Evaluation of the Legal Framework for the Free Movement of Lawyers

Final Report

Projectnumber: BA03973

This study has been financed by the European Commission,
DG Internal Market and Services (MARKT/2011/071/E)

Mr. Dr. S.J.F.J. Claessens, M.C.C. van Haeften MSc, Dr. N.J. Philipsen, Drs. B.J. Buiskool, prof. dr. H.E.G.S. Schneider, Dr. S.L.T. Schoenmaekers, drs. D.H. Grijpstra, prof. dr. H.J. Hellwig (advisor).

Zoetermeer, November 28, 2012

Contents

Executive Summary

A Introduction

The Legal Framework for Free Movement of Lawyers

The profession of lawyer takes up a unique position among the professions in Europe. First, lawyers have an important function in the administration of justice and in safeguarding the rule of law. Second, lawyers play a vital role in the economies of Member States and the functioning of the internal market of the European Union. Third, the profession of lawyer is specifically targeted to and based on the national legal systems in which prospective lawyers train and fully qualified lawyers practise. In general, that means that lawyers are trained and, therefore, are experts in their own respective legal systems, but do not necessarily have knowledge of other legal systems.

Lawyers also take up a unique position when it comes to the legal regime for free movement applicable to them in the European Union. Since the consolidation of the directives applicable to the medical professions and architects in Directive 2005/36/EC, the profession of lawyer is the only (liberal) profession that is covered by a separate system of Directives: the Lawyers' Services Directive and the Lawyers' Establishment Directive. The system applicable to lawyers specifically employs a unique mechanism of mutual recognition, without (immediate) integration into the profession of the receiving Member State.

Besides the two Lawyers' Directives, lawyers can also make use of the general system of Directive 2005/36, which leads to full integration in the profession of the receiving Member State. Under this regime, to proceed to full integration, a lawyer must first successfully complete an aptitude test. The Lawyers' Establishment Directive also offers a possibility to integrate fully in the legal profession, without the need to do an aptitude test, but only after the lawyer in question has practised for three years in the receiving country under the system of the Lawyers' Establishment Directive.

The traditional coupling between the Member State and the content of the knowledge and activities of lawyers along with the role of the lawyers in the national justice system has led to strict controls on access to and exercise of the legal professions. The qualification criteria and the extent (or even existence) of activities that can only be carried out by lawyers (monopolies) differ largely between the Member States, which is a complication in the realization of free movement of lawyers in the European Union.

Evaluation Study

This report contains the results of a study evaluating the legal framework for the free movement of lawyers. The overall object of this study was to carry out an evaluation of the legal framework for the free movement of lawyers, with a focus on the two Lawyers' Directives, while taking into account market and regulatory developments in the Single Market.

In the course of the study, a wide variety of research methods has been used.

- Interviews with representative organizations at the EU level;
- Interviews with large, multinational law firms (17 in total);
- Country studies in all 27 Member States;
- 21 qualitative case studies on specific topics (76 interviews in total);
- A web survey among lawyers, in which 2.365 lawyers participated.

B Results of the Study

Implementation of the Directives

In general, both the Lawyers' Services Directive and the Lawyers' Establishment Directive have largely been implemented correctly in the Member States. As far as irregularities are concerned, these are most notably encountered with regard to the administrative requirements for registration under the home title (on the basis of article 3 of the Lawyers' Establishment Directive) and to a lesser extent to the introduction of limitations on professional activity.

Both Lawyers' Directives offer some discretionary room to the Member States in the implementation in national law, such as whether or not to use requirements of working in conjunction with local lawyers, and introduction to the court and/or Bar president.

The requirement to work in conjunction with a local lawyer in court proceedings is implemented in almost all Member States. The survey shows that many lawyers have experienced benefits from this, although some have experienced difficulties, in particular the costs. At present, there is no pressing need to change the Directives in this regard.

Some form of introduction to the court is required in ten Member States. Countries that have prescribed it are generally of the opinion that it is important and that this should remain possible. The introduction requirement itself seems of little importance, and the study has not provided any indication that it is perceived as a significant obstacle to mobility. Therefore, we conclude that there is no need to change the Directives on this point.

Use of the Legal Framework

Familiarity with the possibilities that the Legal Framework offers

The use lawyers make of the Directives is partly dependent on the extent of their knowledge of the possibilities that the Directives offer. Interviews have shown that the freedom to provide temporary cross-border services within the EU is by now taken for granted by European lawyers. The web survey shows that the possibility to integrate into the profession of another country after being established there for (at least) three years is less well-known than the possibility of establishing under home-country professional title and the possibility of integration after completing an aptitude test (by making use of the Professional Qualifications Directive).

Temporary Cross-border Services

As registering is not required when lawyers provide services temporarily in other Member States, there are no official statistics available on the number of lawyers providing services in other countries. Interviews and secondary sources, however, indicate that there is a large market for temporary cross-border legal services. Often temporary cross-border services are provided at a distance, for example by e-mail or telephone.

Permanent Establishment in another Member State

According to the most recent available statistics in Member States (varying from 2008 - 2012) around 3.5 thousand lawyers have made use of the Lawyers' Establishment Directive by establishing themselves in another EU Member State. Belgium is the country in which most lawyers from other EU Member States are established under the Lawyers' Establishment Directive. This is mainly due to the presence of EU institutions in Brussels. Other countries in which relatively many lawyers are established are Germany, Luxembourg (the seat of the European Court of Justice), Italy, and France.

Registration as an established lawyer in another country does not pose major administrative difficulties for most lawyers. In southern European countries, however, 58% of the lawyers find that much or very much time was involved in registering as a lawyer.

Admission to the Profession of another Member State

With regard to the number of lawyers that have gained admission to the profession of the host Member State using the route of the Establishment Directive, it is very difficult to give exact numbers. Lawyers that have fully integrated often disappear from lists of foreign lawyers and, therefore, most bars cannot provide exact numbers retrospectively. However, judging from what the bars have provided, the number is somewhere between 200 and 300 lawyers in all Member States taken together.

According to the Regulated Professions Database of the European Commission, a total of 3 544 lawyers have had their qualifications recognized by making use of the Professional Qualifications Directive or its predecessor Directive 89/48/EEC in the period from 1997 to April 2012. The implementation of the Lawyers' Establishment Directive did not lead to a reduction of the number of lawyers applying for recognition of their qualifications under Directive 2005/36/EC.

The survey shows that important reasons for lawyers to prefer the route of the Professional Qualifications Directive over that of the Establishment Directive are that lawyers want to integrate earlier than after three years, or that they did not want to establish in the host country. In addition, many lawyers do not consider the aptitude test to be too complex, considering its objective. We conclude that in this sense the Lawyers' Establishment Directive is complementary to the Professional Qualification Directive, since both routes are used, for different reasons.

Besides, there are likely other reasons why the route to admission of the Professional Qualifications Directive has often been chosen instead of the route of the Lawyers' Establishment Directive. First of all, as noted above, the provision is not very well-known compared to other possibilities that the legal framework offers. Second, the practical implementation is surrounded by a great deal of uncertainty among the Bar Associations and

lawyers that mainly seems to centre around the amount of experience with national law necessary for integration, and the influence of European law thereon, and what is necessary to fulfil the requirement of three years of 'effective and regular pursuit'. As this uncertainty will only be settled after at least three years of practice, this may motivate lawyers to opt for a route that offers more certainty in the short-run, and do an aptitude test, under the Professional Qualifications Directive. This will be the case even more so in the countries in which the aptitude test is considered not to be that difficult. Third, insurers in general seem to be hesitant to accept a lawyer that has gained admission to the profession of another country via the route of the Lawyers' Establishment Directive. They are more inclined to accept a lawyer who has proven his or her abilities by successfully completing an aptitude test.

Impact of Lawyers' Mobility

Meeting the Needs of Clients

In general, the needs for cross-border legal services have increased since the introduction of the Lawyers' Directives due to e.g. globalization, integration of markets, family migration, cross border marriages, cross border trade and mobility, and the ease of cross-border provision of services at a distance by the use of ICT. Most individual citizens and small businesses prefer a lawyer that speaks their language.

At the level of the European Union, the study has provided no indications that the needs of clients of cross-border legal services are not being met as a result of flaws in the legal framework or a lack of mobility of lawyers. National Bar Associations are also not aware of such difficulties. The web survey indicates that, as a result of lawyers' mobility, the range of services offered by lawyers has grown. We, therefore, conclude that, in general, the legal framework has provided the conditions under which cross-border needs of clients can be met. Although there are reasons that preclude clients from hiring a lawyer in cross-border cases, one of these is not a general lack of lawyers competent in cross-border cases, but other reasons such as the additional costs and the complexity of cross-border cases.

The study has provided one indication of an area in which client needs may not be met. In some new Member States the capacity of lawyers competent in cross-border cases seems to be insufficient, partly due to the fact that education has traditionally not focused on comparative and European law.

Economic Impact

Lawyers established in another Member State and lawyers that have been admitted to the profession in another country put together are roughly estimated to account for a turnover of around 640 million Euros annually.

For temporary cross-border legal services, no statistics covering all Member States of European Union are available. Based on a survey carried out in 2008, twenty-two countries put together accounted for a turnover of 4.2 billion Euros for services to clients residing in another EU Member State. This clearly shows that the provision of temporary cross-border services accounts for a turnover that is much higher than that of lawyers established abroad.

The survey among lawyers shows that the most commonly perceived effect of lawyer mobility is an increase in the range of legal services that is offered. In addition, relatively many lawyers perceive an increase in competition pressure because of cross-border mobility of lawyers. This seems to be especially so in countries in which the average profitability rate is relatively high (e.g. Luxembourg). Lawyers are somewhat divided about whether lawyer mobility leads to increased accessibility of lawyers' services and to an increased quality of legal services. Almost half of the lawyers think that mobility does not to lead to lower fees for legal services, while a small minority thinks it does.

Remaining Difficulties

One of the objectives of the study was to identify remaining barriers and difficulties for the free movement of lawyers.

The survey shows that almost a third of the lawyers that have *established* in another country did not experience difficulties related to practicing the profession of lawyer while being established in another country. On the other hand, one third of the lawyers has experienced difficulties related to professional indemnity insurance (e.g. because they had to take out insurance in both their home and home country). One quarter experienced difficulties because of continuing requirements of the Bar in the home state, resulting from the requirement to stay registered with the home bar. Difficulties related to double deontology (i.e. that the Directive requires lawyers to comply with deontological rules of both the home and the host Member State) were encountered by one-fifth of the lawyers. A case study additionally shows that lawyers who are employed as in-house counsel may experience difficulties carrying out cross-border activities because in-house employment is not permitted for lawyers in many Member States. One particular problem is that it is unclear whether the Directive applies to situations where a lawyer from a Member State which prohibits in-house counsel can establish as an in-house lawyer in another Member State in which that is permitted.

Lawyers that have provided cross-border temporary *services* have encountered fewer difficulties than those that have established in another country. The survey shows that half of the lawyers that have provided temporary services did not encounter any difficulties related to the practice of their profession at all. The difficulties that have been most commonly encountered by the others are a lack of professional expertise in the law of another Member State and difficulties related to language. About one out of every ten lawyers have encountered difficulties related to double deontology and a lack of understanding and acceptance by other professionals, such as judges and local lawyers.

Because of developments in the national regulations applicable to lawyers in various Member States, the differences between regulations, hence also difficulties related to double deontology, have grown. There are three kinds of problems related to double deontology:

- It is not always clear which regulations apply, resulting in legal uncertainty, risks and extra costs for lawyers in determining what regulations apply
- There are differences in deontology between Member States resulting in competitive disadvantages for lawyers working at a cross-border level
- In some cases it is impossible to comply with double deontology, because rules are contradictory

These problems can act as a deterrent for both clients and lawyers to engage in cross-border activities. This is confirmed both in interviews and through the survey.

Recent Developments

At the European Level, there have been a number of developments that may possibly impact the system of free movement of lawyers. Specific mention in this case is made of the efforts made by the European Union to establish a European order for payment procedure, a European small claims procedure and a directive on legal aid in cross border disputes. These can all be characterized as harmonization measures. Harmonization can potentially considerably help the free movement of lawyers since it reduces the differences in the legal systems across the Member States from the perspective of content. The study did not reveal any barriers or difficulties in relation to the services of lawyers in these procedures.

At the national level there have been a number of reforms, of which developments in relation to business structures are especially relevant for cross-border mobility of lawyers and law firms. The Lawyers' Establishment Directive, namely, contains an article on joint practice (article 11). This article allows Member States to prohibit lawyers from practicing where they are members of a grouping which includes members who are not lawyers. In most Member States, non-lawyer management and ownership of law firms are not allowed. However, recently a number of Member States have allowed some forms of non-lawyers involvement in law firms. England and Wales, for example, introduced the possibility, subject to certain conditions, of non-lawyer management, ownership and multidisciplinary practises (alternative business structures or ABS's). Non-lawyer ownership has also been permitted to some extent in Scotland, Italy, Spain and Denmark. Since these kinds of practices remain illegal in the majority of Member States and most bar associations are against introducing them, the researchers think the safeguards in article 11 of the Establishment Directive are, generally speaking, still appropriate. However, it should be clarified whether the right of the host state to prevent a lawyer from acting in the name of a grouping (or to forbid the opening of the establishment altogether), as stated in art. 11(5) of the Lawyers' Establishment Directive, is *per se* a right or whether the exercise of such right must meet the Gebhard-test. The latter option would be in accord with article 15 of the horizontal Services Directive.[1]

Some Member States have introduced firm-based regulation besides the existing individual lawyer-based rules. In England and Germany some firms are granted lawyer titles. It is unclear whether these firms are able to make use of the Lawyers' Directives. Both Lawyers' Directives are primarily aimed at individual lawyers. The researchers suggest to broaden the scope of the Directives so that law firms (at least those without non-lawyer managers/owners) are recognized by them so that they can also make use of the freedoms provided.

[1] See also Regulatory Policy Institute, *Assessing the economic significance of the professional legal services sector in the European Union*, 2012, p 81, where it is argued that "a careful consideration of the proportionality of any restrictions on ownership and business structures may be merited".

C Main Conclusions

During the course of the study, six objectives of the Lawyers' Directives with corresponding success criteria were identified. On the basis of the results of the study we have come to the following conclusions about the success of the directives in meeting these objectives.

Objective 1: The removal of any restrictions on the provision of services based on nationality or on conditions of residence for lawyers
In the course of the study no evidence has been found of any conditions or restrictions based on nationality or conditions of residence for the provision of services by lawyers coming from other EU Member States. The freedom of providing cross-border services within Europe by EU qualified lawyers seems to be generally taken for granted by the lawyers. In this regard the Legal Framework can be regarded as highly successful.

Objective 2: Enabling qualified lawyers to offer services in Member States other than that in which they obtained their qualification
The Lawyers' Services Directive has formally created the possibility for qualified lawyers to provide services in any EU Member State. It has successfully taken away (national) legislative barriers for the provision of services. The absence of legislative barriers is confirmed by the notably low amount of case law on the Lawyers' Services Directive, since its becoming effective in 1977. The study has shown that cross-border provision of services has become a common, largely unproblematic practice in the legal sector in the EU.

Although the Directive has been very successful, there are some areas in which the free provision of services can meet with difficulties, notably the parallel application of the deontology of the home and the host states. The identified problems are such that they, in the opinion of the researchers, are an important reason to revise the current system of double deontology. In principle, different approaches could be taken to reduce difficulties related to double deontology. Dismissing double deontology in favour of single deontology (home country rules for temporary services; host country rules for established lawyers) will likely be the most effective in removing the difficulties in the area of deontology.

The Lawyers' Services Directive does not address the topic of professional indemnity insurance, whereas the Lawyers' Establishment Directive does. The researchers therefore recommend changing the Lawyers Services' Directive so that it states that when a lawyer renders temporary cross-border services these must be covered by his home country insurance.

Objective 3: Enabling establishment of lawyers in a Member State other than that in which they obtained their professional qualifications
The Lawyers' Establishment Directive has provided European nationals who are qualified EU lawyers the opportunity to establish and register with the Bar in all EU Member States. The Directive has been implemented in all Member States (although an infringement procedure against Bulgaria is still pending), making it legally possible for lawyers to establish in all EU Member States.

The fact that establishment is legally possible does not automatically mean it is also always easy and devoid of practical difficulties. First of all, the administrative requirements of

competent authorities for establishment differ across countries (and sometimes even within countries in Member States with decentralized bars). Second, around a third of the lawyers that established abroad have experienced difficulties related to professional indemnity insurance, often resulting in the need for lawyers to take out multiple insurances. Lawyers also have encountered practical difficulties that are related to social insurance and pension. Finally, the difficulties in the area of deontology not only apply to the provision of services but also to establishment.

To facilitate the establishment of lawyers, the researchers suggest that the process of registration should be simplified and made more uniform across Member States. This can be done in a number of ways, such as by including detailed requirements for registration in the Directive or by creating the possibility to use an identity card, such as the European Professional Card or the CCBE identity card, in the process of registration. The (re-)introduction of IMI for the legal professions could also be helpful in a number of ways. Competent authorities could then be in direct contact with each other and exchange information, possibly relieving the burden of the candidate that wishes to register as an established lawyer. Intensified contact between bars could also be helpful when bars need to assess the professional indemnity insurance policies of lawyers from other Member States, which could help remove some of the obstacles encountered.

A specific obstacle for in-house lawyers is that it is not clear whether article 8 of the Establishment Directive applies to situations in which a lawyer from a Member State that prohibits in-house counsel can establish as an in-house lawyer in a country in which that is permitted. From the point of view of facilitating free movement of lawyers, the researchers think it would be better to explicitly regulate in the Directive that lawyers have the freedom to work as in-house counsel in host countries in which that is permitted, irrespective of the regulations applicable in the home state of the lawyer.

Objective 4: Enabling fully qualified lawyers to achieve integration into the profession after three years of professional practice in the host Member State under their home-country professional titles

The Lawyers' Establishment Directive provides the opportunity to achieve integration into the profession of another country after three years of professional practice, without the need to take an aptitude test. Only a limited number of lawyers (a few hundreds) have made use of this provision since the implementation of the Directive. In the same period, thousands of lawyers have achieved integration into the profession by making use of the Professional Qualifications Directive. The limited use of the route of the Establishment Directive is likely due to a number of difficulties.

