EUROPEAN LAWYERS
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Council of Bars and Law Societies of Europe
The voice of European Lawyers

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CCBE response to the public consultation on the Skills Portability Initiative

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I. Introduction

The Council of Bars and Law Societies of Europe (CCBE) represents the Bars and Law Societies of 46 countries and, through them, more than one million European lawyers. This position paper sets out the perspective of the legal profession in the context of the European Commission's public consultation on the forthcoming Skills Portability Initiative.

As a preliminary remark, the CCBE wishes to clarify that it has carefully examined the public consultation questionnaire for the Skills Portability Initiative. While the questionnaire may be suitable for capturing experiences across the labour market in general, it is formulated in a way that does not sufficiently reflect the regulatory framework and the reality of the legal profession. Unfortunately, it does not allow for a clear explanation of the fact that, for lawyers, **skills portability within the EU is already effectively ensured through a dedicated legal framework that has proven its value and efficiency over time**. For these reasons, the CCBE considers that responding to the questionnaire would not enable the CCBE to present a precise situation of the legal profession. Therefore, the CCBE considers it appropriate to provide its contribution in the form of a structured written submission. **This approach allows for a more accurate reflection of the specific regulatory and professional realities of the legal profession than would be possible through responses to a horizontal questionnaire.**

Regarding the initiative itself, the CCBE wishes to recall that it supports the EU Commission's objective of promoting fair labour mobility and ensuring the effective functioning of the Single Market. At the same time, the CCBE considers that due account must be taken of the highly regulated nature of the legal profession, of the existence of a dedicated EU legal framework, that enables the cross-border mobility of lawyers, and of the Member States competence regarding recognition of third country qualifications[1]. The CCBE's main concern is to maintain the quality of legal services for the EU citizens who will rely on them.

The CCBE would appreciate being invited to any further consultation such as focus groups.

[1] CCBE (2021), *Guidelines for Bars & Law Societies on Free Movement of Lawyers within the European Union*: EN_EUL_20210521_FML-guide.pdf

II. Freedom of Movement of Lawyers within the European Union

For several decades, the free movement of lawyers within the EU has been governed by a specific body of EU legislation, in particular Directives 77/249/EEC, 98/5/EC and 2005/36/EC. This framework, as interpreted by the Court of Justice of the EU and supported by long-standing cooperation between Bars and Law Societies, enables lawyers to exercise their profession across borders within the EU while safeguarding fundamental public interest objectives.

Experience has shown that this framework operates effectively in practice, facilitating mobility for lawyers within the EU, while ensuring the proper administration of justice, the independence of the legal profession, professional secrecy and the protection of the rights and the interests of clients. The CCBE has consistently observed that the Lawyers' Directives constitute a successful model of sector-specific regulation, with limited interpretative disputes, due in part to structured cooperation between professional bodies and the availability of practical guidance. In this context, the CCBE and its member Bars and Law Societies have played a continuous role in supporting the consistent interpretation and application of EU free movement rules for lawyers. Since the entry into force of Directive 98/5/EC, the CCBE has provided an advisory and facilitative role, assisting competent authorities, promoting cooperation between home and host Bars, and developing shared interpretations of EU law[2]. The experience gained through this practice has contributed to clarifying the application of the CCBE Guidelines on the implementation of Directive 98/5/EC[3] and ultimately into the Free Movement of Lawyers Guide, which serves as a practical reference tool for Bars and Law Societies across the Union.

Within this existing and very advanced framework, the transparency and recognition of lawyers' qualifications are ensured through a structured system of professional regulation anchored at national level and supported by EU law. Access to the legal profession is subject, in the first place, to qualification and registration with the competent Bar or Law Society in the home Member State, which verifies academic and professional training, and compliance with ethical requirements. This initial registration constitutes the foundation of the professional status required and is accompanied by ongoing obligations, including adherence to disciplinary rules and continuous professional training[4]. In cross-border situations, this regulated status is recognised through legally protected professional titles and mandatory registration, where applicable, with the competent Bar or Law Society in the host Member State, in accordance with the applicable EU legal framework. **These mechanisms allow for reliable and immediate verification of qualifications and professional standing, based on mutual trust between the Bars[5]. Employers, Courts and clients therefore rely not on informal descriptions of skills, but on**

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[2] CCBE (2020), *Interpretation issues in relation to free movement of lawyers*, par. 2-8, describing the CCBE's role following the entry into force of Directive 98/5/EC :
EN_EUL_20200220_Interpretation-issues-in-relation-to-free-movement-of-lawyers.pdf

[3] CCBE (2001), *Guidelines on the implementation of the Establishment Directive (98/5/EC of 16 February 1998)*:
FURTHER CCBE GUIDELINES ON THE IMPLEMENTATION OF THE ESTABLISHMENT DIRECTIVE

