

Working as a lawyer across borders in the EU

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The CCBE is recognised as the voice of the European legal profession representing, through its members, **more than 1 million European lawyers.**

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1 AFFILIATE MEMBER



8 ASSOCIATE MEMBERS



6 OBSERVER MEMBERS



The Council of Bars and Law Societies of Europe (CCBE) has as its principal object to represent its member Bars and Law Societies, whether they are full members (i.e. those of the European Union, the European Economic Area and the Swiss Confederation), or associated or observer members, on all matters of mutual interest relating to the exercise of the profession of lawyer, the rule of law and the proper administration of justice as well as important developments in the law and the jurisprudence, both at a European and international level (Article III a) 'Objects' of the CCBE Statutes).

The CCBE has around 24 Committees and Working Groups and one of these is the CCBE EU Lawyers Committee which monitors and promotes the free movement of lawyers in the European Union.



EU founding principles of Free movement

Treaty on the Functioning of the European Union (TFEU): relevant provisions

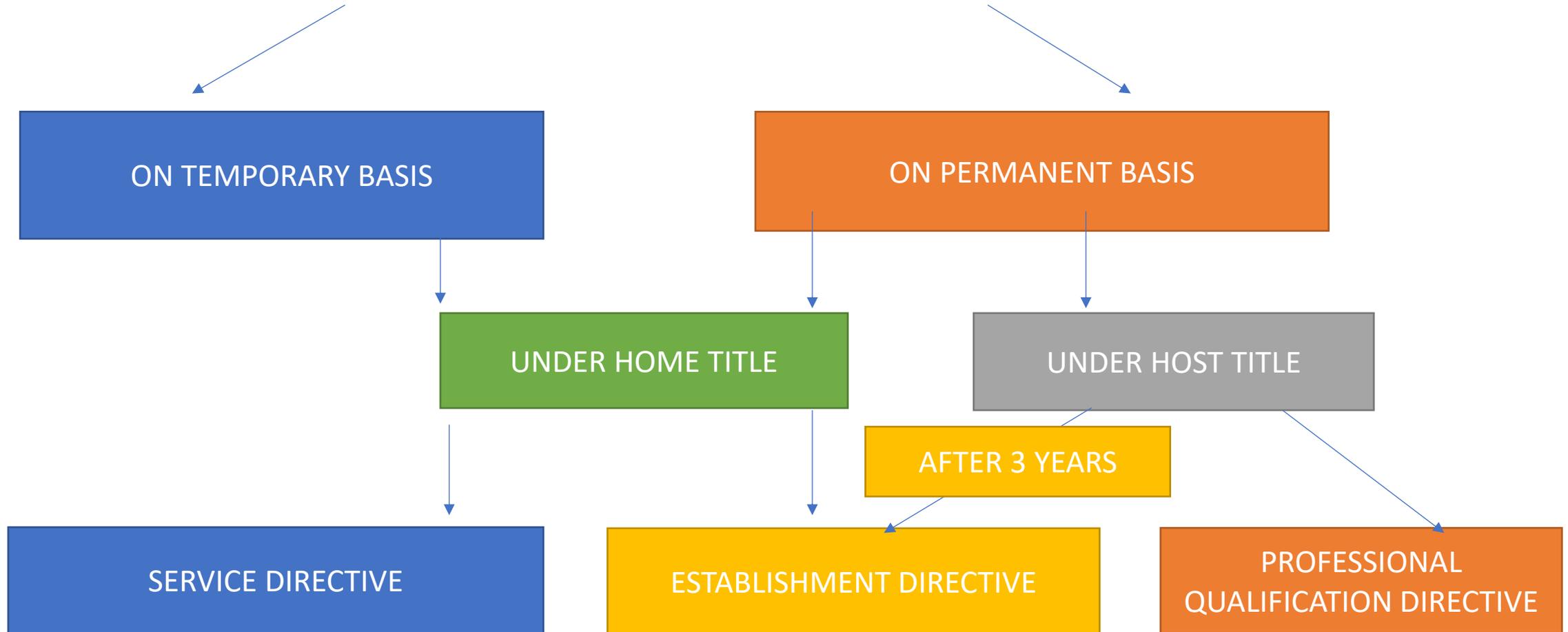
- Right of establishment (Article 49 TFEU)
- Freedom to provide services (Article 56,57 TFEU)
- To be implemented if necessary, through secondary legislation (directives, regulations, etc.)
- CJEU Case law (Reynders, Case 2/74)
- Mutual recognition without harmonisation: diversity of legal systems has prevented full mutual recognition of diplomas → sectoral Directives