First of all, the provision is not very well-known compared to other possibilities that the legal framework offers. Second, the practical implementation is surrounded by a great deal of uncertainty among the Bar Associations and lawyers about the requirements. Third, insurers in general seem to be hesitant to accept a lawyer that has gained admission to the profession of another country via the route of the Lawyers' Establishment Directive. They are more inclined to accept a lawyer who has proven his or her abilities by taking a test.

Possible solutions to the difficulties are manifold, but the researchers think that they should at least be aimed at taking away uncertainties by clarifying the criteria to become eligible for admission to the profession after three years of establishment.

Objective 5: Meeting the needs of consumers of legal services who seek advice when carrying out cross-border transactions

The legal framework for the free movement of lawyers not only provides opportunities for free movement of lawyers. As lawyers have an important role in the administration of justice, their mobility may also facilitate the free movement of other services, citizens, and businesses. The study has provided no indications that the needs of clients of cross-border legal services are not being met as a result of flaws in the legal framework or a lack of mobility of lawyers. We, therefore, conclude that, in general, the legal framework has provided the conditions under which cross-border needs of clients can be met, and has facilitated access to legal services for clients requiring assistance in cases involving more than one Member State.

Objective 6: A close collaboration between the competent authorities, in particular in connection with any disciplinary proceedings

A condition for a well-functioning system of free movement of lawyers is a close collaboration between the competent authorities, in particular, in connection with disciplinary proceedings. However, the procedures for disciplinary proceedings of the directives have hardly, if ever, been used, making a good assessment of their functioning impossible. It seems plausible that intensified cooperation between bars could further facilitate free movement in the future.

Is a separate legal framework still necessary?

Besides evaluating the success of the Lawyers' Directives in meeting their objectives, it should also be assessed whether the Directives are still relevant. Specifically, following the implementation of the Professional Qualifications Directive the necessity of a separate legal framework for lawyers comes into question. The researchers think it is still necessary Abolishing the separate legal framework for lawyers (the Lawyers' Directives) would either lead to a less liberal regime for lawyers, or, if the system is to retain its liberal character, it would make necessary the adoption of many lawyer-specific articles in the Professional Qualifications Directive, with the result not of simplifying but rather of complicating things. These changes would be necessary because the profession of lawyer is different from most other professions, in the sense that the content of the knowledge of lawyers is very much limited to the legal system in which they were trained. Besides, none of the respondents have indicated that they seek major reform of the Directives or even the abolishment of the Directives in lieu of the Professional Qualifications Directive.

1 Introduction and Research Method

This report contains the results of a study evaluating the legal framework for the free movement of lawyers in the European Union. This introductory chapter first shortly introduces this legal framework. Subsequently, the evaluation questions and the research method will be discussed. The final section of this chapter sets out the structure of this report.

1.1 Introduction to the Legal Framework

The profession of lawyer takes up a unique position among the professions in Europe. This position can be illustrated in a number of ways.

First, lawyers have an important function in the administration of justice and safeguarding the Rule of Law. Since lawyers provide a broad selection of services such as drafting contracts, representing clients in court, providing legal advice and making deeds, their work is of considerable importance and involves a high degree of responsibility, not only towards their clients, but also towards society as a whole. Legal documents need to be correct and often not only the contracting parties but also third parties may be affected by lawyers' services.

Second, lawyers play a vital role in the economies of Member States and the internal market of the European Union. Mobility of lawyers can enhance the functioning of the internal market since it facilitates the mobility of services, goods and persons. After all, these lawyers can assist clients in cases with cross-border elements, in which international law, EU law and the law of different Member States may overlap. This can help in taking away obstacles for integration of the internal market.

A third reason for the uniqueness of lawyers is the fact that the professions in the Member State are specifically targeted to and based on the national legal systems in which prospective lawyers train and fully qualified lawyers practise. In general, that means that lawyers are trained and, therefore, are experts in their own legal systems, but do not necessarily have knowledge of other legal systems. This leads to the situation that lawyers fulfil similar tasks and functions in the various Member States but their *substantive knowledge differs considerably from state to state.* This is atypical of other (liberal) professions where there is greater common ground with regard to the substantive knowledge of the profession compared to the legal professions (e.g. the medical professions).
This traditional coupling between the Member State and the content of the knowledge and activities of lawyers in the respective Member States and the role of the lawyers in the national justice system has lead to strict controls on access to and exercise of the legal professions. Prospective lawyers have to undergo long and demanding qualification processes and fulfil additional criteria before they are allowed to practise as a lawyer. Many Member States also have so-called 'legal monopolies' that reserve the exercise of certain activities to those who qualify to be a member of the regulated legal profession. Complication, as will be set out below, in the realization of a true free movement of lawyers in the European Un-

ion is that the qualification criteria and the extent (or even existence) of the legal monopolies differ largely between the Member States.[2]

Lastly, lawyers take up a unique position when it comes to the legal regime applicable to them in the European Union. After the consolidation of the Directives applicable to the medical professions and architects[3] in Directive 2005/36/EC,[4] the profession of lawyer is the only (liberal) profession that is covered by a *separate system of Directives***,** the Lawyers' Services Directive[5] and the Lawyers' Establishment Directive.[6]

Moreover, the system employed by the Lawyer's Directives deviates largely from the earlier system applied to the medical professions and the general system laid down in Directive 2005/36/EC. Where the system of the medical professions relied on a minimum harmonization of educational standards combined with the result that members of the profession in Member State A would *fully integrate* in the profession of Member State B, the system applicable to Lawyers specifically employs a mechanism of mutual recognition *without (immediate) integration* into the profession of the receiving Member State. Both in the Lawyers' Services Directive and in the Lawyers' Establishment Directive there is a system based on full mutual recognition, i.e. if one is allowed to practise in one of the professions listed in the Directive in Member State A one may exercise that profession in Member State B under the professional title of Member State A, without becoming integrated in the profession of the receiving Member State.
The general system of Directive 2005/36 also leads to full integration in the profession of the receiving Member State but through a system of conditional mutual recognition where the main rule resorts to mutual recognition, but the receiving Member State can require compensatory measures if substantial differences between the profession in the sending and receiving Member State can be established or if the training is at least one year shorter in the home State. Normally, the choice of compensatory measures (either an adaptation period or an aptitude test) lies with the candidate who seeks integration in the profession in the receiving Member State, except for professions that require precise knowledge of the national law of the receiving state, in which case the receiving state may prescribe one of the compensatory measures.[7] It may hardly be surprising that most Member States require an aptitude test as a compensatory measure. This allows for a clear assessment of the extent and content of the knowledge of the candidate, and, therefore, gives the receiving Member State more assurance that candidates have the desired level of knowledge.[8]

---

[2] See S. Claessens, *Free Movement of Lawyers in the European Union*, 2008, page 123.
[3] Doctors: Directive 75/362/EEC of 16 June 1975 (recognition) and Directive 75/363/EEC of 16 June 1975 (minimum standards), [1975] OJ L 167; nurses: Directive 77/452/EEC of 27 June 1977 (recognition) and Directive 77/453/EEC of 27 June 1977 (minimum standards), [1977] OJ L 176; dentists: Directive 78/686/EEC of 25 July 1978 (recognition) and Directive 78/687/EEC of 25 July 1978 (minimum standards), [1978] OJ L 233; veterinarians: Directive 78/1026/EEC of 18 December 1978 (recognition) and Directive 78/1027/EEC of 18 December 1978 (minimum standards), [1978] OJ L 362; midwives: Directive 80/154/EEC of 21 January 1980 (recognition) and Directive 80/155/EEC of 21 January 1980 (minimum standards), [1980] OJ L 33; pharmacists: Directive 85/432/EEC of 16 September 1985 (recognition) and Directive 85/433/EEC of 16 September 1985 (minimum standards), [1985] OJ L 253 and architects: Directive 85/384/EEC of 10 June 1985 (recognition), [1985] OJ L 223.
[4] Directive 2005/36/EC [2005] OJ L 255/22.
[5] Directive 77/249/EEC of 20 March 1977, [1977] OJ L 78.
[6] Directive 98/5/EC of 16 February 1998 [1998] OJ L 77/36.
[7] Article 14 Directive 2005/36/EC.
[8] See S. Claessens, *Free Movement of Lawyers in the European Union*, 2008, page 32-33.

The system of conditional mutual recognition leading to full integration in the legal profession of the receiving Member State is further complicated by the fact that the Lawyers' Establishment Directive offers a possibility to integrate fully in the legal profession *without application of the compensatory mechanism* laid down in Directive 2005/36/EC after the lawyer in question has practised for three years under the system of the Lawyers' Establishment Directive.

This overview indicates that the result of the application of the Lawyer's Directives leads to a different result in their application compared to the old Directives for the medical profession and architects and the system in place in Directive 2005/36/EC. Where these Directives lead to a full integration in the profession of the receiving Member State, the system laid down in the Lawyers' Services Directive and the Lawyers' Establishment Directive lead to an opening of the market for the members of the designated professions in other Member States. From the customers point of view that is a substantial difference. Where the old system and the system of Directive 2005/36/EC lead to full integration in the profession of the receiving Member State, customers and other market participants in that Member State are only confronted with members of the profession of the receiving Member State (irrespective of their origin) where under the system of the Lawyer's Directive(s) customers and other market participants are confronted with a diversity of lawyer professions, using the different titles of their Member States of origin. This phenomenon leads to effects that are unique to these Directives.

1.2 Research Objectives and Success Criteria

1.2.1 Research Objectives

The overall object of this study is to carry out an evaluation of the legal framework for the free movement of lawyers, with a focus on the two Lawyers' Directives, while taking into account also market and regulatory developments in the Single Market. This study's aim is to evaluate the functioning of the legal framework and as such is not an assessment of the transposition of the Directives by Member States. Identification and detailed analysis of violations of the Directives by the Member States and infringement procedures have, therefore, not been the primary focus of the study.

The study has been guided by five main objectives, which are presented in the scheme below. The scheme also contains associated sub-objectives.[9]

[9] The objectives are taken from: European Commission, *DG MARKT, Study Evaluating the Legal Framework for the Free Movement of Lawyers Against Market and Regulatory Developments in the Single Market: Invitation To Tender*, MARKT/2011/071/E, 2011.

1. To assess the extent to which the Lawyers' Services Directive has contributed to the integration of the Internal Market for legal services and the legal profession; to evaluate the extent to which the Directive has facilitated lawyers' cross-border mobility in the EU

Identifying the most common categories of users by:

- describing in detail the reasons for mobility
- describing in detail the administrative proceedings involved
- describing in detail the extent of integration into the profession in the host Member State
- describing any other information which may aid in creating a picture of a typical user (e.g. gender, nationality, education, experience)

Compile an inventory of barriers or challenges commonly experienced by lawyers who wish to provide services in another EU Member State in accordance with Directive 77/249/EEC, including (though not necessarily limited to) the following categories of obstacles:

- the requirement of introduction by a local lawyer related to the representation or defence of a client in legal proceedings and the average costs incurred due to this requirement;
- the requirement of working in conjunction with a local lawyer who practises before a judicial authority related to the representation or defence of a client in legal proceedings and the average costs incurred due to this requirement;
- lack of clarity, or difficulties arising from, applicable professional rules or conflict between home Member State and host Member State rules;
- problems linked to professional liability insurance, pensions or social security payments; and
- any other commonly occurring barriers.

Examine whether the provisions of Article 5 of Directive 77/249/EEC allowing Member States to require European lawyers to be introduced to a judge or president of the local Bar remain justified.

2. To assess the extent to which the Lawyers' Establishment Directive has contributed to the integration of the Internal Market for legal services and the legal profession; to evaluate the extent to which it has facilitated lawyers' establishment in a Member States other than that in which initial qualifications were obtained.

Identifying the most common categories of users by:

- describing in detail the reasons for mobility
- describing in detail the administrative proceedings involved
- describing in detail the extent of integration into the profession in the host Member State
- describing any other information which may aid in creating a picture of a typical user

Developing quantitative indicators of the impact of Directive 98/5/EC on lawyers' mobility;

Compile an inventory of barriers or challenges commonly experienced by lawyers who wish to provide services in another EU Member State in accordance with Directive 98/5/EC, including (though not necessarily limited to) the following categories of obstacles:

- excessive administrative burden (in particular, as regards registration to practice under the home Member State title or admission to practice under the host Member State title);
- difficulties linked to the administration of aptitude tests;
- difficulties related to the legal form or capital structure of the grouping to which a lawyer practicing under his or her home Member State title belongs;
- difficulties encountered by lawyers seeking admission to practice under the host Member State title;
- lack of clarity, or difficulties arising from, applicable professional rules or conflict between home Member State and host Member State rules;
- different Bar membership fees applicable to lawyers qualified outside the host Member State;
- problems linked to professional liability insurance, pensions or social security payments; and
- any other commonly occurring barriers.

3. To evaluate the extent to which the Directives have facilitated access to legal services for clients requiring assistance in cases involving more than one Member State

Carrying out a qualitative assessment of the extent to which the Directives have contributed to raising the quality of legal services available in national markets.

Assess the extent to which the Directives contribute to meeting the needs of consumers of legal services who, owing to the increasing trade flows, seek advice when carrying out cross-border transactions in which international, Community and domestic law overlap, in particular with regards to the following:
• allowing individual citizens to have their interests represented by lawyers from their country of origin to avoid language barriers and allow for a more accurate assessment of the quality of the service provided;
• allowing corporate clients to benefit from a seamless provision of service across borders (within any limits imposed by legislation other than the two Directives and/or other factors, which should be identified)

Identify any areas where the cross-border needs of consumers of legal services are not effectively met.

Developing quantitative indicators of the impact of the Directives on the economies of the Member States and the EU.

4. To examine the interrelation between the Lawyers' Directives and more recently adopted internal market legislation: the Professional Qualifications Services Directive, the Services Directive, the E-Commerce Directive, and other relevant internal market legislation;
To examine the interrelation between the Lawyers' Services Directive and initiatives in the area of Judicial Cooperation in Civil and Commercial Matters;

Identify opportunities or challenges arising from the interaction with the Lawyers' Directives

Assess the extent to which a separate legal framework specific to lawyers is still necessary, following the adoption of Directive 2005/36/EC on the recognition of professional qualifications, i.e. provide quantitative and qualitative indicators of the added value of the "Lawyers' Directives.

Particular attention should be given to the role of commercial communications in facilitating lawyers mobility.

Assess the coherence between the legal framework for the mobility of lawyers and judicial cooperation in civil and commercial matters, identifying any potential areas for improvement, at least in relation to:

- the requirement of introduction to the court by a local lawyer in the context of the small claims procedure and European order for payment procedure and its effects on efficiency of the procedures and cost to the client;
- availability of lawyers competent to represent clients in cross-border cases.

5. Assessing the way in which the legal framework is transposed and implemented on a national level and the experiences with implementation (after the transposition) and functioning of the directives, and to examine the impact of any significant reforms undertaken in the Member States which are not directly related to the implementation of the two Directives

Examine whether the scope of application of the two directives with respect to the professional titles listed in Article 2.1 of each of the two Directives is sufficient or whether the scope of the directives should be extended to broader categories of legal professionals.

Examine whether the safeguards concerning joint practice provided for in Article 11(5) of Directive 98/5/EC is still appropriate, in the light of increasing interest in alternative business structures and multi-disciplinary practice within the legal profession?

Provide a list of regulatory reforms undertaken by Member States in the last 5 years which are not directly linked to the implementation of the Directives but nevertheless affect access to the legal profession in Member States. Provide a description of each reform and an analysis demonstrating any opportunities or challenges arising from their interaction with the Directives.

1.2.2 Objectives and Success Criteria

To be able to assess the success of the Directives in reaching their objectives, success criteria must be determined. In essence, success criteria are developed based on the intended results and impacts. They allow the evaluator to measure how well policy actions have led to progress towards the objectives.[10] This means that success criteria are linked to the objectives of the Directives. Identifying the objectives of the Lawyers' Directives is thus the first step in identifying success criteria.

The objectives of the Directives have been discussed in a number of interviews at EU level, and in particular in interviews with DG MARKT and other DG's that have a stake in the topic under study. During these interviews we also discussed possible success criteria. The outcomes of the interviews have been used to fine-tune the success criteria.

Table 1.1 contains the resulting overview of objectives of the two Lawyers' Directives and success criteria related to those objectives. Furthermore, the table contains indicators that have been used to assess whether the criteria have been satisfied. Below, some further remarks will be made on the outcomes of the interviews and the results presented in the table.

First of all, from the viewpoint of (the rights and freedom of) individual lawyers, the criterion for success is whether the individual lawyer is able and allowed to provide services or establish himself to another Member State without facing insurmountable barriers.

However, during the interviews it was said that, nowadays, the success of free movement from an economic point of view also receives increasing attention, seeing mobility (and an efficient legal system) as a factor reducing market inefficiencies and better satisfying client needs. This development is, for example, illustrated by the fact that the needs of consumers are referred to in the '98 Establishment Directive, while this was not the case in the 77 Lawyers' Service Directive. Therefore, from the point of view of the legal system as a whole and from the perspective of clients the criterion for success is a sufficient number of cross-border movements of lawyers. The question here is what qualifies as sufficient.
This is related to the demand from clients, e.g. the need for specific language abilities or legal expertise in cross-border cases. So, the success criterion here is that enough lawyers are available who are competent in cross-border cases. It is important to distinguish between different groups of clients (consumers, small and large businesses) as they may have different needs and a different position in relation to the lawyer in terms of e.g. available information, dependence and vulnerability.

Besides the question of meeting client needs in terms of a sufficient number of available lawyers, a secondary approach is to look at the economic benefits for lawyers and clients resulting from increasing mobility. Reasoning from economic theory, cross border mobility of lawyers may be expected to lead to enhanced competition, lower prices, better quality of services, and innovation. Innovation in the legal sector could mean technical progress, resulting in higher productivity in the sector. Innovation could be enhanced by broadening the expertise of lawyers and law firms, the variety of language expertise, new insights because of exchange of perspectives of lawyers from different jurisdictions and offering a

[10] DG MARKT, *DG MARKT Guide to Evaluating Legislation,* 2008, p. 32.

broad range of services. As these kind of economic impacts are not primary objectives of the Directives, these effects will not as such be regarded as success criteria for the Directives. However, the study will take these effects (where possible and information is available) into account in a descriptive manner, as (secondary) impacts of the legal framework and/or explanation for their functioning.

A third approach in assessing the success of the Directives is that of using a 'negative' success criterion such as the absence of complaints and/or problems, both for lawyers and for clients.

