report to the bureau in the manner specified by the Minister of Justice in consultation with the authorities referred to in Article 488.

Each year, the bureau shall send an activity report on second-line legal aid to the Legal Aid Commission and to the Minister of Justice in the manner specified by the latter.

**Article 508/12** - Except in urgent cases or if the bureau has expressly given its consent, lawyers shall be prohibited from offering second-line legal aid in matters where they have offered first-line legal aid as referred to in Article 508/4.

## PART II

### GRANTING OF PARTY OR TOTALLY FREE LEGAL AID

**Article 508/13** - Second-line legal aid may be offered partly or totally free of charge to persons who have insufficient income and to other persons classed as such.

The King shall determine by a decree submitted in the Council of Ministers the level of that income, the documentary evidence to be produced and the persons who are to be classed as persons with insufficient income.

The bureau shall verify whether the conditions for free legal aid are met.

The bureau shall keep a copy of the supporting documents.

**Article 508/14** - The application for legal aid partly or totally free of charge shall be made verbally or in writing by the applicant or his lawyer whose name appears on the list referred to in Article 508/7.

Without prejudice to what is stipulated in the previous paragraph, the application may also be submitted to the competent authorities, within the meaning of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

Except in urgent cases, all supporting documents referred to in Article 508/13 shall be attached to the application.

In urgent cases, the bureau may provisionally grant the applicant the benefit of partially or totally free legal aid. In that case, the bureau shall determine the time limit for submission of the documentary evidence referred to in Article 508/13.

The bureau shall decide on the application for partly or totally free legal aid on the basis of the documentary evidence. The applicant or, where appropriate, his lawyer shall be heard at his request or if the bureau so deems necessary.

Manifestly unfounded applications shall be refused.

**Article 508/15** - Except in urgent cases, the applicant or, where appropriate, his lawyer shall be notified of the decision within fifteen days after the application.

Any decision of refusal shall be duly reasoned.

The notification of this decision shall contain information that is useful for the purpose of lodging an appeal as provided for in Article 508/16.

**Article 508/16** - The applicant may appeal to the Labour Tribunal against a decision of refusal within a month after the notification referred to in Article 508/15.

**Article 508/17** - If the applicant has been granted partly or totally free second-line legal aid and he wishes to submit a request for legal assistance, his lawyer shall immediately send the documentary evidence submitted with a view to obtaining legal aid to the competent court.

**Article 508/18** - The bureau may withdraw the second-line legal aid if the recipient no longer meets the conditions stipulated in Article 508/13 or if he manifestly fails to cooperate in the defence of his interests.

To this end, the lawyer shall submit a reasoned request to the bureau.

The bureau shall notify the recipient of the request and shall invite him to formulate his remarks.

The recipient shall be notified by registered letter of any decision to withdraw legal aid. This decision shall be appealable.

Articles 508/15 and 508/16 shall apply.

## SECTION V

### PAYMENT OF THE LAWYERS

**Article 508/19** - § 1. The lawyers entrusted with offering partly or totally free second-line legal aid shall report to the bureau on every case for which they have rendered services.

The bureau shall assign points to the lawyers for those services and shall report on this to the president of the Bar Association.

The president of the Bar Association shall communicate the total score of the Bar to the authorities referred to in Article 488, who in turn shall communicate the total score of all the Bars to the Minister of Justice.

§ 2. As soon as he has received the information referred to in §1, the Minister of Justice may order an audit in the manner he decides after having consulted the authorities referred to in Article 488. He shall order payment of the fees to those authorities, who shall attend to the distribution thereof through the Bar Associations.

#### SECTION VBIS

##### ORGANIZATIONAL COSTS OF THE LEGAL AID BUREAUS

**Article 508/19bis** - An annual subsidy shall be appropriated to meet the organizational costs of the legal aid bureaus, chargeable to the budget of the Federal Department of Justice. This subsidy shall amount to 8.108% of the fees referred to in Article 508/19, §2.

This subsidy shall be payable upon expiry of the due date.

The King shall establish the detailed rules for the implementation of the present Article, and more particularly the manner in which this subsidy shall be distributed.