Three Directives on cross border practice legal practices

- Sectoral Directives - Lawyers in the EU enjoy a unique regime of free movement
 - **Lawyers Services Directive – 77/249 /EC**
 - **Lawyers Establishment – Directive 98/5**
- **EU Professional Qualification Directive** (Directive 2005/36 as amended in 2013)

Note: this regime also applies to EEA countries and Switzerland through separate agreements on the free movement of persons.

PROVIDING LEGAL SERVICES IN HOST MEMBER STATE



EU Professional Qualification Directive – 2005/36

- Applied to all regulated professions, thus also the legal profession (general system)
- Replaced the previous Mutual Recognition of Diplomas Directive
- Immediate integration into the legal profession of the host State (usually through an aptitude test)

Free Movement of lawyers: materials developed by the CCBE at the destination of the Bars/lawyers



- CCBE Guidelines for Bars and Law Societies on Free Movement of Lawyers within the European Union (2021)
- Publication of “National Practical Guides”
<https://www.ccbe.eu/documents/professional-regulations/>

CCBE Guidelines for Bars and Law Societies on Free Movement of Lawyers within the European Union

- 7 Chapters
- First intended to the national competent authorities (Bars and Law Societies) but also toward EU lawyers
- Compilation of CCBE recommendations and experience gained in dealing with interpretation issues of the sectoral Directives, and relevant case-law from the Court of Justice of the European Union (CJEU).
- Annex: list of the jurisprudence on the EU regime on free movement of lawyers.

CCBE National Practical Guides

Each of the Sectoral Directives (called the Lawyers Directives) mentioned in the CCBE FML Guide will have been implemented through national legislation. The first place to seek guidance regarding the interpretation of a Directive's provisions will therefore be in the national implementing legislation for the relevant jurisdiction.

- In 2018, the CCBE put together an overview table to access at a glance key information on national/local rules (and their relevant references) applicable to lawyers who want to provide services or be established in another country in the EU.
- The national guides are available online
<https://www.ccbe.eu/documents/professional-regulations/>