Other Indicators

One further remark with regard to success criteria has to be made. The study is an evaluation of legislation. As the DG MARKT Guide on Evaluation states, evaluating legislation involves researching "a range of indirect as well as direct impacts and unexpected as well as expected effects."[11] This means that the evaluation is broader than the assessment of the objectives alone, so that criteria need not necessarily be defined for every subject considered in the study. Part of the research concerns unintended and indirect effects. Although these are of course important and interesting aspects of the study, success criteria do not have to be defined for these findings. These results will be laid out in a more descriptive manner.

Barriers and Other Difficulties

Furthermore, the study will take into account, on the one hand, *barriers* preventing lawyers from providing services and/or establishing abroad, and, on the other, *other difficulties* that lawyers may experience when providing services or establishing abroad that do not necessarily prevent the lawyer from providing services or establishing abroad. These other difficulties will be taken into account, as they can provide insight in the functioning of the legal framework in practice.

[11] DG MARKT, *DG MARKT Guide to Evaluating Legislation,* 2008, p. 11.

Table 1.1 Objectives, Success criteria and Indicators

Objective	*Success criteria*	*Indicators (most important methods employed)*
The removal of any restrictions on the provision of services based on nationality or on conditions of residence for lawyers	There are no restrictions or barriers for the provision of services based on nationality or on conditions of residence	▪ Law/regulations/policies in Member States (country studies) ▪ The experience of lawyers (as it appears from interviews and the survey)
Enabling qualified lawyers to offer services in Member States other than that in which they obtained their qualification	The Directives have taken away and/reduced formal and practical difficulties that prevent lawyers from offering their services in another Member State (notwithstanding some exceptions that may be justified)	▪ Law/regulations/policies in Member States (country studies) ▪ The experience of lawyers (as it appears from interviews and the survey)
Enabling establishment of lawyers in a Member State other than that in which they obtained their professional qualifications	The Directives have taken away and/or reduced formal and practical difficulties that prevent qualified lawyers from establishing in another Member State (notwithstanding some exceptions that may be justified)	▪ Law/regulations/policies in Member States (country studies) ▪ The experience of lawyers (as it appears from interviews and the survey)
Enabling fully qualified lawyers to achieve integration into the profession after three years of professional practice in the host Member State under their home-country professional titles	The Directives have taken away and/or reduced formal and practical difficulties that prevent qualified lawyers to fully integrate into the profession of the host state after three years of professional practice (notwithstanding some exceptions that may be justified)	▪ Law/regulations/policies in Member States (country studies) ▪ The experience of lawyers (as it appears from interviews and the survey)
Meeting the needs of consumers of legal services who seek advice when carrying out cross-border transactions	The legal framework has facilitated access to legal services by consumers of legal services who seek advice when carrying out cross-border activities; there are no areas in which the needs are not met structurally as a result of flaws in the legal framework for lawyers.	▪ Issues and complaints known by representative organizations of lawyers, businesses and consumers, relevant DG's (Justice, SANCO) (interviews) ▪ Qualitative assessment of different groups of clients (whether lawyers competent in cross border cases are available; if the client is able to find them; costs and quality of services) (case studies) ▪ Experience of lawyers acting as client/co-counsel of other lawyers (in survey)
A close collaboration between the competent authorities, in particular in connection with any disciplinary proceedings	The competent authorities/bars collaborate sufficiently; there are no problems in connection to disciplinary proceedings arising primarily out of lack of collaboration between bars.	▪ The level of satisfaction of Bars and CCBE (interviews, country studies) ▪ No (lasting) difficulties related to collaboration in connection with disciplinary proceedings (interviews, survey) ▪ Qualitative case study illustrating collaboration between bars, possible difficulties and solutions found (interviews)

1.3 Research Method

1.3.1 Overview

The study has been designed with the principle of triangulation for collecting and analyzing data in mind. Triangulation is a method of data verification based on the use of different sources of data on the same topic/indicator. The key strategy of triangulation consists of three steps:

- first, all potential sources of information are identified;
- second, each source of information is exploited in order to obtain evidence regarding the same topic;
- third, the data from various sources is compared.

For answering the research questions and with the principle of triangulation in mind, a wide variety of methods has been used. Data has been gathered at the EU level, at the level of all 27 Member States (country studies), and also in qualitative case studies on specific topics. Besides, an EU-wide web survey has been carried out. Below, the main research methods are discussed in more detail.

1.3.2 Activities at EU Level

Interviews have been carried out with various organizations at the EU level. The table below provides an overview of the interviews. For the interviews at the EU level two checklists with subjects and questions have been developed. One checklist was of a general nature and has been used for interviews with different organizations. The other was developed especially for large law firms.[1]

[1] See annex 1 for the checklists.

Table 1.2 Interviews at the EU level

Group	Interviews
Interviews of DG's	▪ DG MARKT (two interviews) ▪ DG JUSTICE ▪ DG SANCO ▪ DG EAC ▪ DG EMPLOYMENT
Interviews of lawyers/ professionals	▪ CCBE ▪ The European Association of Lawyers (EAL), ▪ CEPLIS - European Council of the Liberal Professions ▪ European Law Faculties Association (ELFA)
Interviews of academics	Three interviews with academics
Interviews of EU consumer and business organizations	The following organizations have been consulted, for consumers: ▪ European Association for the Coordination of Consumer Representation in Standardisation (ANEC). ▪ Bureau Européen des Unions des Consommateurs (BEUC), the European consumers organization. ▪ Your Europe Advice (YEA) ▪ SOLVIT For Businesses: ▪ UEAPME (employers' organisation representing the interests of European crafts, trades and SME's at EU level) ▪ BusinessEurope (formerly UNICE) ▪ EUROCHAMBRES (European Association of Chambers of Commerce and Industry)
Interviews of major law firms	Major European law firms headquartered in the UK, Germany, Italy, Spain, the Netherlands, Belgium, France, Portugal, Sweden and Denmark participated in the study (in total 17 interviews)

1.3.3 Country studies

Methods

In order to gain a better insight in transposition and implementation of the relevant Directives and its effectiveness in different EU Member States, in every country an intensive desk research has been carried out. The aim of the desk research has been to answer the research questions for every Member State of the European Union. An important part of the desk study has been a legal analysis of the transposition of the Lawyers' Directives, plus an analysis of other relevant legislation applicable to lawyers.

In addition, interviews have been carried out with national representatives of the Bar (the competent authority) and (where relevant) the Ministry responsible for lawyer regulation. These interviews were meant, on the one hand, to discuss their experiences with the transposition and implementation of the two Directives and to identify barriers lawyers and law

firms face when providing services or establishing in another Member State. The interviews have also been used to gain better insight in the market of cross border legal services provided by lawyers.

Checklist for data collection
For the country studies, a checklist with research questions has been used. This checklist has been used for the desk study, the interviews and as a template for reporting the results. The checklist addressed the following subjects:
A. Policy background
B. Implementation of legal framework
C. Interaction of the lawyer directives with other legislation and developments
D. Effectiveness of the directives
E. Impact of the directives
The complete checklist can be found in annex 1.

1.3.4 Case Studies

Introduction
In the course of the study, twenty-one qualitative case studies have been carried out. The case studies were meant to illustrate the functioning of the Directives and to analyse the most common barriers/difficulties. The case studies usually consisted of desk research in a selection of countries and a number of interviews with relevant stakeholders. In this way, the case studies provided the opportunity for in depth analysis of some selected topics.

Thematically, the case studies can be divided into three groups. First, seven case studies were focused on the functioning of both Lawyers' Directives in practice. The case studies address the four most important provisions offered by the directives: establishment by making use of the Lawyers' Establishment Directive, integration after three years of practise by making use of the Lawyers' Establishment Directive, providing services temporarily under home professional title by making use of the Lawyers' Services Directive, and integration in the profession by making use of the Professional Qualifications Directive.

Second, nine case studies were focused on specific barriers and difficulties that had been identified in earlier phases of the study.

Third, five case studies focused on the functioning of the directives from the client perspective, and sought to illustrate to what extent the cross-border needs of some different client groups (small and large businesses, individual consumers) for legal services are being met in various regions of Europe.

With regard to client needs, interviews have been carried out with a number of organizations at the European level in the phases of the study preceding the case studies (with e.g. DG SANCO, BEUC, and Eurochambres). These interviews did not result in any indications of specific areas in which the needs of consumer of legal services are not effectively met. As a result a tentative, illustrative approach was used in the case studies on client needs to assess whether the needs for cross border legal services are (not) effectively met. Because

this approach was used, the selection of cases was made such that it would reflect a high degree of diversity. Variables that were taken into account were:

- Kind of regions (e.g. a major city, border regions)
- Groups of clients (individuals, small business)
- Border regions with a high percentage of cross border commuters and a rich history of cross border co-operation vs. border regions with a limited number of cross border commuters and limited history of cross border cooperation
- Countries with relatively many foreign lawyers vs. countries with a low number of foreign lawyers

Furthermore, case studies were included from different geographical areas in Europe.

Table 1.3 provides an overview of the topics of the case studies and the associated interviews. The interviews add up to a total of 76. The results of the case studies are recounted throughout this report. The results are either presented in a separate box (in yellow), in the main text, or a whole section of the report has been devoted to the subject of the case study.

Table 1.3 Case studies and interviews

Case study topic	Methods of data collection	Results in section
Seven Case Studies Focusing on the Functioning of the Directives		
1. Integration into the profession in a major law firm	Five interviews with lawyers at major law firms (lawyers from Italy, The Netherlands, Belgium, and England)	4.4.2
2. Moving between States with similar legal systems but a different language	Four interviews with lawyers from Greece and Germany	4.5.2
3. Moving between States with similar legal systems and the same language	Interviews with three German lawyers, one Austrian lawyer and two French lawyers	4.5.2
4. Foreign lawyers in Spanish regions	Interviews with two English and two Dutch lawyers established in Spain	4.3.2
5. Finnish lawyers and legal professionals	Three interviews with Finnish lawyers	2.7.3
6. Deontology	Literature study, two interviews with two academics professors who are also lawyers	3.3.7
7. Salaried Practice	Interview with ECLA, two interviews with national company lawyers associations (The Netherlands, Belgium), two interviews with company lawyers from those countries	3.3.6
Nine Case Studies Focusing on Barriers and Difficulties with Regard to the Directives		
8. Cross-border insurance	Interviews with the CCBE and four insurance companies	4.5.3
9. The Legal Services Act and Alternative Business Structures	Two interviews with Bar representatives (Germany, England), one interview with an English LLP law firm.	6.3.1
10. Online services and lawyer mobility	Interviews with two academics	6.4
11. Multidisciplinary practice and establishment	Interview with Dutch associations of notaries, tax advisors, and accountants.	6.3.2
12. Barriers/difficulties related to social security and pension rules	Interviews with a Spanish lawyer and a Portuguese lawyer	4.5.4
13. Morgenbesser and Pesla and German regulation	Six interviews with lawyers from Belgium, France, the Netherlands and Germany	2.4.2
14. Cooperation between bars and use of IMI	Interview with Latvian Bar Associations, consultation of various French bars	3.3.4
15. Differences between regional bars in Italy	Interviews with five Italian lawyers, analysis of complaints made to the Italian Competition Authority and cases brought before the Italian courts	3.3.3

Case study topic	Methods of data collection	Results in section
16. Integration after three years of practice	Four interviews with lawyers in France and Belgium	4.1
Five case studies on the needs of clients for cross border legal services		
17. The need for foreign lawyers in a large EU city with a high amount of internationally operating law firms	Four interviews with representative associations of businesses in The Netherlands	5.2.3
18. The need for cross border legal services in a border region with a high percentage cross border commuters and rich history of cross border cooperation	Four interviews with a EURES regional institution, a chamber of commerce, a trade union, and a law firm active in a border region (Maas-Rhin, BE-NL-DE).	5.2.3
19. The need for cross border legal services in a border region with a low percentage cross border commuters and limited history of cross border cooperation	Interview with a Polish lawyer, interview with Polish academic.	5.2.3
20. Assessing consumer needs in a country with a relatively high number of foreign lawyers (Luxembourg).	Interviews with consumer representative organization, chamber of commerce, 2 interviews with Bar representatives	5.2.3
21. Assessing consumer needs in a country with a relatively low number of foreign lawyers (Sweden).	Two interviews with representative associations of business, interview with Bar representative	5.2.3

1.3.5 Web Survey

Survey

To give lawyers the opportunity to provide their opinion on the subject of the study, a large European wide web survey has been carried out. The survey has been aimed primarily at lawyers who have made use of the provisions of the Directives, but also at lawyers that have not (yet) done so.

Questionnaire

The questionnaire that has been used for the web survey addressed the following subjects:[1]

- General questions on characteristics of the lawyer and his or her firm
- The way the lawyer has made use of the free movement possibilities (establishment, services, admission to the profession of another Member State)
- Barriers and difficulties experienced
- Available information, support and experienced administrative burden
- Future perspectives on mobility
- Working in conjunction with local lawyers

[1] The questionnaire has been included in annex 1.

- Commercial communications
- Economic impact of lawyer mobility

The complete questionnaire can be found in annex 1.

The web survey has been offered in five languages, namely English, French, German, Spanish and Italian. Prior to release, the questionnaire has been pre-tested both by researchers and lawyers.

Approach of the lawyers

A European wide file with contact details (specifically: e-mail addresses) of all lawyers does not exist. In a number of countries, such a file does not even exist on a national level. In order to reach lawyers with an invitation to participate and to assure a sufficient response we have followed different strategies.

1 National Bar Associations have been asked to announce the survey in a (electronic) newsletter and/or on their website. Many bars reacted positively to this request.

2 We have also asked bars to provide us with lists of e-mail addresses, to enable us to invite lawyers personally. Most bars were not able to provide the research team directly the e-mail addresses of their lawyers. Some bars have themselves sent an invitation to (a selection of) their lawyers to participate in the survey.

3 By making use of an electronic 'robot' we have extracted names and e-mail addresses from public directories of lawyers, available on the website of bar associations. This enabled us to invite lawyers personally. It was technically not possible to follow this method in all Member States. This method has been used in Cyprus, Czech Republic, Finland, France, Germany, Greece, Italy, the Netherlands, Spain, Sweden and England.[1]

Because of the diverse methods used, it is not possible to find out exactly how many lawyers have received an invitation to contribute to the survey. It is also not necessary. As it could not be known beforehand how many and which lawyers were making use of the provisions of the Directives, it was inevitable to use an approach in which many lawyers were invited, including lawyers for whom the subject may not be very relevant because they never do cross-border work.

It has to be taken into account that lawyers have decided themselves whether or not to participate. This means that, for example, those lawyers that are interested in cross-border work have probably been more inclined to respond to the survey. As a result of this, it is not always possible to come to reliable conclusions about all lawyers, for example, about the number of lawyers that carries out cross-border work, on the basis of the results of the survey.

Response

In total 2,365 lawyers have filled in the web survey. The table below shows in which countries lawyers were established at the moment they filled in the survey.

[1] In England, no e-mail addresses of individual lawyers but only of firms were available.

Table 1.4 Country in which the lawyer is established

	n	%
Austria	9	0,4
Belgium	37	1,6
Cyprus	58	2,5
Czech Republic	78	3,3
Denmark	4	0,2
Estonia	2	0,1
Finland	59	2,5
France	42	1,8
Germany	1239	52,4
Greece	5	0,2
Hungary	21	0,9
Italy	204	8,6
Latvia	15	0,6
Luxembourg	76	3,2
Malta	1	0
The Netherlands	147	6,2
Poland	27	1,1
Portugal	1	0
Slovak Republic	9	0,4
Spain	168	7,1
Sweden	95	4
UK - England or Wales	67	2,8
UK - Scotland	1	0
Total	2.365	100

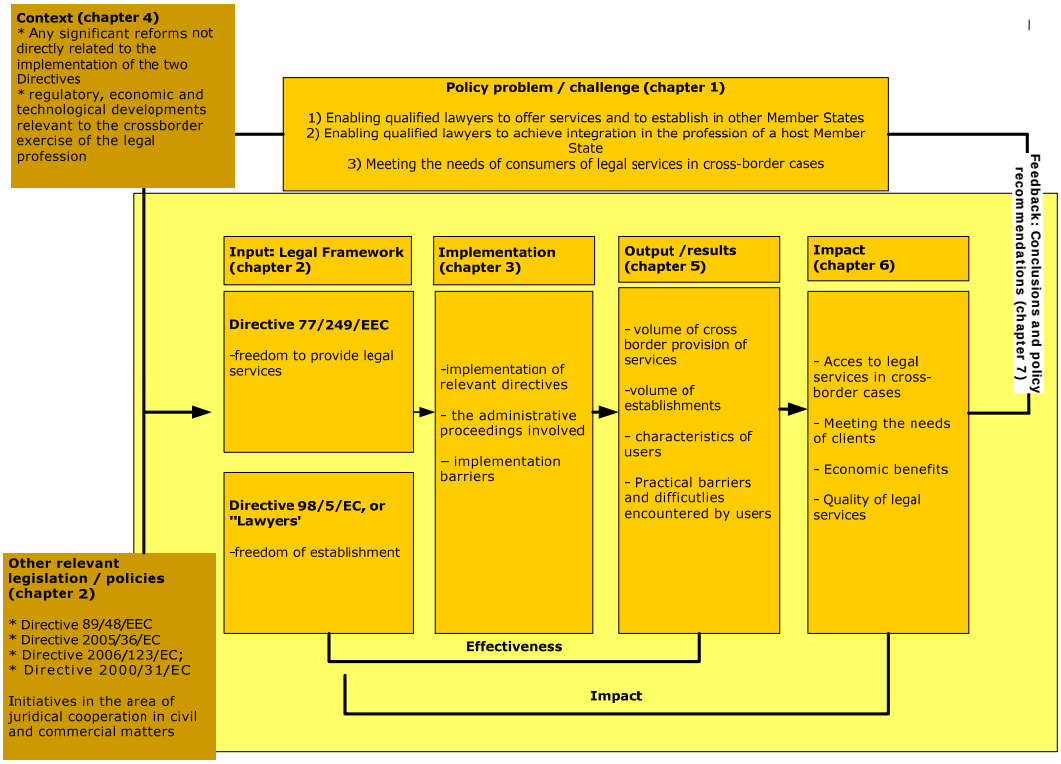
As the table shows, the response differs across countries to a large degree, as a result of different ways of inviting used by the bars and/or the researchers. There are also differences in the degree in which lawyers are internationally active between countries and therefore possibly also in the willingness to contribute to a survey about lawyer mobility. In some countries, only a few lawyers have filled in the questionnaire. In others, no response was received (Bulgaria, Lithuania, Romania, and Slovenia). In Germany a relatively very high number of lawyers (1239) have filled in the questionnaire. In the analysis of the results, country differences have been studied to prevent bias in the conclusions. For most questions, the responses from German lawyers did not differ from those of other countries in any important way.

