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CCBE position paper on free legal counselling under the New Pact on Migration and Asylum

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Summary

The CCBE considers the introduction of free legal counselling under the New Pact on Migration and Asylum to be an opportunity to improve access to justice for applicants for international protection. Whether this opportunity is realised will depend substantially on the manner in which the concept is implemented by Member States. In this paper, based on its previous work and information collected from lawyers regarding the first months of implementation of this concept, the CCBE sets out conditions that must be met to harness the potential of this concept both for the protection of migrants' rights and for the effectiveness of the Member States' asylum systems.

The CCBE considers that the effectiveness of free legal counselling should go beyond checking whether a formal mechanism exists. It should rather verify whether an applicant can obtain, in sufficient time, independent, confidential, individualised and professionally competent legal advice capable of enabling the effective exercise of his or her rights. Lowering standards of legal assistance or excluding lawyers from entire areas of legal aid will inevitably lead to a decline in the quality of decisions, an increase in the number of appeals, and consequently a greater workload for all actors involved in the system.

1. Introduction

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 45 countries and, through them, more than one million European lawyers.

The CCBE has consistently underlined that effective access to legal advice, legal assistance and representation is an essential component of access to justice and of the effective exercise of fundamental rights by migrants and applicants for international protection.

The New Pact on Migration and Asylum introduces, for the first time in EU asylum law, a specific concept of free legal counselling (FLC) at the administrative stage of asylum procedures. In particular, Article 16 of Asylum Procedure Regulation[1] provides that Member States shall, at the applicant's request, provide free legal counselling during the administrative procedure and delineates its scope.[2] The concept must be read together with Articles 15 to 19 of that Regulation concerning legal assistance, representation and the

[1] Regulation (EU) 2024/1348 establishing a common procedure for international protection

[2] Article 16 APR: "For the purposes of the administrative procedure, free legal counselling shall include the provision of: (a) guidance on and an explanation of the administrative procedure including information on rights and obligations during that procedure; (b) assistance on the lodging of the application and guidance on: (i) the different procedures under which the application may be examined and the reasons for the application of those procedures, (ii) the rules related to the admissibility of an application, (iii) legal issues arising in the course of the procedure, including information on how to challenge a decision rejecting an application in accordance with Articles 67, 68 and 69".

conditions governing the provision of legal support. Moreover, the same concept is present in the provisions of Asylum and Migration Management Regulation[3] (Articles 21) regarding procedure determining competent Member State.[4]

The CCBE understands that this concept is something more than provision of information, but less than legal assistance and representation. Looking at the activities that counsellors should carry out, it is clear that FLC overlaps with legal assistance/advice. According to Article 16 APR, FLC includes for example assistance on the lodging of the application and guidance on legal issues arising in the course of the procedure, including information on how to challenge a decision rejecting an application in accordance with provisions on effective remedy.[5]

The CCBE welcomed the introduction of this right in its observations addressed to the European Union Agency for Asylum (EUAA) in February 2025[6]. It recognised that in principle, FLC has the potential to improve access to legal support, particularly in Member States where free legal assistance was previously unavailable during the administrative stage. At the same time, the CCBE stressed that the concept is new, emerged from the legislative compromise surrounding the Pact, and must be implemented carefully because of its direct consequences for access to asylum procedures, fundamental rights, access to justice and the right to an effective remedy under Article 47 of the Charter of Fundamental Rights of the European Union.

The CCBE has subsequently reiterated that implementation of FLC should be closely monitored and developed in consultation with the legal profession. In particular, the term "counselling" must not result in asylum applicants receiving legal advice of a lower standard from persons or bodies lacking the necessary independence, qualifications or experience.

This position paper builds on previous observations of the CCBE and examines in detail the elements which, in the CCBE's view, should guide Member States when designing and implementing systems of free legal counselling under the Pact. The purpose of the Pact is not merely to ensure formal compliance with the relevant provisions, but to promote systems capable of ensuring effective and meaningful access to justice in practice.