#### SECTION VI

##### RECLAIMING OF THE GOVERNMENT ALLOWANCE – ENTITLEMENT OF THE LAWYERS TO FULL PAYMENT OF FEES AND COSTS

**Article 508/20** - § 1. Without prejudice to penal sanctions, the Treasury may reclaim the allowance that has been paid for second-line legal aid from the legal aid recipient:

1°. if it emerges that there has been a change in his property situation, income or expenditure and he is therefore able to pay;

2°. if the recipient has derived benefit from the lawyer's actions, in such a way that, if that benefit had existed on the day of the application, he would not have been granted that legal aid;

3°. if the legal aid has been obtained on the basis of false statements or by other fraudulent means.

In that case, the bureau shall draw up a statement of costs and fees which the lawyer can still claim from the recipient.

§ 2. If the recipient is entitled to an allowance under a legal aid insurance policy, the appointed lawyer shall notify the bureau thereof, and the Treasury shall be subrogated to the rights of the recipient to the amount it has borne for the legal aid being granted.

If the recipient has been paid the aforesaid allowance, the Treasury shall reclaim from him the amount of the legal aid that has been granted.

If the lawyer has received the aforesaid allowance from the recipient, the Treasury shall reclaim the amount of the legal aid from the lawyer.

§ 3. The reclamation referred to in §1 of the present Article shall become statute-barred

five years after the decision to grant partly or totally free legal aid; the limitation period shall not be less than one year after the lawyer has received the fee.

## SECTION VII

### EX OFFICIO ASSIGNMENT OF LAWYERS

**Article 508/21** - Whenever, by law, a lawyer has to be assigned ex officio, the lawyer shall be appointed by the Bar Association president or by the bureau, except in the cases provided for by law.

**Article 508/22** - If a person applying for legal aid does not meet the conditions of income referred to in Article 508/13, the president of the Bar Association shall appoint a lawyer chosen by that person. In the cases which he considers urgent, the president of the Bar Association shall appoint a lawyer who takes part in the on-call services referred to in Article 508/7.

Article 446ter shall apply to the fees of this lawyer.

If the recipient of legal aid fails or refuses to pay, the ex officio assigned lawyer shall be paid a government allowance for the services which he has rendered as part of his assignment.

If the recipient of legal aid pays part of the fees, the amount paid shall be deducted from the government allowance.

When an allowance is allocated, Sections V and VI shall apply.

**Article 508/23** - If the recipient of legal aid meets the conditions of income specified in Article 508/13, the bureau shall appoint a lawyer from the list referred to in Article 508/7.

In the cases which he considers urgent, the president of the Bar Association shall appoint a lawyer who is registered on the list referred to in Article 508/7 and shall notify the bureau thereof.

For the rest, Sections IV to VI shall apply.

## SECTION VIII

### CROSS-BORDER DISPUTES REFERRED TO IN DIRECTIVE 2003/8/EC

**Article 508/24** - §1. The Federal Department of Justice shall be the competent authority charged with transmitting and receiving applications in connection with cross-border disputes within the meaning of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

§2. The legal aid bureau shall also be competent to receive applications for legal aid on the territory of another Member State of the European Union.

In such case, the bureau shall transmit this application immediately to the Federal Department

of Justice, which shall, after having translated it into a language recognized by the receiving State, bring it to the notice of the competent authority of that country.

§3. In order to facilitate the transmission of applications, the standard forms referred to in Article 16 of the Directive mentioned in §1 shall be used for applications and for the transmission of those applications.

§4. If the application is submitted via the authority referred to in §1, the costs of translation of said application and of the requisite supporting documents shall be borne by the Kingdom. These costs shall be set in the manner stipulated in the general regulations governing legal costs in criminal cases.

§5. Where a person has received legal aid in a Member State of the European Union whose court has taken the decision, said person shall be entitled to legal aid if the decision has to be recognized, declared enforceable or executed in Belgium.

§6. The authority referred to in §1 shall refuse to transmit the application if it is manifestly unfounded or if it manifestly falls outside the scope of the Directive referred to in §1. When taking a decision on the merits of an application, the importance of the individual case to the applicant shall be considered. A decision to refuse legal aid shall be duly reasoned and shall be notified to the applicant by ordinary letter.

**Article 508/25** - A person who does not lack financial resources within the meaning of Article 508/13 may, however, also be granted legal aid if he proves that he is unable to pay the legal costs as a result of differences in the cost of living between the Member State where he has his domicile or habitual residence and Belgium.

Orde van Vlaamse Balies  
18 september 2007