Annex 1 contains additional tables that give insight in the compilation of the response. Here we will only describe the main characteristics. Participating lawyers practise in a number of fields. Half of the participants regularly practises contract law, around a third corporate and company law. Around a quarter practises tort, family law, and/or employment and social security law. Over two thirds of the participating lawyers regularly work for small and medium-sized companies, while around two thirds (also) serve private individuals. Over a quarter regularly works for large enterprises. Less than half of the lawyers are working in a self-employed capacity. More than a quarter works in a small group of 2-5 lawyers. The others work in larger firms. In total, 66% of the lawyers that have participated in the survey are male, while 32% is female.[1] Around half of the lawyers are aged between 35 and 55 years.

1.4 Structure of this Report

Below the conceptual framework is presented that has been used for this evaluation study.

Figure 1.1 Evaluation model for assessing the impact of the legal framework



[1] A small proportion (2%) of the lawyers did not answer the question on their sex.

The conceptual framework serves to establish the logical connections between the policy goals and objectives, the means (the legal framework), its implementation, the context, the results (the use of the directives), the impact and the conclusions and recommendations. This logic has also provided the basis for the composition of this report. The figure above shows the themes that will be dealt with in the different chapters of this report.

2 The Legal Framework for the Free Movement of Lawyers

This chapter provides an overview of important characteristics of the legal profession in the European Union, and describes in detail the content of both Lawyers' Directives as an introduction to the study. Furthermore, it examines the interrelation between the Lawyers' Directives and more recently adopted internal market legislation, in particular the Professional Qualifications Directive, the Services Directive, and the E-Commerce Directive, which is one of the objectives of the study. The chapter concludes with a discussion of systemic barriers.

2.1 The Profession of Lawyer in the European Union

In the realm of professions the profession of lawyer takes up a unique position. On the one hand, it is a profession that is exercised in a liberal, traditionally self-employed (although it becomes more and more accepted that lawyers can also work for a salary in a more traditional contract setting) fashion, and on the other hand, it has extremely strong links with the jurisdiction in which the lawyer is trained and exercises his profession.

A Regulated Profession

Independence, absence of conflicts of interest and professional secrecy/confidentiality are core values of the profession of lawyer throughout the Member States of the European Union.

Legal Reasons

Lawyers have an important function in the administration of justice and safeguarding the Rule of Law. Therefore, the protection of these core values is a public interest issue. The core values are protected by different kinds of regulation. This protection of values through regulation has a number of modalities. Firstly, the title of lawyer as is used in different Member States is protected, meaning that only those people who fulfil certain criteria laid down by law or regulation, may use the title of lawyer as designated in that specific jurisdiction. Secondly, regulation may exist with regard to the protection or monopolization of professional activities, meaning that certain activities, for example the representation of a client in court, or the provision of legal advice, is reserved for those individuals who fulfil the conditions of bearing the title of a lawyer, as prescribed by the laws and regulations of the Member State in question. A third level of regulation governs the rules on the exercise of the profession. Laid down mainly in professional regulation, lawyers exercising their professions in different Member States must stick to the so-called deontological rules that govern their professions. Violation of these rules can, in general, ultimately lead to the loss of the right to bear the protected title.

The profession of lawyer is regulated in the vast majority of the EU Member States which means that the pursuit of the profession is subject, directly or indirectly, to laws, regulations or administrative provisions, and to the possession of evidence of education and training (or an attestation of competence). To what extent and how these Member States

regulate the profession falls within the competence of the Member States, by the introduction of state regulation and/or by self-regulation by professional associations. Exactly what matters are regulated by law on the one hand and by professional associations on the other hand differs across countries. From a legal perspective the reason for exactly which activities are regulated and why often has historical or traditional reasons that can no longer be accurately traced.[1]

Economic Reasons

Since lawyers provide a broad selection of services such as drafting contracts, representing clients in court, providing legal advice and making deeds, their work is of considerable importance and involves a high degree of responsibility, not only towards their clients, but also towards society as a whole. Legal documents need to be correct and often not only the contracting parties but also third parties may be affected by lawyers' services. In this regard, the prevention of harm -also known as negative external effects- is often invoked by law and economics literature as one of the reasons why regulation is needed. To ensure that negative external effects are limited as far as possible, lawyers need to be trained before they can practise their profession. An additional economic justification for regulation may follow from the argument that legal services serve a public goal, namely facilitating a well-functioning legal system[2]. The regulation of the profession with regard to entry and conduct requirements is, therefore, of the utmost importance.

The presence of information asymmetry - which entails that one of the parties to a contract (generally the professional), has information which is not available to the other party (the client) - can be another reason for the regulation of the profession. In this regard the position of the consumer is important as well. Most clients are uninformed about which qualifications are important, and do not know how to assess qualifications, which means that they cannot make good use of their options. Since free markets will only achieve efficient outcomes if a significant number of consumers is able to make purchase decisions on the basis of complete and undistorted price-quality judgments, free markets for professional services will not produce efficient outcomes.[3] Professionals may not wish to communicate certain information, and are likely to act only in their own interests, without taking account of their clients' best interests. [4]

When the European Court of Justice decided in the *Reyners* –case[5] in 1974 that the special nature of the legal profession, as described above, could not lead to an exceptional position with regard to the free movement rules laid down in the then EEC treaty, it became evident that those fundamental rules would also apply to lawyers. Free movement does not have to contradict the safeguards of access to justice and the protection of the Rule of Law since free moving lawyers might actually enhance these goals by offering necessary knowledge

[1] See for England alone: Legal Services Institute, *The regulation of Legal Services: reserved legal activities – history and rationale*, 2010.
[2] See N.J. Philipsen, "Regulation and Competition in the Legal Profession: Developments in the EU and China", in *Journal of Competition Law and Economics*, Vol. 6, No. 2, 2010, p. 203-231. (Advance access published on April 21, 2009, doi:10.1093/joclec/nhp009.)Philipsen (2009), pp. 206-207.
[3] Frank H. Stephen and James H. Love, *Regulation of the Legal Profession*, 2000.
[4] J.T. Addison,C.R. Barrett C.R. & W.S. Sieben, *Labour Markets in Europe, Issues of Harmonization and Regulation*, London: Dryden Press, 1997, p. 69.
[5] Case 2/74, *Reyners v. Belgium*, [1974] ECR 631.

and/or advice in the law or language of their home Member State, or may assist compatriots in other jurisdictions.

The regulations on different levels that apply in different Member States to safeguard the core values of the profession have an impact on mobility and competition in the internal market. Since the profession of lawyer is strongly linked to the legal system of the Member State where it is exercised, many of the requirements in force in the Member State deal with knowledge of the national law (and sometimes explicitly, but certainly implicitly the knowledge of the language(s) spoken in that Member State). This means that if the regulations in a certain Member State were to be too strict and severe, it would prevent lawyer mobility altogether, possibly negatively affecting the functioning of the justice system and the protection of the Rule of Law, because access to a lawyer competent in e.g. a certain language or the law of another Member State could be hindered. On the other hand, not enough restrictions may also affect the functioning of the justice system and the protection of the Rule of Law, when they would negatively affect the observance of core values.

It will be shown that there are (considerable) differences with regard to the extent and content of regulations in the Member States. These differences are present on all three levels of regulation described above. The extent of regulation varies with regard to access to the profession and the exact delimitation (by means of professional monopoly) of the profession. With regard to the content of deontological rules, it may be observed that there might be considerable differences between one jurisdiction and the next when it comes to issues such as conflicts of interest, professional secrecy and the like.

This being said, it can be helpful, before going into the implementation of the Lawyers' directives, to provide an overview of at least the first two levels of regulation in force in the different Member States. Such an overview may exemplify to which extent different Member States are comparable when it comes to regulation of the professions. It must be noted here that only the first two levels of regulation (access to the profession and the delimitation of the profession) will be dealt with in this part of the report. The third level of regulation, the deontological rules, is admittedly the level a lawyer will encounter most on a day-to-day basis. It must be mentioned however, that the Lawyers' Directives have sought to resolve any conflicts with regard to this level of regulation; therefore this level will be addressed later on in the report.

2.1.1 Access to the Profession

The first level of regulation is protecting access to the profession, or protection of the professional title. Since it was established above that there is a public interest in protecting access to justice and protecting the Rule of Law in all Member States, it may not be surprising that, with regard to protection of the title, i.e. the access to the profession of lawyer, there is a strong emphasis on knowledge of the national legal system.

As the table below indicates, the vast majority of Member States imposes a two tier system of qualification that starts with a university education in law,[1] followed by some form of professional training encompassing a traineeship with a fully qualified lawyer. In all jurisdictions the training is completed by additional assessment that takes places during or at the end of the traineeship. Many jurisdictions require continuous training in order for lawyers to fulfil the rules with regard to using the protected title.

[1] The university training does not always have to be done in the country itself. For example, Sweden considers law education pursued in Norway, Finland, Iceland or Denmark 'equivalent' to a Swedish juristexamen (the qualification necessary for access to the profession of advokat in Sweden; professional training is, of course, still required).

Table 2.1 Regular training requirements for access to the profession and continuous training requirements

Country	University program	Apprenticeship (no. years)	Additional assessment (yes/no)
Austria	Yes (8 semesters)	Five years (including training courses)	Yes (written and oral)
Belgium	Yes (5 years)	Three years	Yes (during traineeship)
Bulgaria	Yes	Two years	Yes
Cyprus	Yes	One Year	Yes
Czech Republic	Yes	Three years	Yes (written and oral)
Denmark	Yes	Three years	Yes (during traineeship)
Estonia	Yes	Two years	Yes
Finland	Yes	Two to four years	Yes
France	Yes (5 years)	Two years (after successful completion of courses and CAPA)	Yes, CAPA prior to stage.
Germany	Yes (7 semesters)	Two Years	Yes; after the first and the second stage (1st and 2nd State Examination)
Greece	Yes	One and a half year	Yes
Hungary	Yes	Yes; duration unknown	Yes
Ireland	Yes (Law degree not necessary) or for non-graduates via a preliminary exam	Two years	Yes assessment is done prior to training (called the Final Examination 1) and during the training (called PPC 1 and PPC 2 courses)
Italy	Yes	Two years	State examination, written and oral
Latvia	Yes	Five years	Yes
Lithuania	Yes	Two years	Yes
Luxembourg	Yes (formerly this had to obtained outside Luxembourg)	Two years	Yes
Malta	Yes	One year	Yes (2 judges must approve)
The Netherlands	Yes	Three years	Yes (during traineeship)
Poland	Yes	Three Years	Yes
Portugal	Yes	Two years, including an interim Bar exam	Yes, written and oral.
Romania	Yes	Two years	Yes
Slovakia	Yes	Three years	Yes
Slovenia	Yes (3 or 4 years)	Four years	Yes
Spain	Yes	Two years	Yes (State exam)
Sweden	Yes (4,5 years)	Three years	Yes (ethics and professional techniques)
UK - England and Wales	Yes (but not necessarily a Law degree)	Two years	Yes (Legal Practice Course)

Source: country studies.

Reasons for regulating access to the profession

Although details vary from Member State to Member State the access requirements in regulation seek to achieve a number of goals. First of all, regulatory authorities seek to ascertain the necessary level of knowledge of the national legal system. This is achieved by requiring a law degree in that specific jurisdiction, combined, at least in a number of Member States, with courses on advanced subjects during the (first phase of) professional training. Secondly, the traineeship seems to ensure a decent and thorough initiating in the practical workings of the profession including the applicable deontology. In this manner Member States seem to succeed in assuring the deliverance of a high quality service to consumers therewith guaranteeing access to justice and the protection of the rule of law.

Lawyers play an important role protecting fundamental rights and freedoms and in upholding the rule of law. Besides, their work can benefit not only their own clients but also other clients dealing with similar matters, therefore, the quality of a lawyer's work has a public interest dimension. A third reason for lawyer education is that it promotes efficient court and dispute resolution procedures.

2.1.2 Reserved Activities

It is important to keep in mind that the activities that a lawyer exercises differ from Member State to Member State. Legal advice, for example, is not a regulated activity in a number of States, and a person who limits himself to giving legal advice in such a State, most likely does not turn up in the official statistics of lawyers since he is not (or not necessarily) a member of the legal profession. The table below provides some insight in activities reserved for lawyers in the Member States of the EU.

Table 2.2 Reserved activities for lawyers

Country	Representation in court *)	Legal advice **)	Other reserved activities
Austria	Yes	Yes	
Belgium	Yes	No	
Bulgaria	No (data 2008)	Yes	
Cyprus	Yes	Yes	Preparing legal documents; registering brand names, trademarks, patents; drafting statutes of companies; registering ships or vessels; preparing court documents
Czech Republic	Yes	Yes	
Denmark	Yes	Yes	
Estonia	Yes	No	
Finland	No	No	
France	Yes	Yes	

Country	Representation in court *)	Legal advice **)	Other reserved activities
Germany	Yes	Yes	
Greece	Yes	Yes	Presence and signature of lawyer in case of contracts for transactions of real estate or ships; Research in land registries; Compiling or changing statutes of companies of a certain minimum size; Compilation and submission of documents related to application for intellectual property rights; Presence in cases of mediation; Certification of copies and translation of official documents
Hungary	Yes	Yes	Preparation of contracts
Ireland	Yes	No	
Italy	Yes	Yes	
Latvia	Yes	No	
Lithuania	Yes	No	
Luxembourg	Yes	Yes	
Malta	Yes	No	
Netherlands	Yes	No	
Poland – advocate	Yes	Yes	Legal opinions, drafting legislation
Poland – Legal advisor	Yes	Yes	Legal opinions, drafting legislation
Portugal	Yes	Yes	
Romania	Yes	Yes	filing legal requests; drafting legal acts; mediation; fiduciary activities
Slovakia	Yes	Yes	Legal instruments, administration of property
Slovenia	Yes	No	Some conveyance activities (contract)
Spain	Yes	No	
Sweden	No	No	
England and Wales (solicitors	Yes	No	Shared reserves: Re-

Country	Representation in court *)	Legal advice **)	Other reserved activities
and barristers)			served instrument activities; Probate activities; Administration of oaths
Scotland (solicitors and advocates)	Yes	No	Probate activities; Executry Services; administration of oaths
Northern Ireland (solicitors and barristers)	Yes	No	Probate activities; Executry Services; administration of oaths

Sources: Country studies; DG MARKT (2012). Study to provide an Inventory of Reserves of Activities linked to professional qualifications requirements in 13 EU Member States & assessing their economic impact.
**) In jurisdictions where there is a monopoly right for lawyers in representing clients it is more often than no limited to higher courts or certain procedures (such as criminal or civil cases where the claim exceeds a certain amount of money).*
***) the exact extent of the monopoly varies across countries; monopolies may be shared with other professionals (e.g. tax advisors)*

In Denmark, England and Wales, Ireland, Scotland, and Sweden lawyers can do conveyance work. Furthermore, lawyer involvement is mandatory for conveyance activities in Greece and Hungary. Other countries in which lawyers are usually involved in conveyance work are Austria, the Czech Republic, Portugal, and for contracts in Slovakia and Slovenia.[1]

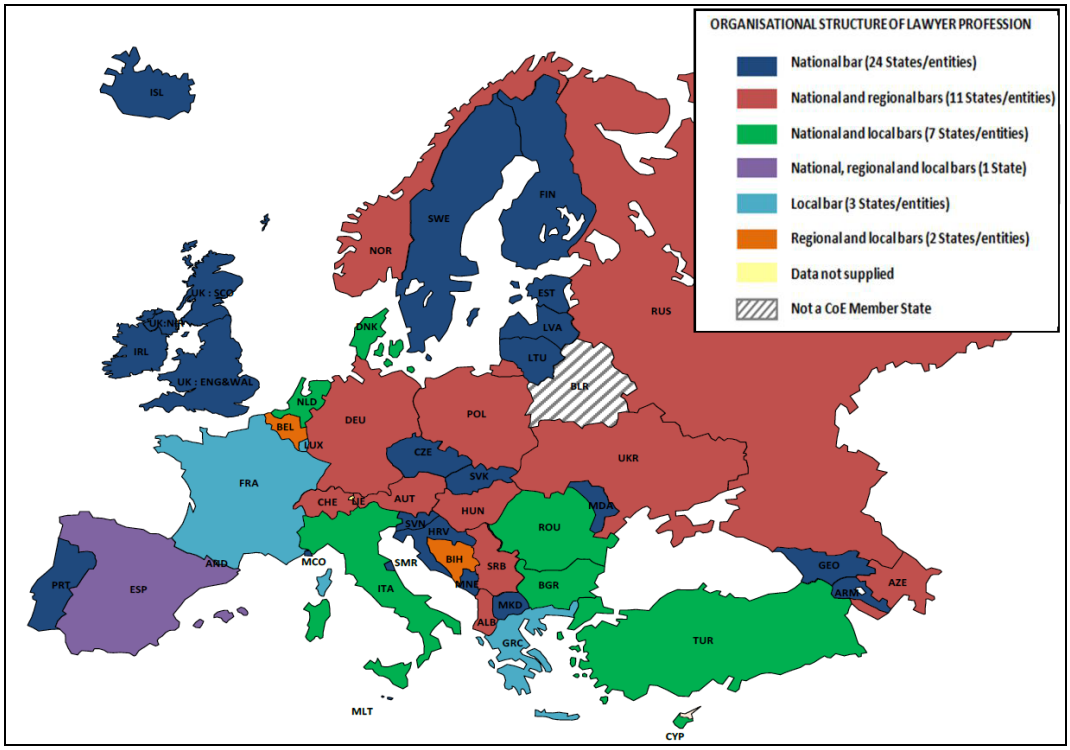
The table above shows that there are considerable differences between the Member States when it comes to the actual exercise of reserved activities. This indicates that the contents of the legal professions are not identical in the different Member States. With regard to the Lawyers' Services Directive and the Lawyers' Establishment Directive this is addressed by giving lawyers access to the professional activities of the legal professions in the host Member States (although there are exceptions when it comes to access to professional activities in mainly Common Law countries that are normally executed by a notary in civil law systems) leading effectively to the solution that differences in the content of the professions are ignored. It may be more problematic for other (legal) professionals who make use of the smaller professional monopoly in certain Member States, who therefore exercise professional activity that belongs to the professional monopoly of lawyers in certain Member States (but not in their home Member State), but who are not qualified lawyers, and, therefore, not allowed to use the Lawyers' Services Directive and the Lawyers' Establishment Directive. The combination of the limitations on the scope *ratione personae* of the Directives and the discrepancies between the extent of the professional monopoly in the different Member State may lead to a serious disturbance in the exercise of the free movement rights of these legal professionals who are not lawyers. This becomes all the more true since the discrepancy between professional monopolies is almost ignored in the system of the Lawyers' Services Directive and the Lawyers' Establishment Directive.