The CCBE recalls at the outset that FLC should be understood as part of a continuum of legal support. It should complement — and not replace — legal assistance and representation. Where Member States already provide free legal assistance at administrative stage, the introduction of FLC should not result in any lowering of existing standards. The highest standard remains access to a fully qualified and independent lawyer from the earliest possible stage of the procedure.

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[3] Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management

[4] Article 21 AMMR: "the free legal counselling shall include the provision of:
(a) guidance on and explanations of the criteria and procedures for determining the Member State responsible, including information on rights and obligations during all stages of that procedure;
(b) guidance on and assistance in providing information that could help determine the Member State responsible in accordance with the criteria set out in Chapter II of this Part;
(c) guidance and assistance on the template referred to in Article 22(1)."

[5] CCBE Guide for Bars & Lawyers on the New Pact on Migration and Asylum, 27.11.2025, available here.

[6] CCBE's observations and suggestions with regards to the concept of free legal counselling (FLC) conveyed to the EU Asylum Agency, 18.02.2025, available here.

2. Key elements for ensuring high-quality and effective free legal counselling

a) Independence of the provider

Independence must be a defining characteristic of free legal counselling.

Although the Pact allows Member States a degree of flexibility as regards the organisation of FLC, the nature of the tasks covered by legal counselling requires providers to be capable of acting independently from the authorities responsible for examining the asylum application or otherwise taking decisions affecting the applicant.

Article 16 APR shows that FLC extends well beyond the provision of general administrative information. It includes assistance with the lodging of an application, guidance concerning legal issues arising during the procedure and information concerning the means of challenging an adverse decision. Such activities inevitably involve legal assessment and may require the counsellor to identify procedural defects, question the position adopted by the administration or advise the applicant on remedies against decisions taken by State authorities.

A provider who is institutionally subordinate to the deciding authority, or whose professional position does not allow independent advice to be given, may therefore face an inherent conflict between the interests of the administration and those of the person seeking counselling. For example, in the Netherlands, FLC is provided by the Immigration Service with the justification that there is a separation within the service that does not allow for interference and excludes the conflict of interest. However, this solution raises serious doubts whether asylum seekers feel free to share their thoughts with an official that is employed at the same entity that decides on their case.

In a similar vein, provisions foreseeing an additional fee/bonus, payable to lawyers for each asylum seeker that applies for voluntary departure following a counselling session is clearly violating the principle of independence of lawyers.[7]

The CCBE has consistently maintained that legal aid providers should be independent and should not have the status of civil servants or public employees where such status risks conflicts of interest, undue interference or inadequate protection of professional secrecy.[8] The same principle should apply to FLC, particularly because of its substantial overlap with legal advice.

For these reasons, the CCBE considers that qualified independent lawyers are best placed to provide FLC. Lawyers are subject to professional and ethical obligations designed specifically to protect independence, loyalty to the client, avoidance of conflicts of interest and confidentiality.

Where national systems permit other appropriately accredited actors to provide FLC, equivalent safeguards concerning independence, confidentiality, professional competence and conflicts of interest must be guaranteed.

b) High quality and professional competence

Free legal counselling must not become a lower-quality substitute for legal advice.

[7] See the reaction of the Plenary of the Greek bars to a law proposing such a measure, 10.07.2026, available here.
[8] CCBE Recommendations on legal aid, 31.03.2023, available here.

The CCBE has previously observed that FLC is situated between the simple provision of information and full legal assistance and representation. However, many of the activities included within FLC — identification of relevant legal issues, assistance in presenting information, explanation of procedures and remedies — require legal knowledge and professional judgment.

The quality of counselling is particularly important in asylum proceedings. Decisions may depend on complex questions concerning persecution, subsidiary protection, admissibility, responsibility between Member States, vulnerability, family relationships or procedural deadlines. Incorrect or incomplete advice given at an early stage may have consequences that cannot easily be corrected during an appeal.

The CCBE therefore considers that persons providing FLC should possess appropriate qualifications and demonstrable knowledge of asylum and migration law and should receive regular specialised training. This is consistent with the CCBE's earlier recommendation that legal assistance in migration and international protection matters should be provided by qualified practitioners with relevant expertise, and that EU and national funding should support the training of lawyers to specialize in this field.