Practical Guide for EU, EEA and Swiss Lawyers on Service and Establishment

FRANCE

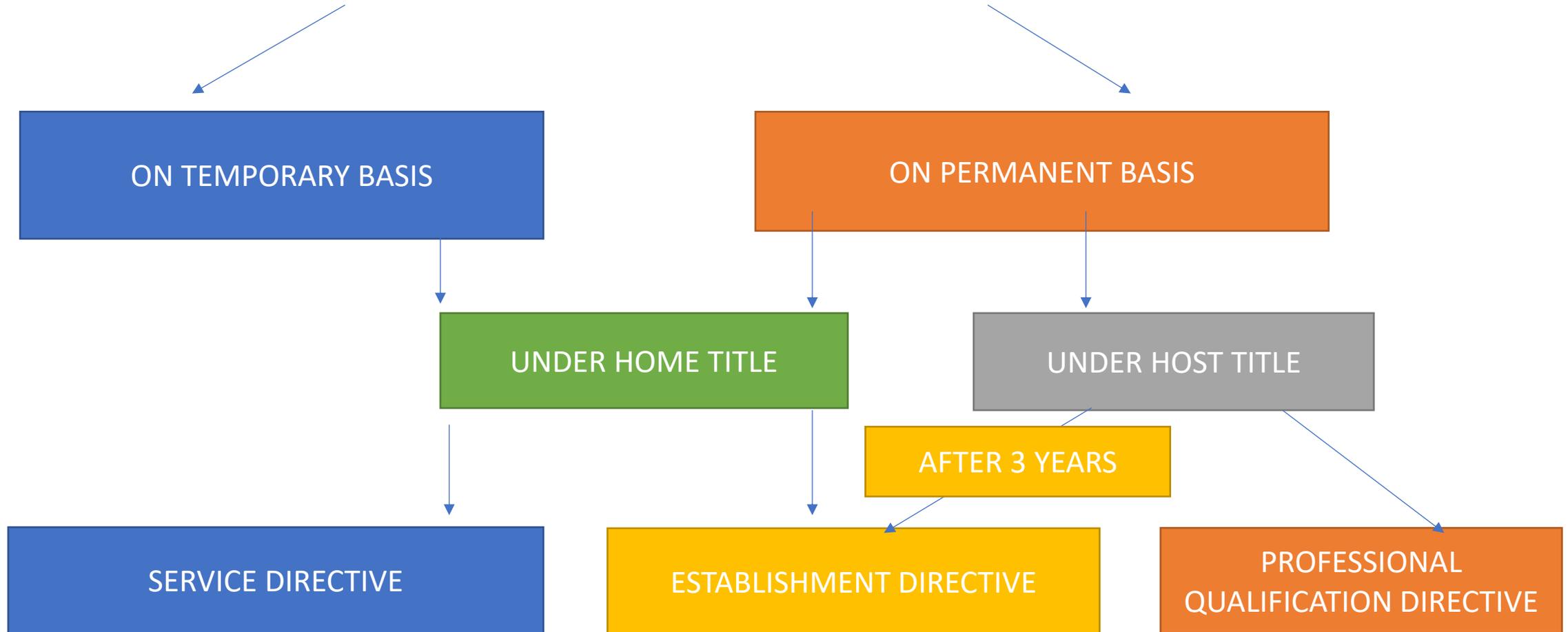
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This information is provided by our members Bars and Law Societies and seeks to reflect the rules applicable at national level at the time of the most recent update by the relevant Bar or Law Society. The CCBE cannot be held responsible for the accuracy or validity of the information provided, nor give a guarantee that the details are complete, accurate and up-to-date. All information is provided subject to modification, error or omission.

If an error is identified, please bring it to the attention of the CCBE which will correct it, where appropriate.

Structure	Information received
1. Establishment	<i>Etablissement d'un avocat exerçant sous son titre professionnel d'origine en vertu de la directive 98/5/CE visant à faciliter l'exercice permanent de la profession d'avocat dans un Etat membre autre que celui où la qualification a été acquise.</i>
1.1. Registration with Host Bar	<p>L'avocat souhaitant exercer à titre permanent sous son titre professionnel d'origine doit s'inscrire sur une liste spéciale du tableau du barreau de son choix.</p> <p>Liste des pièces à joindre pour l'inscription¹ :</p> <ul style="list-style-type: none"> • Attestation d'inscription du barreau d'origine datant de moins de 3 mois ; • Documents permettant d'établir l'identité, l'état civil et la nationalité ; • Attestation d'une compagnie d'assurances de son Etat membre d'origine indiquant, pour son activité en France, le montant et l'étendue de sa couverture Responsabilité Civile Professionnelle (RCP) ainsi que la date échéance du contrat ; • Extrait du casier judiciaire du ou des pays dont vous avez la nationalité, datant de moins de 3 mois ; • Justificatifs des conditions d'installation professionnelle, qui diffère en fonction du mode d'exercice (exercice individuel ; collaborateur libéral ou salarié ; exercice en structure) <p>Avertissement : les avocats européens admis sur le fondement de la Directive 98/5/CE doivent prêter serment.</p> <p>Textes de référence :</p> <ul style="list-style-type: none"> - Loi n° 71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques ; - Décret n°91-1197 du 27 novembre 1991 organisant la profession d'avocat

PROVIDING LEGAL SERVICES IN HOST MEMBER STATE



Free movement of lawyers – a distinct Regime

(1) Establishment – Directive 98/5 – Chapter 3 of the FML Guide

(2) Temporary services : Directive 77/249 – Chapter 4 of the FML Guide

+ **Two conditions:** being a lawyer (List of professional titles “home title”) + EU nationals (+EEA/Swiss nationalities)

The Lawyers’ Directives state (Article 1 of both Directives) that a lawyer is someone who is authorised to pursue his or her professional activities under one of the following professional titles: LIST

Thus **two ways** of providing services **under your home professional title** as a lawyer in another country:

- by practising on a permanent basis in another Member State
- or by providing temporary services across the border

Exclusive to each other

The boundaries between Establishment/Temporary Services is sometimes not easy to draw.