[1] DG Competition, *Conveyancing Services Market,* COMP/2006/D3/003, p. 34.

2.1.3 Organizational Structure

In the figure below, an overview is provided of the organizational structure of the profession of lawyer across Member States. On the one hand, there are countries in which there is one national Bar; on the other, there are countries with many regional or even local bars, such as Italy, which has 168 local bars. Annex 2 contains a list of the competent bars in the Member States.

Figure 2.1 Organizational structure of the profession of lawyer



Source: European Commission for the Efficiency of Justice (CEPEJ), *European judicial systems, Edition 2012 (2010 data): Efficiency and quality of justice*, 2012, p. 315.

2.2 The Lawyers' Services Directive (77/249/EEC)

Background of the Directive

Directive 77/249/EEC was the first instrument of Secondary Legislation that was specifically addressed to lawyers. The instrument was firmly based in the period where the European Commission sought to 'unlock' certain professions by means of regimes that were based on mutual recognition after minimum harmonization of educational requirements for said professions. The system proved successful, albeit after lengthy and extensive negotiations with regard to establishing minimum educational requirement, for medical professions and the profession of architect (although there it proved impossible to establish minimum educational requirements); no effort was made to bring the profession of lawyers under this system. Efforts with regard to that profession were limited to regulation of the right of lawyers

to provide services in other Member States. In 1977, a directive was issued which regulated the trans-border provision of services by lawyers within the European Community.[1] This Directive would prove to be the fertile soil on which the later establishment Directive could be built.

The idea to issue a directive that would regulate the freedom to provide services was not new. On the contrary, the original proposal for the Lawyers' Services Directive, facilitating the effective exercise by lawyers of their freedom to provide services (legal bases are Articles 47 and 55), was already issued in 1969. At the time it was rejected because Germany and Luxembourg were of the opinion that the legal profession was subject to the exception laid down in Article 45 of the Treaty. It was only after *Reyners* and *Van Binsbergen* that the possibility arose to adopt a Directive in order to facilitate the effective exercise by lawyers of the freedom to provide services.[2] Although the Services Directive was adopted in the era of vertical harmonisation it differs from the vertical approach on some essential points. The essence of the vertical approach was the mutual recognition of the qualifications of the individuals exercising that profession and was made 'harmless' by laying down minimum criteria for education. It showed that such a regime was impossible for the profession of a lawyer. Even if all parties involved, Institutions, Member States and professional organisations had been willing to create such a system for lawyers, it would have been next to impossible since lawyers are educated in their national legal systems and, as a consequence, know little of the legal systems of their neighbouring Member States. The Services Directive, therefore, seems to be fairly similar to the Architects' Directive which was also adopted without an accompanying directive laying down minimum educational standards. However, they differ in that the Architects' Directive allows establishment, whereas the Lawyers' Services Directive is limited to services.

Content of the Directive.

The first article of the Directive states that it shall apply to all lawyers in the Member States. A lawyer in the sense of the Directive is a person who is allowed, on the basis of national law, to bear one of the professional titles listed in that article. The article also gives the right to Member States to exclude certain activities which are, in that particular Member State, not exercised by lawyers.

According to Article 2, Member States have to recognise a lawyer as any person that is entitled to bear the professional titles listed in the second paragraph of Article 1. It must be noted that the Directive does not contain a nationality requirement, leading to the interpretation that also third country nationals who have the right to rely on EU law (for example family members of EU citizens) and who also have the right to bear one of the titles mentioned in article 2, can rely on the Directive. The question of which professional title should be used by a lawyer providing services in another Member State is solved by Article 3 of the Directive. That article states that lawyers who provide services in another Member State are obliged to use their own professional title, also known as the 'home title'. That means that if a German lawyer provides services in the Netherlands he must indicate that he is a *Rechtsanwalt*.

[1] Directive 77/249/EEC of 20 March 1977, [1977] OJ L 78.

[2] See also: H. Schneider, *Die Anerkennung von Diplomen in der Europäischen Gemeinschaft*, MAKLU, Antwerpen, 1995, p. 271.

Moreover, a lawyer providing services in another Member State is obliged to indicate either the professional organisation through which he is authorised to practise, or the court of law before which he is entitled to practise according to the laws of that Member State. Therefore, if the abovementioned German lawyer is a member of the Mannheim Bar and is providing services in the Netherlands, he will have to indicate that he is a *Rechtsanwalt* authorised to practise by the Mannheim Bar.

The core of the Directive can be found in Article 4. That Article lays down the conditions under which services may be provided in another Member State. The first paragraph of Article 4 states that where the services provided by the lawyer consist of representing a client in legal proceedings or before public authorities, that lawyer must abide by all the conditions laid down in the host Member State for lawyers established in that State, except, of course, all the conditions which require residence and/or registration with a professional organisations in the host State.

The second paragraph of the Article states that lawyers who provide services of the kind laid down in the first paragraph of the Article must observe the rules of professional conduct of the host Member State, without prejudice to his obligations in the Member State in which he is established, i.e. his home Member State. Hence it becomes clear that a lawyer who provides services in another Member State will have to abide by two sets of rules: the rules of professional conduct of the host Member State and those set by his home Member State. This phenomenon is often referred to as the Kumulationsprinzip[1] or 'double deontology'. It may be clear that this principle leads to quite some difficulties when the host Member State's rules of conduct do not coincide with rules of the home Member State. Although the Directive offers no direct solution for this problem, it is now generally believed that when there is a conflict, the rules of the host Member State prevail.[2]

Article 5 of the Directive provides for a further elaboration of the rules for representing a client in legal proceedings if a Member State so desires. According to the Article the elaboration can consist of an introduction, in accordance with local rules or customs, to the presiding judge, and, where appropriate, to the President of the relevant Bar in the host Member State. A host Member State may also require the lawyer who provides the services to work in conjunction with a lawyer who is a member of the legal profession in the host Member State and who practises before the judicial authority in question and would, therefore, if necessary, be answerable to that authority.

Where activities exercised by the lawyer do not constitute representation of a client in court, paragraph 4 of Article 4 states that a lawyer exercising those activities shall be subject to the rules of professional conduct of the home Member State, without prejudice to respecting the rules, whatever their source, governing such subjects in the host Member State. The paragraph states further that visiting lawyers must be especially respectful toward the rules of the host Member State on incompatibility of the exercise of the activities of a lawyer with the exercise of other activities in the host Member State, professional secrecy, relations with other lawyers, the prohibition on the same lawyer acting for parties with mutually conflicting interests, and publicity.

---

[1] S. van Camp, *Het statuut van de advocaat in het Europese Gemeenschapsrecht*, Kluwer, Deventer, 1989, p. 38.
[2] Idem, p. 40.

The Article states that these latter rules only apply to those lawyers not established in the host Member State who are capable of observing them, and to which extent their observance is objectively justified to ensure the proper exercise of a lawyer's activities, the standing of the profession and respect for the rules concerning incompatibility, in the host Member State.

Article 7 of the Directive lays down the rules applying to disciplinary measures. The first paragraph of this Article states that the competent authority in a host Member State may require the lawyer who seeks to provide the services to prove his legal qualifications obtained in the home Member State. The second paragraph states that a lawyer who provides services is, in the event of non-compliance with the obligations laid down in Article 4 of the Directive, subject to the rules laid down in the host Member State. The competent authority in the host Member State has the right to obtain information about the person providing the services, without violating the confidential nature of that information. Moreover, it shall notify the competent authority of the home Member State of any decision taken.

What is most striking about the Services Directive is that there seems to be complete mutual recognition of lawyers who provide services in other Member States. Apart from some specific peculiarities of the British legal system, there are no limitations on professional activity, and a lawyer providing services in another Member State may apparently exercise all professional activity a home lawyer may, albeit under a rather complicated regime of applicable professional rules.

Case law

In the thirty-five years of its existence, the Lawyers' Services Directive has generated surprisingly little case law. The most important case in this respect is Commission v. Germany.[1] This case dealt with the German implementation of Article 5 of the Lawyers' Services Directive. The German authorities had implemented this Article in a manner by which a foreign lawyer was at all times required to work together with a German lawyer, who would also act as the primary lawyer dealing with the case. Foreign lawyers were even obliged to follow this requirement/structure in cases where representation by a lawyer was not mandatory. In addition, the German authorities required extensive proof of the cooperation and required that the German lawyer assigned to the lawyer providing services would be the lead council in the case. The European Court of Justice ruled that a foreign lawyer should be allowed to work alone if representation by a lawyer was not mandatory in that particular case in the host Member State. In cases where such representation was mandatory, the foreign and the national lawyer working together should themselves determine their relationship. It was also held that it could not be laid down in a law that the national lawyer should always have the primary role in the case. The ruling of the European Court of Justice was confirmed in the case Commission v. France.[2]

It might be clear that the European Court of Justice did some important work here in order to safeguard the free provision of services for lawyers. Had the Court not intervened then,

[1] Case 427/85, *Commission v. Germany*, [1988] ECR 1123. See for a summary of this case: G.A. Bermann et al, *Cases and Materials on European Community Law*, American Casebook Series, Westbook Publishing Co., 1993, pp. 598-601.

[2] Case C-294/89, *Commission v. France*, [1991] ECR I-03591.

the Member States would have had the opportunity to reduce the freedom of services for lawyers almost completely. The role of a lawyer in providing representation for a client abroad would be marginal if he was forced to work with a national lawyer even in situations where the national law did not prescribe compulsory legal representation. It might also be clear that the importance of this case stretches beyond the Lawyers' Services Directive. The Lawyers' Establishment Directive contains a similar provision on working in conjunction with a national lawyer. Although there are no limitations on this provision included in the text of the Directive, it is self-evident that the limits imposed by the Court on the co-operation provision in the Services Directive also apply to the similar co-operation provision in the Lawyers' Establishment Directive.

The Court had an opportunity to state that the Lawyers' Services Directive cannot be relied upon by a lawyer who is established in more than one Member State as a lawyer who seeks to use the Directive to continue professional activities in the state where that lawyer had been barred from exercising the national profession.[1]

Other cases under the Lawyers' Services Directive have been scarce. It is worth to mention the *Gebhard* case where the Court also ruled that setting up of an office or other infrastructure can fall within the freedom to provide services and the demarcation between services (which is governed by the Lawyers' Services Directive) and establishment (governed by Directives 89/48/EEC and the Lawyers' Establishment Directive) is made on time difference alone.[2] Another case which requires some attention is the *AMOK*-case,[3] which had dealt with a subject that was not as such regulated by the Directive, namely the restitution of fees. The Court stated that the Directive warrants that a calculation of restitution of fees is made on the rules in force in the host Member State and that the restitution of fees for a lawyer is limited to what a home State lawyer would have received. According to the Court, it is a violation of the Directive if the Member State does not allow restitution of legal fees for a lawyer who is, according the rules of the Member State, co-operating with the lawyer who provides services in that Member State. The ratio behind this dictum is clear, because if a person soliciting for a lawyer is not able to claim restitution of the fees from the co-operating lawyer, it is unlikely that such a person would opt for the services of a foreign lawyer over a domestic lawyer. This German rule, therefore, directly infringed the full enjoyment of the provision of services as safeguarded by the Directive, bringing the Court to the conclusion that this rule was in violation of the Directive.

2.3 The Lawyers' Establishment Directive (98/5/EC)

Development of the Directive

Already in 1975, the Commission invited the Council of the Bars and Law Societies of the European Communities (hereinafter the CCBE) to consider a way through which the freedom of establishment of lawyers could be realised. It took the CCBE seventeen years to

[1] Case 292/86, *Claude Gullung v. Conseil de l'ordre des avocats de Colmar et Saverne*, [1988] ECR 111.

[2] Italy needed some more encouragement to abolish the rules that made it illegal for lawyers providing services to have an infrastructure in Case C-145/99 *Commission of the European Community v. Italian Republic*, [2002] ECR I-02235.

[3] Case C-289/02, *AMOK Verlags GmbH v. A&R Gastronomie GmbH*, [2003] ECR I-15059.

agree on a draft that was finally presented at a CCBE meeting in 1992. In an article in the Irish Student Law Review, Hagan unearths the political machinations that lay behind the years and years of negotiation in the CCBE.[1] Based on interviews of CCBE and Commission officials, Hagan tells a tale of a CCBE that is deeply divided over this issue.

The eventual draft[2] proposed a compromise, stating that lawyers would be allowed to establish themselves under their home country title on the precondition that they would register with the competent authority of the host Member State. The CCBE draft that was presented to the Commission eventually led to a proposal by the Commission of a draft Directive on the matter. The major difference between the CCBE Draft and the Draft of the Commission was that in the Commissions draft the right of establishment would only be given for a period of five years, after which the lawyer concerned would have to fully integrate in the legal profession of the host Member State. This criterion met with hefty criticism from both other law-making Institutions of the European Union and academia.[3] Eventually, it took a revised proposal of the European Commission in order for a Directive to be adopted. The recitals of the Directive that was eventually adopted still utter the underlying view of the Commission that the establishment of the lawyer under his home title must eventually lead to the full integration of the lawyer in the legal profession of the host Member State.[4] On the other hand, the recitals have lost every reference to the fact that the establishment under home title should be of a temporary nature. This is because the Council was of the opinion that there is a need for establishment under home title that has no connection with the full integration of the lawyer in the legal profession of the host Member State, and that, therefore, the establishment under home title should be seen as an independent form of establishment.[5]

Content of the Directive.

Article 1 lays down the purpose of the Directive, namely to facilitate the practise of the profession of lawyer on a permanent basis in a self-employed or salaried capacity in a Member State other than that in which the professional qualification was obtained. The Article states, further, that the Directive is applicable to anyone allowed to practise in his home Member State under one of the professional titles listed in Section 2a of the first article.

Article 2 of the Directive concerns the general right for lawyers to establish themselves on a permanent basis in any of the Member States under their home title in order to pursue the professional activities that are further specified under Article 5 of the Directive. Integration of the lawyer into the legal profession of the host Member State is subject to the rules laid down in Article 10 of the Directive.

---

[1] C. Hagan, The Free Movement of Lawyers, in: *Irish Student Law Review*, [2003] 11, pp. 149-172.

[2] CCBE, *CCBE Draft Directive on the Right of Establishment for Lawyers*, adopted by the CCBE on 23 October 1993. For the text of the CCBE Draft see: House of Lords, Select Committee on the European Communities, *The right of establishment for lawyers*, House of Lords Paper 82, Sessions 1994-1995, 14th Report, pp. 34-40.

[3] See further S. Claessens, *Free Movement of Lawyers in the European Union*, 2008, pp. 39-49.

[4] See, for example, recital 3, [1998] OJ L 77/36.

[5] See: Statement of Councils Reasons, [1997] OJ C 297/14.

Articles 3 and 4 lay down the requirements which have to be fulfilled by the lawyer in order to become established in a Member State other than the one in which he obtained his qualifications. Article 3 states that, in order to become established, the lawyer must register with the competent authority of the host Member State. That competent authority shall register that lawyer if he can produce a certificate from the home competent authority certifying that he is registered with them.[1] The competent authority of the host Member State may require that the certificate is no older than three months and shall further inform the competent authority of the home Member State of the lawyer concerned that it has registered that lawyer. Article 3 further states some specific rules relating to the special nature of the profession of lawyer in Common law countries within the European Union, namely the United Kingdom and Ireland.

Article 4 states that the lawyer who wants to practise in another Member State other than the one in which he obtained his professional qualifications must do so under his home country professional title. The lawyer is obliged to avoid any confusion with the professional title used in the host Member State.

Article 5 of the Directive lays down the areas of activities in which a lawyer, established under his home title, may practise. Section 1 of the Article states that a lawyer established under his home title is allowed to carry out the same professional activities as a lawyer who is practising under the professional title of the host Member State. That lawyer may give advice on the law of his home Member State, on Community law, on international law and on the law of the host Member State. The lawyer, established under his home title, shall comply in any event with the procedural rules applicable in the national courts of the host Member State. Section 2 of the Article states that a Member State may exclude a lawyer, established under his home title, from exercising certain specialist activities (such as preparing deeds), if these activities are reserved for a profession other than that of the lawyer in the lawyer's home Member State. It may be clear that this provision did not have to be formulated in a two-way manner. Section 3 of the Article states that, where activities pursued include the defence or representation of a client in legal proceedings the host Member State may require the lawyer, established under his home title, to co-operate with a lawyer who is established under the professional title of the host Member State if the host Member State reserves such activities for lawyers established under the professional title of the host Member State. The second subparagraph of Section 3 states further that the host Member State may, in order to secure the smooth operation of justice, lay down specific rules for access to its Supreme Court, such as the use of specialist lawyers.

Article 6 of the Directive lays down with which rules of professional conduct the lawyer, who is established under his home title, must abide by. Section 1 states that lawyers who are established under their home title are subject to the host Member State's rules of pro-

[1] This means that there is at least a requirement to be registered as a lawyer in ones home Member State. People who fulfil the criteria to be a lawyer in their home Member State, but who are not registered as such can therefore not register under their home country professional title in another Member State. On first sight this requirement might also cause problems with regard to obligations of life-long learining. This potential problem has been solved by the CCBE by stating that a lawyer established under his home country professional title in another Member State may fulfil his life-long learning obligations in that state. See 'CCBE guidelines on the Implementation of the Establishment Directive' and 'CCBE recommendation on continuing training', both via <www.ccbe.org>, last accessed 23 October 2006.

fessional conduct, notwithstanding those rules which they are subject to in their home Member State.[1] Section 2 of the Article states that the lawyers established under their home title, shall be adequately represented in the professional associations of the host Member State. The section provides that such representation shall involve at least the right to vote in elections of those associations' governing bodies. The third section states that a lawyer must have professional indemnity insurance, whether it be in the host Member State or in his home Member State.

