

Statement of the CCBE on the occasion of the 25th anniversary of the Lawyer's Establishment Directive and the 30th anniversary of the Single Market

12/05/2023

On the occasion of the 25th anniversary of the Lawyer's Establishment Directive, the Council of Bars and Law Societies of Europe (CCBE) celebrates the importance of the freedom of establishment of the profession in Europe as one of the most important achievements of the EU legal profession for the cross-border protection of fundamental rights and freedoms, the principle of mutual trust and respect for the rule of law.

As a representative body of the Bars and Law Societies of 46 countries and more than 1 million European lawyers, the CCBE also supports the celebration of the 30th anniversary of the Single Market as an opportunity to reaffirm its attachment to the foundations of the Single Market. The CCBE emphasises that the objective of the Single Market and its freedoms can also serve as a key driver for advancing in the respect and promotion of the EU values in which the EU is founded.

The better regulation of the profession, the defence of the rule of law, as well as the protection of the fundamental freedoms, human rights and democratic values are the most important missions of the CCBE. The CCBE actively monitors several areas of concern, such as the right to access to justice, the development of the rule of law, the respect for the right to a defence, the effectiveness of Justice systems and the core values of the legal profession. The latter includes the need to maintain the independence of the legal profession from state interference.

All EU Member States recognise the core values of the legal profession as major objectives and principles of regulation for the legal profession.¹ The core values should also be seen as an instrument of how access to justice and the maintenance of the rule of law can be achieved.

The CCBE sees the opportunity of the celebration of the 30th anniversary of the Single Market to reaffirm its attachment to the foundations of the Single Market. In addition, the CCBE would like to emphasise that the

¹ The [CCBE Charter of Core Principles of the European Legal Profession](#) sets out the common ground which underlies the national and international rules governing the conduct of European lawyers. See CJEU, Wouters, C-309/99. See also [United Nations Basic Principles on the Role of Lawyers](#), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990; [Council of Europe Recommendation Rec\(2000\)21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer](#), adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies. [European Parliament resolution](#) on the legal professions and the general interest in the functioning of legal systems, 23 March 2006.

Single Market can also be a key driver for advancing EU values and the principles of the rule of law among the EU Members States. The rule of law is one of the founding values of the EU and is enshrined in Article 2 of the Treaty on EU.

As pointed out in the Communication published by the European Commission on 16 March 2023 '[The Single Market at 30](#)', *"the Single Market is one of the greatest achievements of the EU. Since its creation in 1993, citizens and businesses have benefitted from the free movement of people, services, goods and capital to an extent that exceeds even the most visionary expectations of three decades ago. (...) Yet the Single Market is much more than a legal framework or indeed a market: it is an area of freedom, progress, opportunity, growth, shared prosperity, resilience and a means of geopolitical projection."*

On this occasion, the CCBE would like to remind the EU institutions that a well-functioning judicial system also contributes to the prosperity of an economic area. Bars, Law Societies and lawyers play a central role in stabilising and protecting the foundations of the freedom areas, especially in times of crisis or when political and social events may disturb the foundations of democratic societies.

Against this background, the CCBE observes that the Communication mentions the following quote (in a footnote) *"Legal Services remain the most protected profession in the Single Market"*², derived from the "Restrictiveness indicator for Lawyers"³ developed by the Commission in the "Reform Recommendations for professional services"⁴.

First of all, it is not clear where this assertion comes from, and whether it implies a negative situation of existing barriers in the profession, giving the impression that those would be unnecessary or unjustified.

Secondly, the CCBE would like to recall that there is a close relationship between legal services and the administration of justice, and that the Commission makes no reference of the underlying reasons for having a regulation of legal services. In comparison with other sectors, in the area of legal services, regulation is justified by many considerations. It serves to protect consumers and other market participants by ensuring access to justice and the right to a fair trial by a lawyer who is independent of governmental and other third-party influences and interests. As such, regulation of legal services is inextricably linked with the proper administration of justice and the promotion and protection of human rights. Furthermore, professional secrecy and legal professional privilege, the lawyer's duty of independence, as well as the prohibition of representation of conflicting interests all belong to internationally accepted standards and constitute core duties whose observance is monitored by independent, non-state-affiliated Bars and Law Societies.