Quality should also encompass:

- sufficient time to understand the applicant's individual circumstances;
- familiarity with relevant EU and national legislation and case law;
- knowledge of the procedural consequences of statements and omissions made during the administrative procedure;
- appropriate training concerning vulnerable applicants;
- access to qualified interpretation where necessary;
- continuing professional training; and
- appropriate quality-assurance mechanisms which respect the independence of the legal profession.

The existence of FLC should therefore never justify providing a simplified or purely administrative service where the applicant's circumstances require legal analysis.

Some national examples show however a tendency to lower the standards. For instance, a reform in Sweden, limits free legal counselling to a maximum of two hours and an additional hour when justified under the APR and a maximum of one hour under the AMMR. Under the previous framework, applicants were entitled to a publicly funded legal representative who assisted them throughout the entire administrative proceedings. Austria is another country where the standards seem to have been lowered.

Moreover, for the reasons explained above regarding quality, the CCBE is against any use of chatbots or AI-tools to provide FLC. The CCBE is aware that some countries are envisaging and exploring such solutions. For the CCBE, such tools clearly cannot be considered as counselling. In addition, such a solution would go against the text of Article 16 of the Asylum Procedure Regulation refers to “entrusting a person with the provision of legal counselling (…)”.

c) Individualised counselling, confidentiality and professional secrecy

Effective legal counselling must, as a rule, be individualised.

The possibility under the Pact to provide counselling to several applicants at the same time may assist in communicating general information about procedures. However, group information sessions should not be considered equivalent to individual legal counselling which was meant by the co-legislators as it had to be close to free legal assistance.

The CCBE already expressed this position in its February 2025 observations, noting in particular the difficulty of guaranteeing confidentiality and ensuring that advice is properly understood in a group setting.

Asylum applications are intrinsically individual. They frequently concern highly sensitive information, including experiences of persecution, sexual or gender-based violence, torture, trafficking, family relationships, political or religious activity, health conditions or other vulnerabilities. An applicant may understandably be unwilling or unable to disclose such information in a group environment.

UNHCR similarly recommends that legal counselling be tailored to individual circumstances and stresses that group briefings cannot replace individualised counselling. It also highlights confidentiality, continuity and the need to allow applicants — particularly vulnerable applicants — to raise sensitive matters safely.

Confidentiality is therefore not simply a desirable characteristic of FLC but a condition for its effectiveness.

Where FLC is provided by lawyers, professional secrecy and legal professional privilege offer particularly strong guarantees. Member States should ensure that the organisational model adopted for FLC allows private communication between the applicant and the provider and prevents information obtained through counselling from being disclosed to decision-making authorities except where legally permitted and authorised. For instance, the presence of staff of the authority that is responsible for handling asylum application in the counselling sessions may create risks for confidentiality.

Professional secrecy is also one of the reasons why legal assistance provided by lawyers contributes to improving the quality of proceedings: individuals are more likely to feel confident and to speak openly with their lawyers, which inevitably leads to better-conducted proceedings.

d) Accessibility and early access

A right to legal counselling which cannot readily be exercised is not an effective right.

Applicants must therefore be informed, just after arrival and during the screening phase, in a language they understand, about: the existence of the right to FLC; how and where it can be obtained; whether it is free of charge; how to contact providers; and the relationship between FLC and subsequent legal assistance and representation.

The CCBE has repeatedly stressed the importance of providing legal support from the earliest possible stage. Its Guide for lawyers on the New Pact[9] notes that legal counselling plays a crucial role in securing effective access to asylum and emphasises the importance of providing it early, starting from when the application has been made.

The requirement in the APR that FLC be provided "at the request of the applicant" must not lead to a system which is merely passive. A person cannot meaningfully request a right of which he or she is unaware or does not understand.

Member States should therefore establish procedures in which applicants are actively informed about the availability of FLC and are given a realistic opportunity to access it.