[4] CCBE (2001), *Guidelines on the implementation of the Establishment Directive (98/5/EC of 16 February 1998)*, in particular sections 1 -3, and CCBE (2021), *Guide on the Free Movement of Lawyers within the European Union*, section III:
FURTHER CCBE GUIDELINES ON THE IMPLEMENTATION OF THE ESTABLISHMENT DIRECTIVE

[5] CCBE (2001), *Guidelines on the implementation of the Establishment Directive (98/5/EC of 16 February 1998)* , par. 3.2 and 3.4 (registration under Article 3 of the Directive based on a certificate of attestation issued by the home Bar or Law Society, and disclosure of professional and disciplinary status), and par. 6 and 9 (double disciplinary control and cooperation between home and host Bars), together with CCBE, *Guidelines for Bars & Law Societies on Free Movement of Lawyers within the European Union* (2021), section III, IV and VII:
FURTHER CCBE GUIDELINES ON THE IMPLEMENTATION OF THE ESTABLISHMENT DIRECTIVE

a regulated professional status that guarantees competence, independence, ethical obligations and ongoing professional accountability across jurisdictions. The regulatory framework applicable to the legal profession already provides structured responses to many of the issues identified in the Commission's call for evidence. While digitalisation may offer administrative efficiencies, it cannot substitute the regulatory mechanisms that underpin trust in the legal profession. For lawyers, the recognition of qualifications is inseparable from knowledge of national legal systems, procedural law, ethical frameworks and constitutional traditions. It is therefore not a purely technical or administrative exercise, but an integral component of the Rule of Law, based on a regulatory framework that is clearly defined and has long demonstrated its effectiveness in practice[6].

The CCBE considers that a horizontal approach to skills portability would not be appropriate for regulated professions such as the legal profession. Any modernisation of recognition processes must respect the close connection between legal qualifications and national justice systems and avoid simplified or automated mechanisms that could undermine existing safeguards and mutual trust.

With regard to tools supporting transparency and recognition procedures, the CCBE considers that there is scope to further facilitate the **exchange of information between Bars and Law Societies** and is open to have a deeper exchange in that regard. Digital tools to smoothen information exchange or assist bars and EU funds for it could be explored and might be useful. In this respect, bars' experience with the existing mechanisms for administrative cooperation, in particular the Internal Market Information system (IMI), should be taken into account[7].

III. Recognition of third country qualifications

Regarding the qualifications obtained outside the EU, the CCBE has already set out its position in detail in the context of previous Commission initiatives and recommendations.

Legal basis

When it comes to the **legal basis** indicated in the call for evidence, the CCBE supports fair and transparent recognition procedures, but considers that **the proposed use of Article 79 TFEU raises serious legal and systemic concerns**. In fact the Commission asserts that, with regard to Action 3, the legal basis for a "*potential legislative proposal for common rules for the simplification of procedures for the recognition of qualifications and skills of third-country nationals*" could be **Article 79(2)(a) and (b) TFEU**, concerning measures on *"the conditions of entry and residence"* and "*the definition of the rights of third-country nationals (...), including the conditions governing freedom of movement*"[8].

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[6] CCBE (2025), *Comments on the Commission Recommendation on the recognition of qualifications of third-country nationals*, p.3:
EN_ILS_20250227_CCBE-comments-on-the-Commission-recommendations-on-recognition-of-third-country-qualifications.pdf

[7] *CCBE (2021), Guidelines for Bars & Law Societies on Free Movement of Lawyers within the European Union*, section VII:
EN_EUL_20210521_FML-guide.pdf

[8] Article 79 TFEU (ex Article 63, points 3 and 4, TEC):
"*1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States,*

However, this provision cannot be interpreted as a legal basis relating to the internal market freedoms, nor as a basis for introducing a system for the recognition of professional qualifications comparable to that applicable to Union citizens. Such an interpretation would give raise to an improper use of the legal basis, leading to an undue extension of the scope of Article 79 TFEU beyond the limits clearly set by the Treaties.

The use of this provision to establish common rules for the simplification of procedures for the recognition of qualifications obtained in third countries would, first, entail the risk of insufficiently controlled access to the Union labour market, allowing the entry of persons who are not necessarily in possession of qualifications meeting the standards required within the EU. Second, such an initiative would significantly interfere with the sphere of **competence of the Member States, which retain primary responsibility for regulating professions and for defining the conditions for access to and exercise of professional activities**, in accordance with the principles of subsidiarity and proportionality.

Furthermore, the introduction of a system for the recognition of qualifications acquired in third countries on the basis of Article 79 TFEU would open the door to potential circumvention, creating incentives to obtain professional qualifications outside the Union for the sole purpose of subsequently gaining access to regulated professions within the EU, thereby bypassing the substantive and training requirements laid down in the legal systems of the Member States.