The Court of Justice on several occasions has recognised that the application of professional rules to lawyers, this means the rules regarding organisation, qualifications, professional ethics, supervision and liability serve a goal of general interest.⁵ This general interest can justify an impediment to the free movement of services⁶. According to the Court of Justice, the application of these professional rules offers the end consumers of legal services the requisite guarantee of integrity and experience, and thus contributes to the proper administration

² Communication of the European Commission '[The Single Market at 30](#)' of 16 March 2023, footnote 59, page 16.

³ According to the European Commission, the EU restrictiveness indicator (EURI) measures the level of restrictiveness for the cross-border provision of services and the right of establishment for seven groups of professional services with a high share in EU firms' intermediate consumption or cross-border mobility. The level of restrictiveness is measured on a scale from 0 (least restrictive) to 6 (most restrictive).

⁴ The webpage of the 2023 Single Market Scoreboard refers to the same statement: available [here](#)

⁵ CJEU, *Wouters*, C-309/99, § 97

⁶ For example: see CJEU C-33/74 *Binsbergen*, §12-14; Case 71/76 *Thieffry*, § 12; Case 292/86 *Gullung*, § 29; C-3/95 *Reisebüro Broede*, § 38 ; *Cipolla and Others*, C-94/04 and C-202/04, § 64; C-55/94, *Gebhard*, § 37: In this case, the Court applied for the first time the proportionality principle in relation to establishment.

of justice.⁷ Thus, what can be seen as a restriction, may be a measure justified and proportionate to an objective pursued.

Moreover, legal services have “a special complexion as compared with other professional services, for the reason that the services comprise part of the broader social-political-moral landscape that comprises a society’s legal system, or “The Law””.⁸

The CCBE would like to stress that this does not mean that it does not support the work of the Commission in seeking the removal of existing obstacles to the freedom of establishment and the freedom to provide services. On the contrary, the CCBE would like to recall that lawyers have been the most advanced in that respect, thanks to the sectoral Directives (adopted in 1977 and 1998). Lawyers can freely exercise their profession in any EU Member State on the basis of their home professional title. This achievement has been made possible because of the mutual trust and common values shared among the legal profession in the Member States.

The Lawyers’ sectoral Directives⁹ recognise the fact that different legal systems exist throughout the EU, while allowing that lawyers from a Member State can provide services cross-border and/or establish themselves in other Member States. It is the regulation of core principles of the profession which enables these Directives and allows cross-border and EU-wide provisions of legal services based on shared standards which are **in the public interest** and **necessary for the rule of law**. Moreover, the CCBE, through its network of European Bars and Law Societies (home and host state Bars), provides guidance as to facilitate the cross-border practice of the legal profession and that everyone benefits from the functioning of the Single Market (See, [Guidelines for Bars & Law Societies on free movement of lawyers](#) - last updated in 2021).

The CCBE also welcomes the Resolution of the European Parliament of 18 January 2023,¹⁰ which declared that single market policy should not only be about reducing barriers but rather should guide the EU towards further development based on common values, in particular in terms of clearly defining what needs to be done to facilitate businesses and workers in the (green and digital) transition, and to protect consumers and the environment.

Way forward

The CCBE would like to call on the Commission to recognise that both the EU and the national regulations of the legal profession in Member States serve a wider purpose, and that existing measures can be justified, proportionate and necessary. The CCBE would like to call once again for a closer collaboration between DG GROW and DG JUST when rules on the provision of legal services are assessed. The CCBE remains available through its network of national Bars and Law Societies to provide relevant feedback.

The CCBE would therefore expect that the Commission takes more into account the specificity of legal services and refers to the benefits of both the freedom of establishment and services of the Lawyers’ Directives when examining the removal of barriers in cross-border legal services as well as the legitimate objectives of proper administration of justice and protection of consumers of legal services.

⁷ CJEU, *Wouters*, C-309/99, § 97

⁸ George Yarrow & Christopher Decker, Regulatory Policy Institute, Assessing the economic significance of the professional legal services sector in the European Union, 2012, available [here](#).

⁹ [Council Directive 77/249/EEC](#) to facilitate the effective exercise by lawyers of freedom to provide services and [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.

¹⁰ European Parliament [resolution](#) of 18 January 2023 on the 30th anniversary of the single market: celebrating achievements and looking towards future developments (2022/3015(RSP), point 29.