Access should also be ensured in practice irrespective of where the applicant is located. Particular attention is required in:

- border areas and transit zones;
- detention facilities;

[9] CCBE Guide for Bars & Lawyers on the New Pact on Migration and Asylum, 27.11.2025, available here.

- remote reception centres;
- accelerated and border procedures;
- situations involving high numbers of arrivals; and
- procedures governed by particularly short deadlines.

One practical difficulty which should be taken into account is the physical distance separating asylum seekers placed in remote areas or centres and the place of work of FLC providers.

The CCBE has previously recommended establishing legal information points for migrants in border areas and major reception locations, staffed by lawyers from legal aid systems or otherwise sustainably financed by public authorities.[10]

Physical access to legal providers remains important. Remote communication may supplement but should not automatically replace face-to-face counselling, particularly in complex or sensitive cases or where the applicant has difficulties with literacy, technology, language or disability.

e) Access to the file and relevant information

Effective counselling presupposes access to the information necessary to understand the applicant's case.

The CCBE is aware that in some countries (e.g. Sweden) lawyers providing free legal counselling do not have access to applicant's file and finds it problematic.

A counsellor who does not know what information has been collected by the authorities, what statements have previously been made, or which documents form part of the administrative record may be unable to provide accurate advice.

The CCBE has therefore previously recommended that FLC providers who are lawyers should have access to the applicant's file in accordance with the relevant provisions of the APR. The protection afforded by professional secrecy further supports such access.

Member States should ensure that access is available sufficiently early to allow the provider to give useful advice before important procedural steps, including interviews or decisions, take place.

Access should include the possibility, subject to legitimate and proportionate restrictions under EU law, to obtain relevant documents and copies of material necessary for the provision of counselling.

f) Continuity of legal support

Where possible, applicants should have continuity of legal support throughout the procedure.

The CCBE has previously emphasised the advantages of the unity of action of the lawyer, from the first provision of advice or counselling during the administrative phase through to any administrative or judicial appeal. Frequent changes of adviser increase the risk of duplication, inconsistent advice, loss of relevant information and lack of trust between the applicant and the legal professional.

Continuity becomes especially important where a counsellor identifies matters which subsequently become central to the asylum interview or to judicial proceedings.

[10] CCBE recommendations on a framework on legal aid in the field of migration and international protection, 25.11.2022, available here.

National systems should therefore be designed, as far as practicable, so that the legal professional initially assisting the applicant may continue providing assistance or representation at subsequent stages.

FLC should thus be seen not as an isolated procedural event but as the first component of a coherent system of legal support.

g) Effective communication and interpretation

Legal counselling can only be effective if the applicant understands it.

Member States must therefore ensure access to qualified interpretation whenever linguistic barriers would otherwise prevent meaningful communication between the applicant and the FLC provider.

Interpretation should be available without cost to the applicant and should respect confidentiality.

The need for interpretation should be assessed in practice rather than solely by reference to assumptions about the languages an applicant "should" understand.

The CCBE has previously stressed that information concerning rights and procedures should be communicated in a language genuinely understood by the applicant.[11] UNHCR likewise identifies accurate communication through qualified interpreters as an essential condition of effective legal counselling.[12]

h) Special safeguards for vulnerable applicants

The design of FLC systems must take account of applicants with specific procedural or reception needs.

Children, unaccompanied minors, victims of trafficking, torture or violence, persons with disabilities and other vulnerable applicants may encounter particular obstacles in understanding procedures, disclosing relevant facts or obtaining legal assistance.

The CCBE's earlier recommendations on migration legal aid expressly highlighted the need for special arrangements for vulnerable groups and early access to specialised legal assistance.[13]

FLC providers should therefore be trained to identify indicators of vulnerability and know how to refer persons to appropriate specialised services where necessary.

Individual rather than group counselling should be strongly preferred where vulnerability or sensitive personal circumstances are involved.