Article 7 states in which manner disciplinary proceedings against a lawyer established under his home title in another Member State should be carried out. The first section of the Article states that, when the lawyer who is established under his home title fails to fulfil his obligations under the law of the host Member State, the rules of procedure, penalties and remedies provided for in the host Member State shall apply. The remaining sections of the Article provide for an elaborate co-operation between the competent authority of the home Member State and the competent authority of the host Member State. Co-operation is also required if the competent authorities of the home Member State decide to open disciplinary proceedings. Section 4 states that a decision of the competent authority of the host Member State may also have repercussions for the lawyer concerned in his home Member State. Section 5 states that if the competent authority of the home Member State revokes, permanently or temporarily, the authorisation of the lawyer to practise in his home Member State, this shall automatically lead to a prohibition for the lawyer from practising under his home title in the host Member State.
Article 8 of the Directive states that a lawyer established under his home title, may practise as a salaried lawyer to the same extent that the host Member State permits for lawyers established under the professional title of the host Member State to do so.

Article 9 states that a decision not to effect registration as meant in Article 3 of the Directive, a decision to cancel such a registration and decisions imposing disciplinary measures shall be accompanied with a statement of reasons. Moreover, a remedy before a court or tribunal against such decisions shall be available in accordance with the national law of the host Member State.

Article 10 provides for three different ways in which a lawyer can become fully integrated in the legal profession of the host Member State. The first method is the simplest one. Section 2 of the Article states that a lawyer may, at any point in time, take an aptitude test under the system of Directive 89/48/EEC (now 2005/36 EC, although the latest consolidated version of the Lawyers' Establishment Directive (from 2007) still refers to the old Directive), if the competent authority of the host Member State deems it necessary in order to become fully integrated in the legal profession of the host Member State. Subsequently, that lawyer may practise under the professional title of the host Member State. Section 1 states the second method in which a lawyer established under his home title can become fully integrated in the legal profession of the host Member State: if a lawyer has effectively and regularly (meaning: the actual exercise of the activity without interruption other than that

[1] There is a difference in culmination of professional rules compared to Directive 77/249/EEC, where in the case of Directive 98/5/EC the emphasis lies much more on the professional rules of the host Member State. This is logical since an established lawyer is much more 'embedded' in the legal system of the host Member State then a lawyer who provides services in another Member State.

resulting from everyday life) pursued professional activities involving the law of the host Member State, including Community law, for a period of at least three years, he shall be granted access to the legal profession of the host Member State. Subsequently, that lawyer has the right to practise under the professional title of the host Member State without being required to take an aptitude test under the system of Directive 89/48/EEC (now 2005/36/EC). In order to gain such access, the lawyer concerned shall provide the host Member State's competent authority with all the relevant information, notably on the number and nature of the matters he has dealt with. The competent authority of the host Member State has the right to verify the information and may, to that end, require the lawyer to provide, orally or in writing, clarification of, or details on, the information provided. If the competent authority decides to deny the lawyer access to the legal profession of the host Member State, that decision must be reasoned and subject to appeal in the national courts or tribunals of the host Member State. The third method through which one can gain access to the legal profession of the host Member State is laid down in Section 3 of Article 10. The section concerns lawyers who have effectively and regularly pursued professional activities in the host Member State for at least three years, but for a lesser period than three years with regard to the law of the host Member State, including Community law. Such a lawyer may obtain admission to the legal profession of the host Member State from the competent authority of that Member State, without having to take the aptitude test under the system of Directive 89/48/EEC (now Directive 2005/36/EC). In deciding whether or not to give the lawyer concerned access to the legal profession of the host Member State, the competent authority of that State shall take into account the effective and regular professional activities pursued by the lawyer concerned. In addition, it shall also take into account all the knowledge and professional experience gained with respect to the law of the host Member State and any attendance made at lectures or seminars on the law of the host Member State, including the rules regulating professional practise and conduct. It may be clear that this is a codification of the principle laid down by the European Court of Justice in the *Vlassopoulou* case.[1] The lawyer concerned shall provide the competent authority of the host Member State with all the relevant information and documentation, notably on the cases he has dealt with. Assessment of the lawyer's effective and regular activity in the host Member State and assessment of his capacity to continue the activity he has pursued there, shall take place by means of an interview with the competent authority of the host Member State in order to verify the regular and effective nature of the activity. If the competent authority of the host Member State decides not to grant access to the legal profession of the host Member State, such a decision shall be reasoned and it shall be subject to appeal in the national courts of the host Member State. Section 4 of the Article states that the competent authority of the host Member State may also deny lawyers the benefits of the provision of the Article if it considers that this would be against public policy, in particular because of disciplinary proceedings, complaints or incidents of any kind. Again, such a decision shall be reasoned and it shall be subject to appeal in the national courts of the host Member State. Section 6 states that a lawyer who gains access to the legal profession of the host Member State shall be entitled to use his home title alongside the professional title of the host Member State.

[1] Case 340/89, *Vlassopoulou v Ministerium für Justiz, Bundes- und Europaangelegenheiten Baden-Württemberg*, [1991] ECR 2357.

Article 11 governs the rules concerning the joint practice of lawyers. The introduction states that lawyers who are established under home title may practise jointly if the lawyers practising under the professional title of the host Member State are allowed to do so, albeit subject to the rules laid down in this Article. Section 1 of the Article states that joint practice of lawyers established under their home title is allowed. In the case where the fundamental rules of the home Member State governing groupings are incompatible with the rules governing the same subject-matter in the host Member State, the rules of the host Member State prevail, as long as their application is justified by the public interest in protecting clients and third parties.[1] Section 2 states that the host Member State shall make it possible for two or more lawyers who are established under their home title, to practise in a form of joint practice. If the host Member State provides for more forms of joint practice for lawyers established under the professional title of the host Member State, that host Member State must also provide these forms to lawyers who are established under their home title. The manner in which lawyers practise jointly is subject to the laws of the host Member State. Section 3 states that Member States must also take measures to permit different, mixed forms of joint practice: lawyers who are established under their home title, but who come from different Member States, and lawyers established under their home country title practising jointly with lawyers established under the professional title of the host Member State. Section 4 states that a lawyer established under his home title and who wants to work in a grouping, must provide the competent authority of the host Member State with all the relevant information concerning that grouping. Section 5 gives the right to Member States to refuse lawyers who are established under their home title, to practise in a grouping in which some of the members are not lawyers, insofar as it holds lawyers established under the professional title of that state to that same prohibition. The section further states that a grouping is deemed to include persons who are not lawyers if: the capital of the grouping is held entirely or partly by non-lawyers; the name under which it is practises is used by non-lawyers or if the decision-making power in that grouping is exercised, de iure or de facto, by persons who are not lawyers in the sense of Article 1(2) of the Directive. Furthermore, the section states that, if the fundamental rules governing a grouping in the home Member State are incompatible with the rules in force in the host Member State or with the rules of Section 5, the host Member State may refuse the lawyer concerned to open a branch or agency of the grouping in the host Member State. This prohibition may be imposed without the restrictions laid down in Section 1 of the Article.

Article 12 states that lawyers may, while established under their home title in another Member State, employ the name of any grouping to which they belongs in their home Member States. The host Member State may require that, besides the name of the grouping, also its legal form and/or the names of the member(s) practising in the host Member State is/are mentioned.

Article 13 provides for close co-operation between the competent authorities of the host and home Member State in order to facilitate the application of the Directive. The Article further states that the competent authorities must preserve the confidentiality of the information exchanged.

[1] It must be noted at this point that the Directive does not allow for a straightforward application of the rules of the host Member State. In contrast an objective justification is required in order to apply the rules concerning joint practice of the host Member State.

Case Law

In the 14 years of its existence the Lawyers' Establishment Directive has been the basis for a number of court cases. These cases can be classed in a number of different categories. First of all, Luxembourg, that was adamantly against the adoption of the Directive, filed a request for nullity under what is now article 263 TFEU. In case C-168/98 *Luxembourg v. Parliament and Council.*[1] Luxembourg argued that the Directive should not have been adopted since it was based on the wrong legal base. The ECJ dismissed Luxembourg's argumentation and confirmed the Lawyers' Establishment Directive.[2]

After the implementation period of the Directive had expired in 2000, the Court had the opportunity in two instances to rule on failure of implementation. Many countries failed to implement the Directive on time, but only in the case of France[3] and Ireland[4] it came to legal proceedings. France did not contradict the Commission's view that France had violated the Treaty by not implementing the Directive, nor did France offer any explanation or justification as to why it was late with its implementation. In Ireland implementation was late due to technicalities relating to the Irish legislative process. The Court was, however, not impressed and convicted both countries for violating the Treaty due to late implementation of the Directive. In themselves, the cases were uneventful, marginal even, since they did not add anything to the development or offer any better understanding for the application of the Directive.

The last type of case law is much more interesting in its connection to the Directive since it deals with its application by Member States. Unsurprisingly, the first cases from this type stem from Luxembourg, one being a Treaty violation procedure[5] and the other being a prejudicial procedure.[6] Luxembourg required lawyers established under their home title to produce yearly proof of their registration in their home Member State, required a language proficiency test for lawyers seeking establishment under home title, and refused lawyers established under their home country professional title to act as professional domicile in Luxembourg. None of these requirements and limitations is expressly sanctioned in the Directive. Therefore, the Court had to rule on the legality of these requirements.

In the case of *Commission v. Luxembourg*, all these issues were addressed. The ECJ ruled that Article 3 leads to full harmonisation of the rules regarding registration under home country title. This meant that no further conditions may be imposed on the registration under home country professional title, even where such additional conditions were objectively

---

[1] Case C-168/98, *Grand-Duchy of Luxembourg v. European Parliament and Council of the European Union*, [2000] ECR I-09131. On this case see: V. Bettin, "L'Europa degli avvocati: prospettive per il futuro", in: *Diritto Pubblico Comparato ed Europeo*, 2001, 1, pp. 196-205; P. Cabral, "Case Law", in: *Common Market Law Review*, 2002, 39, pp. 129-150; F. Ferraro, "Libertà di stabilimento degli avvocati, anche alla luce di una recente sentenza della Corte di giustitzia", in: *Diritto Pubblico Comparato ed Europeo*, 2001, 1, pp. 205-217.

[2] For an extensive review of the argumentation and the ECJ's reaction see S. Claessens, *Free Movement of Lawyers in the European Union*, 2008, pp. 56-59.

[3] Case C-351/01 *Commission v. France* [2002] ECR I-08101.

[4] Case C-362/01 *Commission v. Ireland* [2002] ECR-I 11433.

[5] Case C-193/05, *Commission of the European Communities v. Grand-Duchy of Luxembourg*, [2006] ECR I-08673.

[6] Case C-506/04, *Graham J. Wilson v. Ordre des avocats du barreau de Luxembourg*, [2006] ECR , I-08613.

justified on the basis of the conditions laid down in *Gebhard*.[1] Consequently, as the ECJ indicated, language requirements and the yearly proof of registration in the home Member State were not in conformity with the Directive and, therefore, illegal. The approach towards the alleged violation of Article 5 of the Directive (professional activities) is marginally different to the approach that was used for Article 3. Both the Advocate-General and the ECJ stated that the exceptions to the exercise of a professional activity (laid down in paragraphs 2 and 3 of Article 5 of the Directive) are exhaustive and that other limitations on professionals are not allowed. There is no mention however of the extent of the harmonisation of Article 5, at least not in any explicit sense. Based on the formulation by the ECJ, it may be readily assumed that the ruling has a similar effect to the statement that Article 5 leads to full harmonisation, since the ECJ stated that no other exceptions to professional activities may be imposed other than those laid down in paragraphs 2 and 3 of Article 5 of the Directive.
The *Wilson* case largely overlaps with *Commission v. Luxembourg*. Graham Wilson was a United Kingdom national who belonged to the profession of barristers. He sought registration under his home country professional title in Luxembourg. As was laid down in the Luxembourg implementation, Mr. Wilson was requested to take a language proficiency test. When he arrived for this test accompanied with a Luxembourg *avocat,* the latter was not allowed to attend the test. Mr. Wilson, therefore, refused to take the test altogether. His request regarding his registration under his home title was subsequently denied. Mr. Wilson was informed that he could challenge the decision before the *Conseil Disciplinaire et Administratif* (the disciplinary council of the Luxembourg Bar Association). Mr. Wilson challenged the decision but the *Conseil* denied jurisdiction. Mr. Wilson brought his case before the *Cour Administrative*, which subsequently asked prejudicial questions to the ECJ.

The prejudicial questions touched upon two different subjects. On the one hand, the *Cour Administrative* asked whether a language proficiency test was allowed under the system of Article 3 of the Lawyers' Establishment Directive. In this sense, the *Wilson* case coincides with *Commission v. Luxembourg*. It is not surprising that the ECJ follows the exact line of reasoning as it did in *Commission v. Luxembourg*. The ECJ repeated that Article 3 of the Lawyers' Establishment Directive leads to full harmonisation in the field of registration under home country professional title. An additional language proficiency test is not allowed. *Commission v. Luxembourg* did not cover the second subject-matter included in the questions of the *Cour Administrative*. Therefore, the ECJ devoted more attention to those questions. The *Cour Administrative* asked whether an appeal procedure such as the one before the *Conseil Disciplinaire et Administratif* was sanctioned by the rules laid down in Article 9 of the Directive. The Directive provides for a judicial remedy against decisions taken by the competent authority of the host Member State. The court began by stating that the terms 'court or tribunal', as per Article 9 of the Directive, are terms defined by Community law. The ECJ then proceeded to state that the *Conseil* does not fulfil the criteria laid down by Community law, more importantly the criteria of independence and impartiality, since the *Conseil* is composed of Luxembourg *avocats*. The ECJ reasoned that a negative decision regarding registration under home country professional title can only be challenged before a council that is made up of other *avocats* who would also be potential competitors to the

[1] Case C-55/94, *Reinhard Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano*, [1995] ECR I-04165.

lawyer who seeks establishment under home country professional title. The ECJ, therefore, concluded that the judicial remedy offered by the Luxembourg authorities was not in conformity with Article 9 of the Directive.

The last two cases concerning the Lawyers' Establishment Directive were those of of *Jakubowska*[1] and *Ebert.*[2] In *Jakubowska,* the ECJ was confronted with the question whether it was possible under article 8 of the Lawyers' Establishment Directive to limit the possibility of people to work as lawyers and as (part-time) public officials. The ECJ ruled that article 8 indeed gave the possibility to Member States to impose such measures, therewith confirming that article 8 must be seen as a "national treatment clause". It is, however, noteworthy to see that the ECJ qualifies the national treatment clause by saying that the underlying measure must conform with the proportionality principle, therewith signalling that, although article 8 is a 'national treatment clause', it is not a *carte blanche* for Member States. In *Ebert,* the ECJ ruled that Member States may impose membership of the national Bar if a lawyer who was established under his home country professional title seeks to integrate in the host Member State profession. The ECJ moreover stated that the Lawyers' Establishment Directive and what is now the Professional Qualifications Directive (the case dealt with the old Diploma Directive) complement each other.

2.4 The Professional Qualifications Directive

The *Ebert* judgement shows that, although not a Directive specifically targeted at the legal profession, and consequently outside the central scope of this study, the Professional Qualifications Directive offers lawyers a third modality of establishing themselves in another Member States and allows them to exercise their professional activities as a member of the profession in the host Member State. In other words, the Professional Qualifications Directive offers lawyers an opportunity to fully integrate in the legal profession of the host Member State.

The Professional Qualifications Directive makes a number of changes to the system as it was laid down in Directive 89/48/EEC and the two other General System Directives. Firstly, the scope of the application of the Professional Qualifications Directive is considerably broader than Directive 89/48/EEC and 92/51/EC. Every regulated profession or regulated professional activity that is not caught by Parts II and III of the Professional Qualifications Directive (professions traditionally governed by the third General System Directive and the Sectoral Directives respectively) is now caught by Article 10. The system of the Professional Qualifications Directive recognises the differences in levels of professional qualifications by introducing five levels to different qualifications in Article 11. Recognition of professional qualifications in a host Member State is dependent on the level of qualification that is required in the home Member State. According to Article 13, recognition of professional qualifications is mandated when the level of qualification in the home Member State is equal to the level immediately prior to the level required in the host Member State. Articles 13 and 14 further clarify the requirements for recognition of professional qualifications. In general, it must be said that the outlines of the system in Article 3 and 4 of Directive 89/48/EEC

[1] Case C-225/09, *Edyta Joanna Jakubowska v. Allessandro Maneggia*, [2010] ECR-I 12329.
[2] Case C-359/09, *Donat Cornelius Ebert, v. Budapesti Ügyvédi Kamara*, [2011] ECR –I NYR

(and 92/51/EC, for that matter) are still visible in the new system but there are some developments that make it actually more difficult to have one's professional qualification recognised. Similarly to the system under Article 3 and 4 of Directive 89/48/EEC, Article 13 begins with the general rule that professional qualifications from another Member State will be recognised only if certain criteria are fulfilled. These criteria are that the person concerned is authorised to exercise the corresponding regulated profession in his home Member State and he must be able to prove this authorisation with evidence of professional qualification (or an attestation of competence) issued by the competent authority of the home Member State. In addition, the proof must also show that the qualification process in the home Member State is at least equivalent to the level (as identified in Article 11 of the Directive) directly prior to the level required in the host Member State.[1]

Just as under the system of Directive 89/48/EEC, the Professional Qualifications Directive also allows the possibility for the host Member State to require compensatory measures from candidates who seek to be integrated in the regulated profession. When compared with the old system, deviations become immediately apparent. The system of compensatory measures is laid down in Article 14 of the Directive. It begins by stating that Article 13 of the Directive (the general rule laying down the principal rule of recognition of professional qualifications) does not preclude a Member State from requiring compensatory measures in the form of an adaptation period or an aptitude test. The first obvious difference with the old system is that the possibility to compensate time differences by means of professional qualification-proof is no longer part of the system of compensatory measures. Article 14 continues by stating that the compensatory measures may be required in three separate events. First of all, such compensatory measures may be required in the event where the training of the candidate is at least one year shorter than the training required in the host Member State. It must be noted that this was the original reason to require professional experience as a compensatory measure. In this sense, the Directive is stricter than the old system since now a Member State may ask for more invasive compensatory measures such as an aptitude test or an adaptation period.