In our Guide, we illustrate this point:

For example:

- Opening a law firm under home title after permanently migrating to another Member State would be establishment.
- Dealing with a brief client matter for one day in another Member State would be the provision of temporary services.
- But what about a sojourn of a few months? This depends. The answer is important because **very different rights and duties** stem from the correct decision, which in turn depends on the directive applying to the lawyer. The person cannot fall under both: the Directives are mutually exclusive (Article 1.4 of the Establishment Directive).

Temporary Services – Directive 77/249

- Right to provide services under home title without registration
- In the case of court related work – The Directive allows Member States to require the incoming lawyer:
 - introduction to the local court / local rules of the host State (Article 4)
 - to work in conjunction with a local lawyer (Article 5). This latter should not amount to an obstacle for providing services – see e.g CJEU Lahorgue case.

Electronic Communication (access to e-services of the host State)

- Usually, it is required from the lawyer to have secure access or access to an intranet network to obtain such communications. If those electronic communications are administered by courts, Bars may not be able to intervene directly in order to allow a European lawyer to gain access to the proceedings they are undertaking. In that case, it may be necessary to work with a local lawyer. However, it is now clear that the Courts (as part of the Member State) need to consider how to permit access to such systems to incoming lawyers from other Member States.
- **Lahorgue case (C-99/16)**, 18 May 2017: this case concerned the denial for an access to e-services for lawyers providing services and whether such denial was justified.

Lahorgue case (C-99/16), 18 May 2017

The Court of Justice had to interpret Directive 77/249 but also other provisions of EU law :

*“the refusal, on the part of the competent authorities of a Member State, to issue a router for access to the private virtual network for lawyers to a lawyer duly registered at a Bar of another Member State, for the sole reason that that lawyer is not registered at a Bar of the first Member State, in which he wishes to practise his profession as a free provider of services, **in situations where the obligation to work in conjunction with another lawyer is not imposed by law, constitutes a restriction on the freedom to provide services under Article 4 of the Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, read in the light of Article 56 TFEU and the third paragraph of Article 57 TFEU.** It is for the national court to determine whether such a refusal, in the light of the context in which it is put forward, genuinely serves the objectives of consumer protection and the proper administration of justice which might justify it and whether the resulting restrictions do not appear to be disproportionate in regard to those objectives.”*

Establishment – Directive 98/5

- Duty to register (**Article 3.1**)
- Once established, a right to practice home, EU and host State law (**Article 5.1**)
- Again, in case of representation before local Courts, there can be a need to work in conjunction with a lawyer (**Article 5.3**)
- Ability to acquire host State professional title, more or less automatically, after 3 years practice in the host State (**Article 10**)

Establishment – Refusal of registration

- 1) Where the lawyer is not an EU national;
- 2) Where the lawyer holds no valid professional indemnity insurance according to Article 6;
- 3) Where the lawyer is practising within a legal structure in the sense of Article 11.5

Establishment - some practicalities for lawyers

1) Certificate of attestation (Article 3)

- The lawyer must remain registered in the home country, and therefore be required to provide proof of registration or renewal at the request of the authorities (bars and law societies) in the host country.

2) Multiple affiliation: a lawyer who is member of more than one Bar

- The CCBE recommends:

*“Where a lawyer registering under Article 3 of the Directive has more than one home jurisdiction, the relevant competent authority is entitled to ask for a certificate of attestation under Article 3.2 of the Directive **from each of the competent authorities** with which that lawyer is registered in a Member State.”*

3) Practical requirements to avoid confusion with host State professional title (Article 4 of the Establishment Directive):

The home State title should not be translated into the equivalent title in the host State, as this could lead to a misunderstanding that the lawyer is admitted to the bar in the host State

- The CCBE recommends:

In order to inform clients and other lawyers, EU bars and law societies are encouraged to ensure that, in addition to the provisions of Article 4 of the Directive, lawyers practising under their home title in another Member State also put on their notepaper the following information:

(a) a statement attesting to their registration with the competent body in the host State (written in the host language); and

(b) a statement of their registration with the home bar in the home State (translated into the host language).