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[11] CCBE recommendations on a framework on legal aid in the field of migration and international protection 25/11/2022, available here. & In Conka v. Belgium, ECtHR clarified that obtaining information on the available remedies printed in tiny characters and in a language they did not understand can be one of the factors affecting the accessibility of the remedy. It can also be an obstacle to the prospect of being able to contact a lawyer. In a similar vein, ECtHR in H.T. v Germany and Greece found a violation of Article 3 (procedural limb) taking into account the importance of information in a language the person understands and that the applicant had been hastily removed without access to a lawyer prior to removal.

[12] UNHCR Advocacy Brief: Legal counselling, legal assistance, and representation under the European Union Pact on Migration and Asylum, available here.

[13] CCBE recommendations on a framework on legal aid in the field of migration and international protection 25/11/2022, available here.

i) Adequate resources and sustainable funding

Formal recognition of the right to FLC will achieve little unless sufficient capacity exists to exercise it in practice.

Member States should anticipate the number of applicants requiring counselling and ensure that a sufficient number of appropriately qualified providers is available.

The CCBE has already stressed that capacity must be proportionate to demand and has recalled the case-law of the European Court of Human Rights concerning situations in which shortages of legal advisers may impair effective access to a remedy.[14]

Adequate funding, including for training of legal professionals, is therefore integral to the effectiveness of FLC.

The provision of legal support required to safeguard fundamental rights is a responsibility of the State and cannot depend on the systematic provision of unpaid professional work by lawyers or civil society organisations.

The CCBE has consistently called for adequate remuneration of legal aid lawyers, with rates reflecting the volume and complexity of the work involved. Adequate remuneration is also necessary to attract and retain practitioners with appropriate expertise and to ensure the long-term sustainability of the system.

Funding should also cover interpretation, necessary infrastructure, training and access to facilities in border or remote areas.

The lack of proper resources devoted to free legal counselling and legal aid risks makes the work of lawyers in this field unsustainable. It also has the potential of discouraging lawyers from exercising in the field of asylum. These risks were indicated by CCBE members. In Sweden, it was flagged as a potential consequence of the reform introducing a two-hours limit for legal aid at the administrative stage. Similarly, the amount of legal aid lawyers is decreasing in the Netherlands.

It is the CCBE opinion that a lower involvement of lawyers in the first stages of the procedure will not bring any advantages to Member States in the long term. To the contrary, it will negatively impact the entire asylum system (e.g. risks of more appeals).

j) FLC must not replace free legal assistance and representation

The distinction between FLC and full legal assistance must be preserved.

The introduction of FLC should not be used to justify the withdrawal, reduction or downgrading of more protective arrangements already existing under national law.

Where Member States already provide free legal assistance at first instance, those arrangements should be maintained.

The CCBE has consistently considered that access to a fully qualified lawyer from the beginning of the procedure represents the best standard. Early legal assistance helps applicants understand and exercise their rights and can also improve the efficiency and quality of administrative and judicial procedures.

[14] ECTHR, M.S.S. v Belgium and Greece, & CCBE Guide for Bars & Lawyers on the New Pact on Migration and Asylum, 27.11.2025, available here.

Restriction of first instance legal assistance in Finland and subsequent re-introduction of it can serve as a lesson. Studies carried out in Finland suggested that removing free legal assistance at administrative stage (legal aid) contributed to poorer decisions and more appeals, therefore, putting more burden on the system. Therefore, a study recommended that immediate access to legal aid after submission of an asylum application should be guaranteed for all asylum seekers, as this would make the entire process more effective.[15]

Member States should consequently treat the guarantees contained in the Pact as a minimum floor rather than a target ceiling.

k) Involvement of Bars and Law Societies

Bars and Law Societies should be actively involved in the development, implementation and monitoring of national FLC systems.[16]

They possess practical expertise concerning legal aid, professional qualification, training, deontology, professional secrecy and the organisation of legal services.

The CCBE has already called for Member States and EU institutions to consult Bars in implementing FLC and for regular dialogue between authorities, Bars and practitioners involved in migration and asylum law.

Such consultation is particularly important where FLC interacts with existing national legal aid schemes.