While, for certain professions, it might be possible to envisage a pathway based on equivalence of training founded on comparable and objectively verifiable standards, such an approach must be categorically excluded regarding the legal profession. Lawyers acquire their professional qualification in a Member State through a training and licensing process that presupposes an in-depth knowledge of national substantive and procedural law. Only after having obtained such qualification, and subject to strictly defined conditions under Union law, may lawyers benefit from the freedoms of establishment and the freedom to provide services within the EU.

Any legislative intervention that, directly or indirectly, allows for the recognition of legal professional qualifications obtained in third countries, without the prior acquisition of a qualification in a Member State, would therefore be incompatible with the allocation of competences laid down in the Treaties, with the regulatory framework governing regulated professions, and with the need to safeguard the rule of law and the proper functioning of national judicial systems.

Current framework

The CCBE underlines that third country lawyers can already apply for recognition of their qualifications according to the current international and EU framework as well as to Member States law, which retain their competence in this matter. Member States are competent to set their own

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and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:
(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;
(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;
(...) 4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States."

rules regarding the access to the legal profession and the recognition of qualifications of TCNs under the rules of General Agreement on Trade in Services – "GATS", such as Most Favoured Nation obligation. The CCBE has consistently underlined that Member States retain competence over access to the legal profession, and **there exist ways to apply for recognition in many national systems**. Reflection regarding any initiatives regarding recognition of qualification of third country lawyers should take into account **all the elements of the legal framework applicable to lawyers**.

The recognition of third-country legal qualifications must be subject to strict safeguards, and any facilitation measures must respect national legal systems, professional independence and the protection of citizens. These considerations have been articulated, inter alia, in the CCBE recommendation on the qualifications of Ukrainian lawyers (2022)[9] and in the CCBE comments on the Commission recommendation on the recognition of qualifications of third-country nationals (2025)[10] and remain fully applicable in the context of the Skills Portability Initiative.

The CCBE understand that the Commission's efforts are concentrating on the procedures regarding the recognition and that its attention is not on the legal sector. **The CCBE would like to urge the Commission to frame its rules in a careful way to avoid that the well-functioning legal framework for lawyers is inadvertently affected, in particular as regard the rules on the access to the legal profession.** The reasons why automatic recognition may be problematic were set in detail in the 2025 CCBE comments on the Commission recommendation on the recognition of qualifications of third-country nationals[11]. Based on lessons from the past, it is for instance clear that the automatic recognition opens the way to misuse the EU rules on free movement of lawyers.

The CCBE also finds that for the moment, **there is no need for any changes to the current framework regarding the recognition of qualifications of third country lawyers.** Above all, there is no evidence that in general, Member States suffer shortages of lawyers. Even if it were the case for some Member States, it cannot be concluded that an EU-wide system would be an answer.

An explicit exclusion of lawyers from the new rules on recognition of third-country qualifications envisaged by the Commission or an explicit clarification clause would bring legal certainty and avoid that the framework applying to lawyers can be inadvertently and negatively impacted.

From the perspective of the quality of legal services provided to citizens in defence of rights within individual legal systems, the profession of a lawyer requires extensive knowledge of national provisions. This requirement is confirmed within the EU framework on the provision of cross-border legal services and the free movement and establishment of lawyers, which justifies and acknowledges the importance of the profession for the functioning of justice, highlighting the negative impact that an automatic recognition of

[9] CCBE (2022), *CCBE recommendation on qualifications of Ukrainian lawyers:* EN_ILS_20220624_CCBE-recommendation-on-qualifications-of-Ukrainian-lawyers.pdf

[10] CCBE (2025), *Comments on the Commission Recommendation on the recognition of qualifications of third-country nationals:* EN_ILS_20250227_CCBE-comments-on-the-Commission-recommendations-on-recognition-of-third-country-qualifications.pdf

[11] CCBE (2025), *Comments on the Commission Recommendation on the recognition of qualifications of third-country nationals*, p.3: EN_ILS_20250227_CCBE-comments-on-the-Commission-recommendations-on-recognition-of-third-country-qualifications.pdf

the qualifications of third-country lawyers could have on the legal systems of Member States and, primarily, on EU citizens.

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

IV. Conclusion

In conclusion, for the legal profession, the existing EU framework, supported by long-standing cooperation between Bars and Law Societies, already ensures transparency, legal certainty and effective recognition and mobility for lawyers throughout the EU. While the CCBE supports the European Commission's objective of strengthening fair labour mobility and the Single Market, the legal profession stands as a good example of a sector in which skills portability is already well regulated, operational and effective within the EU. Any future initiative should therefore preserve the autonomy and specific role of regulated professions. Regarding recognition of qualifications of third-country lawyers, the CCBE wishes to stress that their current regulation at national level, which allows to apply for recognition in line with national rules set by competent Member States is an adequate piece of an entire, balanced framework applicable to lawyers.