The other two instances in which the host Member State may ask for compensatory measures are similar to the old system: (1) where the training undergone covers matters that are substantially different from those required in the host Member State; (2) where the profession in the host State is made up of one or more professional activities which do not exist in the corresponding profession of the home Member State and that the difference arises due to the need for specific training in the host State, which, in turn, covers substantially different matters than those covered during training in the home Member State. Similarly to the old system, the host Member State must let the candidate choose between an aptitude test and an adaptation period. The rule in the old system that the host Member State has the possibility of choosing the compensatory measure for professions that require a precise knowledge of the national law and for professions where the professional activity concerns advice or assistance relating to national law, is maintained.[2] Furthermore, the ex-

[1] The second paragraph of Article 13 also provides for a recognition procedure for those people who have pursued a profession that is regulated in the host Member State but not in the home Member State. This exception will not be explored further since the profession of lawyer is regulated in all the Member States of the European Union.

[2] Although the Commission sought to abolish it.

ception for other professions as to the choice of compensatory measures has been given a prominent position in Article 14 (whereas it used to be placed in Article 10 of the old Directive, separately from the general procedure, which was laid down in Article 4). Article 14 further mentions the exact definition of substantial differences, a definition that was lacking from the old Directive 89/48/EEC. According to paragraph 4 of Article 14, 'substantially different matter' means matter the knowledge of which is essential for pursuing the profession and with regard to which the training received by the candidate shows important differences in terms of duration or content from the training required by the host Member State.

Lastly, Article 14 states that compensatory measures shall be applied with due regard to the principle of proportionality. More particularly, it must first be ascertained whether substantial differences that were encountered can be recovered instead by knowledge acquired during the candidate's professional experience.

Although the old Diploma Directive (and the Professional Qualifications Directive) generated a fair amount of case law, only a very limited amount of this case law concerned the legal professions. Out of those cases, by far the most interesting deal with those people who are in the process of being qualified as a lawyer but have not yet gained the right to enter a legal profession in one of the Member States. With regards to fully qualified lawyers, the case of *Ebert* can be mentioned. The case that was dealt with above indicates that the system of the Lawyers' Establishment Directive does not usurp that of what is now the Professional Qualifications Directive. In an earlier case against Italy,[1] the ECJ ruled that the extent of the aptitude test imposed by the competent authorities could not go *beyond* what is requested of a prospective domestic lawyer during his qualification process, therewith at least implying that the aptitude test can be equally demanding. Another interesting case dealing with what is now the Professional Qualifications Directive is the case of *Koller*.[2] Koller, an Austrian national, studied law in Austria. After completing his law degree, he chose to move to Spain. In Spain he obtained, after following additional courses on Spanish law, recognition of his Austrian law degree being equal to a Spanish law degree. With his recognised law degree he obtained access to the legal profession in Spain (which at the time did not yet require a traineeship). Being qualified as an *abogado*, he returned to Austria were he requested entrance to the Austrian legal profession by an aptitude test under what is now the Professional Qualifications Directive, immediately requesting exemptions for all parts of the aptitude test based on knowledge he obtained during his law studies in Austria. Not only did the Austrian authorities refuse his request for exemptions but they refused him access to the aptitude test altogether stating that Koller was seeking to avoid the five year traineeship in place in Austria (more or less accusing Koller of abusing his rights under what is now the Professional Qualifications Directive). The ECJ states beyond any doubt that Austria was not allowed to preclude Koller access to the aptitude test, it did not, however, comment on the extent or content of the test or whether Koller should be allowed exemptions. The Koller case makes clear that the ECJ fully accepts the potential Delaware-effects resulting from the discrepancies between legal education systems in different Member States. As indicated above, this may lead to Member States feeling the pressure to re-

[1] Case C-145/99 *Commission of the European Community v. Italian Republic*, [2002] ECR I-02235.
[2] Case C-118/09, *Robert Koller*, [2010], ECR-I 13627.

duce these discrepancies and bring the requirements for entrance in the legal profession closer together. This is illustrated by the fact that Spain has now, indeed, introduced a considerable traineeship before law graduates can enter the Spanish legal profession, therewith blocking at least the extreme route Koller used in his case.

2.4.1 Revision of the Professional Qualifications Directive

At the moment, the European Commission has proposed an extensive amendment to the Professional Qualifications Directive. Although the Professional Qualifications Directive is not a focal point of this study, it is at least interesting to review the proposed changes and see to what extent they influence the free movement of those lawyers who are covered by the Lawyers' Services Directive and the Lawyers' Establishment Directive. Additionally, comments will be made with regard to those professionals who do not fall under the scope of the Lawyers' Directives.

The changes proposed first of all affect those who can also benefit from the Lawyers' Directive (i.e. those which are fully qualified as a lawyer in one of the Member States). With regard to this category, there are two noteworthy elements. First of all, the proposed amendment to the Professional Qualifications Directive includes the introduction of a European Professional Card that will validate the fact that the bearer belongs to a certain profession (in this context the legal profession). The European Professional Card will simplify, from an administrative point of view, the exercise of services and the potential establishment of a member of the legal profession in another Member State. The second innovation for fully qualified professionals touches upon the substance of the recognition of a professional in the legal profession of the host Member State. Above it was observed that Member States have considerable freedom in deciding when an aptitude test is necessary and, when they decide it is necessary, considerable freedom in deciding on the extent of the aptitude test. This freedom is somewhat curtailed, at least on a formal level, in newly introduced sections 6 and 7 of article 14 of the Professional Qualifications Directive. When the proposal is adopted host Member State authorities will have to duly motivate the decision to impose compensatory measures such as an adaptation period or, (which will most often be the case in the case of lawyers) an aptitude test. That motivation should at least:

- Indicate the level of the qualification required in the host Member State and the level of the qualification held by the applicant in accordance with the classification set out in Article 11;
- Indicate the subject or subjects for which substantial differences have been identified;
- Explain the substantial differences in terms of content;
- Explain why, due to these substantial differences, the applicant cannot perform his profession in a satisfactory manner in the host Member State territory;
- Explain why these substantial differences cannot be compensated by the applicant's knowledge, skills and competences gained in the course of his professional experience and through lifelong learning.

The proposal further indicates that, if an aptitude test is imposed, such a test must be organized at least twice a year and applicants must be authorized to re-sit a test at least once if they failed the first test. This elaboration of criteria surrounding the imposition of compensatory measures should provide lawyers with protection against imposition of com-

pensatory measures in an overly enthusiastic manner by competent authorities in host Member States.

The new proposal has (much) more potential for two categories of persons who are not at the focal point of this study, but who will be addressed in different sections below.

First of all, the proposal has interesting features for those who are active in the exercise of a professional activity that belongs to the monopoly of lawyers in other Member States. As was indicated above, the second level of regulation, i.e. activities which may be exercised only by a lawyer, differ from Member State to Member State. For example, legal advice is not a regulated activity in the Netherlands, whereas this activity is heavily regulated in other Member States. Since a Dutch Legal Advisor cannot benefit from the scope of the Lawyers' Services Directive and the Lawyers' Establishment Directive, this person is effectively barred from exercising his profession in a host Member State where the activity of legal advice belongs to the professional monopoly of lawyers established in that Member State.[1] The proposal creates, in the wake of case law of the European Court of Justice on that subject, the possibility of partial access to a profession. It does this through a new article, 4f, which is to be included in the Professional Qualifications Directive:

- The competent authority of the host Member State shall grant partial access to a professional activity in its territory provided that the following conditions are fulfilled:
  - Differences between the professional activity legally exercised in the home Member State and the regulated profession in the host Member State as such are so large that, in reality, the application of compensatory measures would amount to requiring the applicant to complete the full programme of education and training in the host Member State to have access to the full regulated profession in the host Member State;
  - The professional activity can objectively be separated from other activities falling under the regulated profession in the host Member State. For the purposes of point (b), an activity shall be deemed to be separable if it is exercised as an autonomous activity in the host Member State.
- Partial access may be rejected if such rejection is justified by an overriding reason of general interest, such as public health, if it would secure the attainment of the objective pursued and if it would not go beyond what is strictly necessary.
- Applications for establishment in the host Member State shall be examined in accordance with Chapters I and IV of Title III in case of establishment in the host Member State.
- Applications for provision of temporary services in the host Member State concerning professional activities having public health and safety implications shall be examined in accordance with Title II.
- By derogation from the sixth subparagraph of Article 7(4) and Article 52(1), the professional activity shall be exercised under the professional title of the home Member State once partial access has been granted.

When applied in this fashion this provision could prove to be a potential improvement for those professionals who exercise professional activities in Member States with a low degree of regulation that belong to the professional monopoly of lawyers in Member States with a high degree of regulation. However, it must be mentioned that, potentially, the provision

[1] See further and extensively: S. Claessens, *Free Movement of Lawyers in the European Union*, 2008.

can cause more problems than it solves. On first sight the provision creates something alike to the Lawyers' Establishment Directive, guaranteeing partial access to a regulated profession under home country professional title, but issues like deontology are not addressed. Under the system of the Professional Qualifications Directive it might be assumed that (as under the Lawyers' Establishment Directive) the deontological rules of the host Member State would apply. It is unclear how this would materialize in practice.

The last interesting amendment proposed to the Professional Qualifications Directive deals with those (prospective) professionals who are still in the process of qualifying for a regulated profession in the home Member State. Influenced by case law of the European Court of Justice that will be addressed below, the proposal seeks to extend the scope of the Professional Qualifications Directive to include access to and recognition of remunerated traineeships. The idea is that in situations where the access to a regulated profession is made dependent on the obtainment of a diploma and the completion of a traineeship (which is the case for lawyers in all EU Member States after the introduction of the traineeship in Spain), the candidate who seeks to complete the qualification for the (in the context of this study) legal profession in another Member State than that where he completed the academic part of his qualification must be able to rely on the provisions of the Directive in order to have the academic part of their qualification track recognized by the competent authorities of the host Member State in order to gain access to the traineeship in the host Member State, ultimately leading to the qualification in the regulated profession in the host Member State. Under the proposed system, the general system of recognition as described above will apply to gaining access to remunerated traineeships. A new addition is the newly introduced article 55a that provides for the apparently automatic recognition of the traineeship (completed in the host Member State) in the home Member State. Applied to lawyers this would mean that someone who studies law in the Netherlands and gains access to and completes a traineeship in Belgium, could rely on the Directive to have the Dutch authorities recognize the Belgian traineeship in order to facilitate immediate access in the legal profession of the Netherlands. This is an unprecedented step that has not appeared in case law such as *Koller*.[1] An additional problem is that, for unclear reasons, the proposal deals with remunerated traineeships where it can be readily assumed (detailed information is not available) that in some Member States the traineeships for the legal profession are not remunerated. This would lead to the undesirable conclusion that these traineeships would fall outside the Directive.

In a reaction, the CCBE[2] comments on the proposals. The most important comments concern the partial access to the profession, where the CCBE seeks to introduce a possibility to justify a refusal to partial access to the profession on the ground of sound administration of justice (undoubtedly leading to a future position stating that the legal profession is caught by such an exception, leading to the exclusion of the legal profession from the partial access rules). Moreover, with regard to the recognition of traineeships, the CCBE seeks removal of the requirement of remuneration and the possibility to include the application of compensatory measures when recognizing a traineeship that has been completed in an-

[1] See also:http://julianlonbay.wordpress.com/2012/02/01/remunerated-traineeships-european-style/, accessed 5 maart 2012

[2] CCBE postion on the Commission's proposal for a Directive amending Directive 2005/36/EC, via www.ccbe.eu, last accessed 31 August 2012

other Member State, effectively leading to another aptitude test for the candidate who seeks qualification in the legal profession of the home Member State.

2.4.2 The *Morgenbesser* Route

For a long time there were no rules in the European system with regard to access to parts of the qualification process. Access to academic stages of the profession and recognition of credentials that guarantee access to the academic stage take place outside the scope of the European Union (under the Bologna Process) but it is less self-evident that the European system did not contain rules on access to and recognition of the training stage of, in the context of this study, the legal profession. That was, however, the situation until quite recently. Where the movement of fully qualified lawyers has undergone constant transformation and liberalization since the *Reyners* judgement, access to the traineeship was regulated in many Member States exactly in the way as it had been back in 1974: in order to access the professional training one needs a national law degree. This was the situation that Ms. Morgenbesser encountered when she sought access to the Italian professional training based on her French law degree.[1] Ms. Morgenbesser, a French national, had studied law in France and obtained her degree there. After obtaining her degree, a *maîtrise en droit*, she started working at a Parisian law firm without qualifying as an *avocat*. After eight months, she moved to Italy and found a similar job with a law firm in Genova. One and a half years later, she filed a request with the Genova Bar to be registered on the register of *practicanti*, i.e. the register for lawyers who are in the process of qualifying to become an *avvocato*.

The Bar of Genova refused, and so did the National Bar Association, on the ground of the fourth criterion of Article 17 of the *avvocato*-law, which requires candidates to have a law degree conferred by an Italian university.[2] In reaction to these decisions, Ms. Morgenbesser tried to have her French university diploma recognised in Italy.[3] Genova University was willing to recognise her *Maitrîse* on the condition that Ms. Morgenbesser was to follow a two-year course in Italian law, pass thirteen exams and write a dissertation. Ms. Morgenbesser kindly declined and appealed to the *Tribunale amministrativo regionale della Liguria*. The case eventually arrived at the *Consiglio di Stato.* Ms. Morgenbesser had, in the meantime, applied for cassation of the National Bar Association's decision. It was the *Corte suprema di cassazione* which, in the end, filed the preliminary questions to the European Court of Justice.[4]

The Supreme Court of Cassation asked the European Court of Justice whether a diploma conferred by a University in another Member State must be automatically valid for registering in a register of persons who follow a period of practical training in order to enter in the legal profession of another Member State on the basis of the rules regarding free move-

[1] Case C-313/01, *Christine Morgenbesser v. Consiglio dell'Ordine degli avvocati di Genova*, [2003] ECR I-13467. See also: A. Baas, "Grensoverschrijdende advocaat-stagiaires", in: *Advocatenblad,* 83, 2003, 22, p. 973; S. Timm and D. Kempter, "Diskriminierung beim Zugang zum Referendardienst in Deutschland – Schein oder Sein?", in: *Neue juristische Wochenschrift*, 2005, 59(39), pp. 2826-2828.
[2] §§ 25-27 Case C-313/01
[3] This is a situation that generally falls outside the scope of European law as it concerns academic recognition.
[4] §§ 28-31 Case C-313/01

ment of services and freedom of establishment.[1] The European Court of Justice reformulated and stated that the Supreme Court, on the whole, wanted to know whether a person who had a law degree from another Member State could be refused entry into a register of persons who follow practical training in order to enter in the legal profession of the Member State concerned on the sole ground that the individual did not have a law degree that was conferred, ratified or regarded as equal by a university from the Member State concerned.[2]

The European Court of Justice ruled that the status of *practicanti* could not be seen as a separate profession since being a *practicanti* is a necessary step in order to qualify as an *avvocato*. Morgenbesser's situation, therefore, did not fall under the regime of Directive 89/48/EEC (which was then still in force). The Court could have stopped there since that was the extent of the question posed by the Italian court. However, it continued and ruled that even in the event where an activity was not caught by Directive 89/48/EEC (or any of the other Directives) the general rules covering the recognition of diplomas, as laid down in established case law of the European Court of Justice, should apply. The Court then went on to refer to the *Vlassopoulou* judgement in which it was stated that a Member State impairs the free movement of persons in an unjustified manner if it fails to take in account knowledge gained in another Member State (irrespective of whether the situation concerned the free movement of workers or the freedom of establishment).[3] The Court came to the conclusion that the Bar of Genova could not refuse to enter Ms. Morgenbesser into the register of *practicanti* for the sole reason that she did not have a diploma conferred, ratified or recognised by an Italian university and that her knowledge gained in France (proven by her *maîtrise*) should be taken into account. The Court furthermore reiterated that when deciding upon the equivalence of diplomas the national authority could only look at the level of the qualification, except for diplomas concerning national law, where the national authority is allowed to compare, taking into account established differences between the legal systems concerned.

It might be questioned why the Court did not rule that the activities of a *practicanti* constitute a regulated professional activity in light of Directive 89/48/EEC. It seems obvious that Italy, as a Member State, applies rules that control the entry to the level of *practicanti*. It should, therefore, not have been very difficult to rule that the professional activities exercised by *practicanti* could be seen as a regulated professional activity. The Court could then have decided the case by referring to Articles 3 and 4 of the Directive[4] and avoided the question of whether the system for the recognition of diplomas also applied to persons who

[1] The Supreme Court bases its question on articles 10, 12, 14, 39, 43, 49 and 149EC, since Ms. Morgenbesser appealed on the basis of these articles. See § 31-32 case C-313/01.
[2] § 33 Case C-313/01
[3] Doctrinally, the basis of the system lies in *Gebhard.* In that case the Court ruled that any hindrance to the free movement of person should be objectively justified. In this niche, objective justification could be obtained in adhering to the *Vlassopoulou*-doctrine.
[4] It could even be argued that in that case the situation of *Peros* and *Aslanidou* would have applied, since Italy had not implemented an aptitude test for *practicanti*. Morgenbesser could then have integrated without Italy being allowed to impose compensatory measures.

were not considered as a *produit fini* as the Court had done in *Neri*.[1] The reason why the Court could not deal with the question in light of a regulated profession, or a regulated professional activity, was not so much because of the fact that the level of *practicanti* could not be seen as a regulated professional activity[2], but more as a result of Morgenbesser's status in France. Ms. Morgenbesser did not have credentials that could be regarded as a diploma in light of Article 1 of Directive 89/48/EEC. Morgenbesser only obtained her *maîtrise en droit*, which did not give her access to the training for an *avocat*, since she did not pass her CAPA. So, even when the level of *practicanti* was seen as a '*semi produit fini*' then Directive 89/48/EEC could still not be applied since she did not qualify to participate in that similar level of training (*stagiaire*) in her home Member State, France.[3] The Court was, therefore, forced to deal with the question of recognition of diplomas outside the scope of Directive 89/48/EEC.

As stated above, the Court referred to and applied the *Vlassopoulou* ruling to the problem posed by Ms. Morgenbesser. The application of the *Vlassopoulou* doctrine to situations that did not (completely) fall under the system of diploma recognition laid down in secondary legislation is not new. In the cases of *Aranitis*, *Fernandez de Bobadilla* and *Burbaud*, the Court reached the same conclusion. Having said that, the case of *Morgenbesser* does have revolutionary potential. That potential does not lie in the application of the *Vlassopoulou* doctrine as such, but more in the application of the doctrine to the particular facts of the case. In *Morgenbesser,* the Court first applied the *Vlassopoulou* doctrine to a situation that was concerned with a person who was not fully qualified to exercise a regulated profession in any of the Member States, including her home Member State, where she was not even qualified to enter the vocational training for the profession of the *avocat*[4]. Ms. Morgenbesser could, therefore, not be regarded as a *produit fini* in the context of Directive 89/48/EEC. This is different from the cases described above, which had all dealt with persons qualified to exercise a certain profession. Moreover, the Court applied the ruling to a situation where the applicant wanted to enter a higher level in another Member State than the level which she had achieved in her home Member State.