Bars may also contribute to: training and accreditation; development of practical protocols; identification of capacity needs; establishment of legal information points; monitoring difficulties encountered by practitioners; and evaluation of the quality and accessibility of the system.

l) Monitoring and data collection

Given the novelty of FLC, implementation should be subject to systematic evaluation.

The objective should not simply be to count the number of counselling sessions delivered, but to determine whether applicants are in practice able to obtain timely, confidential and meaningful legal advice.

Member States should therefore collect comparable data concerning, inter alia: the number of applicants informed of their right to FLC; the number requesting counselling; the number who actually receive it; waiting times; type and location of providers; use of individual and group counselling; availability of interpretation; access to applicants in border and detention facilities; continuity with subsequent legal assistance; and the resources allocated to the system.

The CCBE has previously recommended collecting statistics concerning legal assistance and legal aid in migration matters precisely so that needs, budgets and capacity can be properly assessed.[17]

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[15] Ministry of Justice of Finland, Report: Room for improvement in asylum seekers' access to legal aid, 12.12.2018, available here ; The Non-Discrimination Ombudsman's Report: Subsequent applications are a key factor in safeguarding basic rights and liberties in the asylum process, 24.04.2024, available here; The combined effects of the amendments to the Aliens Act and the practice of applying the Act with regard to the status of those requesting and receiving international protection, 2021, available here.

[16] See for instance CCBE response to the call for evidence on the five-year European migration and asylum strategy, 06.10.2025, available here.

[17] CCBE recommendations on a framework on legal aid in the field of migration and international protection 25/11/2022, available here.

Such monitoring should involve Bars, legal practitioners and civil society organisations and should be used to correct deficiencies identified during implementation.

3. Recommendations and conclusions

The CCBE considers the introduction of free legal counselling under the New Pact to be an opportunity to improve access to justice for applicants for international protection. Whether this opportunity is realised will depend substantially on the manner in which the concept is implemented by Member States.

The CCBE therefore recommends that Member States:

1. give priority to qualified independent lawyers as providers of FLC, particularly given the legal nature of the activities falling within its scope;
2. ensure that every provider possesses the necessary knowledge of asylum and migration law and receives appropriate specialised training;
3. safeguard independence, confidentiality, professional secrecy and the avoidance of conflicts of interest;
4. provide, as a general rule, individualised counselling, with group sessions being used primarily for general information and never as a substitute where individual advice is required;
5. ensure that applicants are actively and clearly informed of their right to FLC and can access it from the earliest possible stage;
6. ensure effective physical and practical access to providers at borders, in detention and reception facilities and in remote locations;
7. guarantee access to qualified interpretation whenever required;
8. ensure that FLC providers have timely access to the applicant's file and to the information required to provide meaningful advice;
9. promote continuity between initial legal counselling and subsequent legal assistance and representation;
10. provide specific safeguards and specialised assistance for children and other vulnerable applicants;
11. establish sufficient capacity and sustainable public funding, including adequate remuneration for lawyers providing legal services;
12. ensure that FLC does not replace or reduce existing systems of free legal assistance and representation and that higher national standards are preserved; in other words, uphold already existing higher standards in their national law during the process of the implementation of the Pact into national law;
13. involve Bars and Law Societies in the design, implementation and evaluation of FLC systems; and
14. establish transparent monitoring and data-collection mechanisms capable of assessing whether FLC is genuinely accessible and effective in practice.

Ultimately, the effectiveness of free legal counselling should not be assessed by whether a formal mechanism exists, but by whether an applicant can obtain, in sufficient time, independent, confidential, individualised and professionally competent legal advice capable of enabling the effective exercise of his or her rights.

Lowering standards of legal assistance or excluding lawyers from entire areas of legal aid will inevitably lead to a decline in the quality of decisions, an increase in the number of appeals, and consequently a greater workload for all actors involved in the system.

This approach is consistent with the CCBE's longstanding position that legal support must be understood as part of the broader guarantee of access to justice and the right to an effective remedy, rather than as a purely administrative component of migration management.