Exception for certain services

- Acts reserved for professions other than that of lawyer, even if the lawyer can perform them in the home state
- Usually, **acts that fall within the monopoly of notaries** are excluded.
- This was the subject of a case law before the CJEU: ‘Piringer’ C-342/15, 9 March 2017

What about the deontology of lawyers in cross border activities?

■ Double Deontology

- Lawyers practising under the EU regime on free movement of lawyers are subject simultaneously to two professional codes of conduct - the code of their home State and the code of the host State - in respect of all activities pursued in the host State.
- How to deal with potential conflicts between professional rules from different bars under the EU regime on free movement of lawyers?
 - The CCBE has adopted an interpretation of the ‘double deontology’ provision of the Directives (Article 6 of the Establishment Directive, Article 4 of the Services Directive).
 - **Chapter 2 of the FML Guide**
- **Code of Conduct for European Lawyers (dates back from 1988, amended since then)**

CCBE Code of Conduct for European Lawyers

- The CCBE has developed a [Code of Conduct for European Lawyers](#) with the objective (among other things): “to minimise, and if possible eliminate altogether, the problems which may arise from “double deontology”, that is the application of more than one set of potentially conflicting national rules to a particular situation (see Article 1.3.1)”.
- The CCBE Code of Conduct was intended to be adopted by all European States (Art. 1.3 of the CCBE Code of Conduct) : all lawyers who are members of the bars of these countries (whether their bars are full, associate or observer members of the CCBE) have to comply with the Code in their cross-border activities within the European Union, the European Economic Area and the Swiss Confederation as well as within associate and observer countries.

CCBE Code of Conduct for European Lawyers

- There can be no problem if the content of the particular rule in question is identical or nearly identical in both codes of conduct. If both rules “point in the same direction”, then it is usually stated that the application of the wider rule will also incorporate the application of the narrower one.
- It is only if there is a conflict between the two rules that a problem might arise (see point above); however, this is a rare occurrence.
- **EXAMPLES**

Professional indemnity insurance

Article 6.3 of the Establishment Directive)

- There is one area of double application of rules – see double deontology above - with which the Directive deals specifically and that relates to professional indemnity insurance. A lawyer establishing in the host country will have to satisfy both home and host rules relating to professional indemnity insurance, which may not be the same.
- The Directive states that a host Member State may require (not must require) a lawyer practising under home State professional title, either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that State lays down for professional activities pursued in its territory. However, a lawyer practising under home state professional title shall be exempted from that requirement if he or she can prove the existence of insurance taken out or a guarantee provided in accordance with the rules of the home Member State, insofar as such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the competent authority in the host Member State may require (again may, and not must) that additional Guidelines for Bars & Law Societies on Free Movement of Lawyers within the European Union insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the home Member State.

Professional indemnity insurance

The CCBE's guidelines on the implementation of the Directive say:

- The bodies responsible in each Member State for arranging and/or providing professional indemnity insurance as mentioned in Article 6.3 of the Directive shall liaise with corresponding bodies in other Member States to ensure that, so far as possible, insurance arrangements made by a lawyer in one Member State are respected and recognised in another Member State both before and after integration under Article 10 of the Directive, to avoid problems relating to double premiums and double insurance.
- *Examples:* The European Commission has in the past encouraged member bars to follow the example of the Paris Bar and the Law Society of England and Wales, which have come to a mutual recognition agreement in respect of the professional indemnity insurance schemes in each other's jurisdiction.

EXAMPLES OF ECJ CASES



- Case C-431/17
- Case C-438/22



PRACTICAL ISSUES WITH PROVIDING LEGAL SERVICES –

AREAS NOT COVERED BY DIRECTIVES AND OPEN IN NATIONAL LAWS

Thank you. Any questions?

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