After the ECJ ruled that access, albeit with the application of compensatory measures, must be possible, a later case made clear that discretion regarding the extent of compensatory measures still very much lies within the competences of the (competent authority of the) host Member State. This was addressed in the case of *Peśla.*[5] Mr. Peśla is a Polish national who studied in both Poland and Germany, where he completed an academic qualification in

[1] Case C-153/02, *Valentina Neri v. European School of Economics (ESE Insight World Education System Ltd.)*, [2003] ECR I-13555. This case revolved around the question whether Italy could refuse to recognize a diploma of an English University when the person in question had followed courses in an Italian establishment of that University, where the diploma would be recognized if she had studied in England. The Court avoided the question of diploma recognition by ruling that such a practice was an unjustified hindrance to the freedom of establishment of the school concerned.

[2] The Court even implicitly acknowledged that a regulated professional activity was at stake (§§ 50-51 of *Morgenbesser*) and only denied explicitly that the level of *practicanti* was a regulated profession.

[3] § 54 *Morgenbesser*.

[4] In that sense the ruling of *Morgenbesser* even stretches beyond *Vlassopoulou* since Ms. Morgenbesser was able to use the *Vlassopoulou* comparison in a situation where she sought access to a stage of the qualification for a regulated profession that she was not entitled to enter in the home Member State because of the fact that she did not fulfil the criteria for entering that stage.

[5] Case C-345/08, *Krysztof Peśla v. Justizministerium Mecklenburg-Vorpommern*, [2009] ECR-I NYR.

Polish Law and a master degree in Polish and German law. Mr. Peśla requested access to the training stage in Germany upon which he was informed that he would have to sit the aptitude test under § 112a *Deutschen Richtergesetz*. Peśla requested that he would be exempted from the aptitude test on the basis of his qualifications in German law obtained during his master. This request was refused by the German authorities because they judged that the level of the Master courses was not adequate to show that he had the level of the First State Examination. In order to show that he had that level, he would have to pass the aptitude test.

The ECJ acknowledged that it was up to the Member State to determine the level required by the candidate. It may be assumed that under case law mentioned above (*Commission v. Italy*) the requirements may not be more demanding than those in place for nationals of that Member State. That assumption may, in Peśla's case, have led to a different outcome since it might be established that Peśla was denied a possibility for exemption that was available for German students. Although regrettably overlooked by the ECJ,[1] this anomaly does not change the principle that the host Member State determines the level of knowledge required by the candidate who seeks to access the traineeship for the legal profession after completing the academic stage in another Member State and this level may be equal to the level required from national lawyers.[2]

2.5 Other Relevant Directives

With a view to the study, it is necessary to investigate the interaction between the Lawyers' Services Directive (77/249/EEC) and the Lawyers' Establishment Directive (98/5/EC) and other secondary legislation from the EU that might influence the legal regime that is created through these Directives. In the following paragraphs, a number of these other pieces of secondary legislation will be addressed. In general, it is necessary to explain that these instruments mainly cover the third level of regulation as described above, i.e. the rules that a lawyer has to adhere to in order to properly function in that jurisdiction. In other words, these rules will affect the deontology applicable to lawyers. Since both the Lawyers' Services Directive and the Lawyers' Establishment Directive contain conflict rules on professional activity and deontology there will not be direct interaction between the Directives central to this study and the instruments mentioned as examples (and other instruments) below.

2.5.1 Directive 2006/123/EC on Services in the Internal Market

Before an overview of the impact of the Services Directive it first needs to be established that the Directive applies. In our view the Services Directive applies to lawyers to the extent that the matter at hand is not covered by the Lawyers' Services Directive.

---

[1] See for a lengthy review and criticism of Peśla: S. Claessens and H. Schneider, "Legal Education and the Free Movement of Lawyers in the EU", in: *AW Heringa & B Akkermans, Educating European Lawyers*, Intersentia Cambridge, 2011, pp.121-154.

[2] J. Lonbay, "Legal Ethics and Professional Responsibility in a Global Context", in: *Washington University Global Studies Law Review,* 2005, p. 615-616.

This view is based on the fact that the Lawyers' Directives are not mentioned in article 3 (and also that the lawyers are not mentioned in article 2, which states that the Services Directive does not apply to a number of activities, such as services provided by notaries and bailiffs), and on the text of article 17 of the horizontal Services Directive. Article 17 of the Directive is about additional derogations from the freedom to provide services. That freedom is regulated in article 16.[1] Article 16 prescribes, in short, the right of service providers to provide a certain service, and the general conditions under which such a service may be provided or may be restricted. Possible reasons for restricting the freedom to provide services are explicitly mentioned in article 16 and are limited to reasons of public policy, public security, public health or the protection of the environment.
Article 17 states that article 16 shall not apply to a number of mentioned services of general interest, to some activities and acts, and to a number of matters regulated elsewhere. It further states that article 16 will not apply to "matters covered by Council Directive 77/249/EC". It does not say that all activities of lawyers are excluded, but only matters covered by the Lawyers' Services Directive.

This leads to the question which matters are actually regulated by the Lawyers' Services Directive. One of the most important elements of the Lawyers' Services Directive is the ruling on the applicability of deontological rules. The Lawyers' Services Directive provides for an intricate system of applicability of deontological rules when a lawyer provides services in another Member State, that, in short, comes down to an accumulation of professional rules of both the host and home Member State. If the Services Directive were to prescribe a system of applicability of professional rules (for example exclusively the professional rules of the host or home Member State) it is clear that in such a situation the situation prescribed in the Lawyers' Services Directive would prevail over the situation prescribed in the Services Directive.

The relationship between the Lawyers' Directives and the Services Directive is however more complicated. From the systems for designating applicable rules of deontology in the Lawyers' Services Directive and the Lawyers' Establishment Directive it only becomes clear what regime of deontology applies (applicability), not what the content of those deontological rules should be (content). That means that when a rule of secondary legislation such as the Services Directive imposes a substantive duty on legislators and professional organizations to either prohibit or allow a certain type of behaviour that such an obligation would be possible even with the hierarchy between the Lawyers' Directive and the horizontal Services Directive in force.

This would mean that for example the limitation to four reasons under which the provision of service may be restricted, as regulated by article 16, also applies to lawyers. Effectively, this could mean that many restrictions imposed by the professional rules of the Member States conflict with the horizontal Services Directive. This concerns specifically restrictions that have been adopted for reasons such as consumer protection and the proper practice of the profession. If these conflicts are to be taken away by a revision of professional codes of

[1] Here it must be mentioned that article 16 of the Services Directive contains a rather general codification of case law of the European Court of Justice that remains in force in its own right. That means that also services covered by the acts of secondary legislation that are exempted in article 17 must be exercised in the context of the rules described in case law (which are more or less identical with article 16 of the Services Directive).

conduct of the Member States, a further consequence could be that a separation of rules for services on the one hand and establishment on the other should be made. After all, the horizontal services directive only covers services and not establishment, so the limitations for competent authorities on restricting the provision of services do not apply to establishment. Competent authorities would therefore still be permitted to impose restrictions on established foreign lawyers for reasons of consumer protection and the proper administration of justice.

Other provisions of the Services Directive also apply to lawyers. For example, the Services Directive contains provisions about information requirements for commercial communication by lawyers. Where the Lawyers' Directives do not address these matters, these regulations of the horizontal Services Directive also apply to lawyers.

The Services Directive allows commercial communications, with the result that total bans on commercial communications by lawyers have become impossible in the European Union. The European Court of Justice also ruled later that a ban on acquisition activities, which existed for the auditing profession in France, was directly opposed to article 24 of the Services Directive (case C-119/09 on April 5, 2011). This case is of relevance for the legal sector as well.

The Services Directive recommends making up professional rules of conduct for advertising on the European level. The CCBE already had taken up an article on commercial communications in its code of conduct. In this article, publicity is understood as an activity aimed at informing the public of the services the lawyer can offer rather than marketing of legal services.[1]

At last, according to the services directive Member States are obliged to exercise their domestic powers of surveillance and supervision also for services provided in other Member States.

The instruments mentioned above illustrate that the content of professional activity and the content of deontology can be influenced by European Legislation. This has no immediate effect on the two Directives at the focal point of the study since they provide rules in a content neutral manner with regard to professional activity and deontology. In a more holistic view the free movement will if anything benefit from these developments since they more or less harmonize the content of professional activity and will therefore reduce discrepancies between the legal professions in Europe.

2.5.2 Directive 2000/31/EC on electronic commerce

The relationship between the Lawyers' Directives and the E-Commerce Directive are similar to the relationship of the Directives to the Services Directive described above. In the E-Commerce Directive however, a dedicated system of rules on conflicts with other legislation, as was observed in the Services Directive, is lacking. In light of the relationship be-

[1] See Louise L. Hill. "Publicity Rules of the Legal Professions Within the United Kingdom", in: *Arizona Journal of International and Comparative Law* 20, 2003: 323.

tween the Lawyers' Services Directive and the E-Commerce Directive, that is also not necessary since they do not conflict. As explained above, the Lawyers' Directives are (where it comes to the nature of the activities and the deontological rules) content neutral. The Lawyers' Directives prescribe how a lawyer from one Member State can exercise his profession in the other Member States, but generally do not contain rules on what may and may not be done (other than in comparison with the domestic lawyers). That means that the content and the activities of lawyers may indeed be influenced by other secondary legislation such as the E-Commerce Directive.

Three basic principles of the E-Commerce Directive may be relevant for lawyers.

1 The E-Commerce Directive regulates that service providers must comply with the national provisions applicable in the Member State where the service provider is established, and, furthermore, that Member States may not restrict the freedom to provide information society services. This means that rules of the host Member State do not apply. Under the regime of the E-Commerce Directive, a lawyer providing a service online to a client in another country (e.g. through a website or a chat program) would only have to comply with the rules and regulations of the country in which the lawyer is established. The CCBE, in its document on electronic communication and the internet, refers to the E-Commerce Directive when explaining which professional rules apply to cross-border online services. The document states that it depends on the location of the lawyer which professional rules apply. For example, when an Irish lawyer gives advice by e-mail to a Belgian client, Irish professional rules apply. The result is that different professional rules apply to, on the one hand, temporary cross-border services that are provided under the E-Commerce Directive (host state rules) and, on the other hand, services that are provided by a lawyer who has travelled to a client in another country (the double deontology provision of the Lawyers' Services Directive). This means that providing services personally could be governed by rules that are potentially more restrictive than when providing the services remotely by electronic means.
2 Exceptions of acceptance of services can only be made for reasons of public policy, public health, public security, and consumer protection. Consumer protection might be perceived to be a ground for limiting or regulating lawyers' possibilities to provide services in another Member State. However, this may prove to be difficult because of the mutual recognition of qualifications of lawyers in the European Union. The recognition of qualifications means that Member States admit that qualified lawyers from other countries are able to practise the law. Therefore, there is no ground to restrict their freedom to provide legal services. The only thing that those lawyers might be lacking is knowledge of specific national laws.
3 The E-Commerce Directive encourages Member States to adopt codes of conduct for the regulated professions. The goal of these codes is the protection of consumers. Analogous to what has been noted above in connection to the Services Directive, the CCBE, in practice, caters for rules of conduct for lawyers also related to e-commerce.

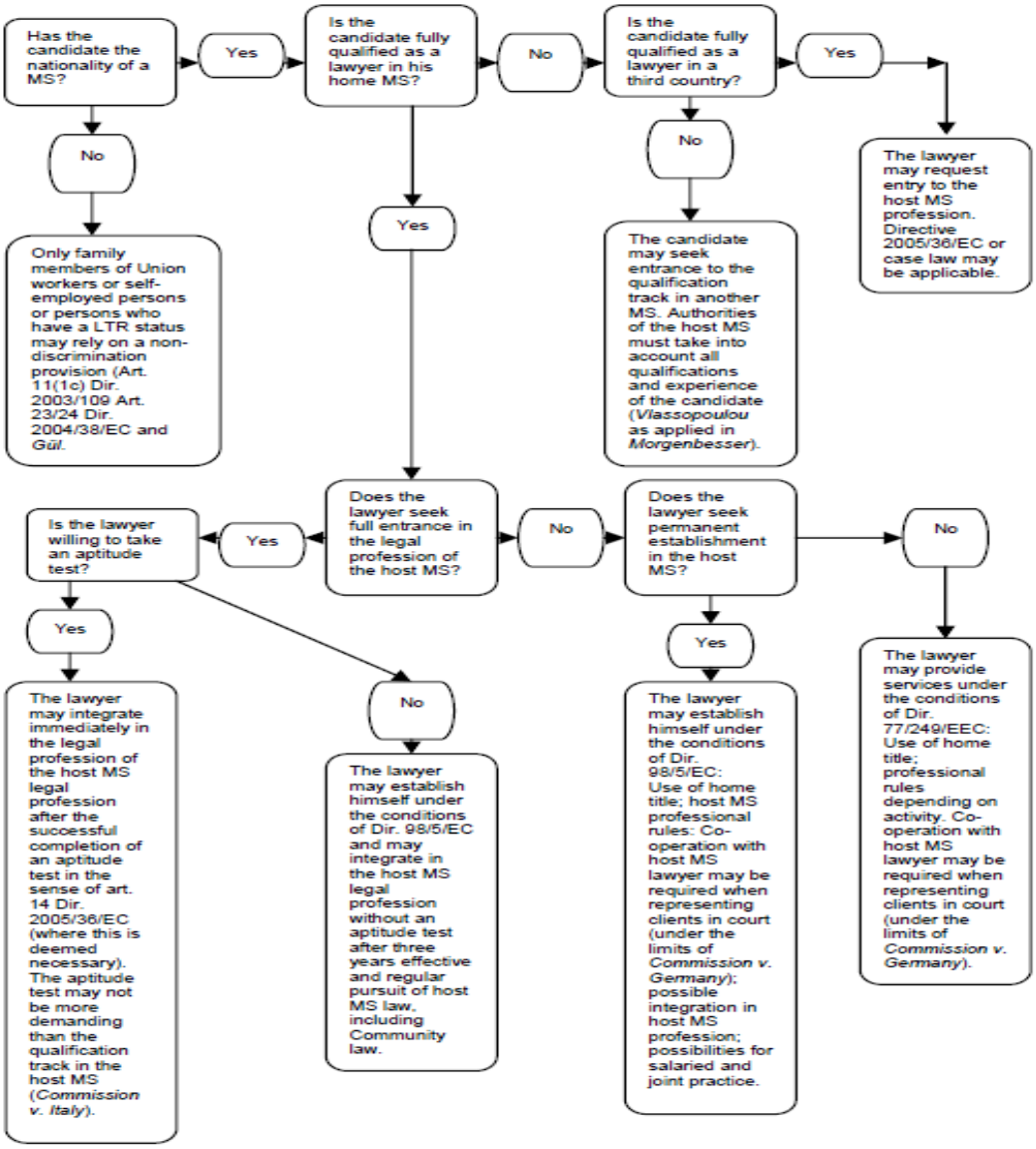
2.6 Overview of the Legal Framework

Since the ECJ ruled in the *Reyners* case that the legal profession could not benefit from a generic exception, a true free movement of lawyers has been created. Central to this free

movement are the Lawyers' Services Directive and the Lawyer's Establishment Directive that ensure the freedom for fully qualified lawyers to provide services and establish themselves in other Member States, respectively. The Professional Qualifications Directive provides, at least for lawyers, a supportive role to the Lawyers' Establishment Directive allowing for (potential) full access to the legal profession in the host Member State at an earlier stage than what is generally provided for in the Lawyers' Establishment Directive.

It was established that, with regard to national regulation of the profession, three levels can be seen: first, regulation with regard to access of the profession (i.e. the national legislation determines who has access to the profession); secondly, regulation with regard to the extent of the profession (determination of professional activity and professional monopolies) and, thirdly, regulation on how the profession is exercised (deontology). It has been observed that the system of free movement on a European level mainly depends on the first level of regulation since the enjoyment of the rights contained in the two Directives is made dependent on belonging to a legal profession in the first place. The second and third level are of lesser importance to the system (they may be of utmost importance to the lawyer!) since the Directives provide for content-neutral conflict rules describing how lawyers using the Directives should deal with issues on professional activity and deontology.

The functioning of the three Directives is described as follows:



Is a separate legal framework still necessary?

Following the implementation of the Professional Qualifications Directive, the question of whether a separate legal framework for lawyers is necessary arises. In essence, both the Lawyers' Services Directive and the Lawyers' Establishment Directive are products of the first phase of recognition of qualifications where the European Union sought to establish free movement of professions by means of creating separate measures for all professions. The underlying idea of the Diploma Directive and, later, the Professional Qualifications Directive would be to create a system that would encompass all regulated professions within Europe. In that sense, the Lawyers' Directives are a dissonant and unique feature in the system of recognition of professional qualifications.

Therefore, simplification might be a reason for abolishing the separate legal framework for lawyers. Of course, this should only be done if abolishing the framework would indeed lead to a simplification. However, this will probably not be the case. The Professional Qualifications Directive contains provisions on both establishment and temporary mobility by professionals. With regard to establishment, it is clear that the regime of the Lawyers' Establishment Directive is currently more liberal and simple than the horizontal regime of the Professional Qualifications Directive. After all, the Lawyers' Establishment Directive makes it possible for lawyers to establish in another EU Member State without needing to undergo an aptitude test first (and without fully integrating into the profession of the host state). With regard to the temporary provision of services, a similar point can be made. Whereas under the Lawyers' Services Directive lawyers are free to provide services without any administrative requirements, the Professional Qualifications Directive offers Member States the possibility to impose requirements, for example, that the service provider informs the competent authority in advance, including the details of any insurance cover or other means of personal or collective protection with regard to professional liability.[1] Our conclusion is that abolishing the separate legal framework for lawyers would either lead to a less liberal regime for lawyers, or it would make necessary the adoption of many lawyer-specific articles in the Professional Qualifications Directive, with the result not of simplification but rather of complication of the matter. Additionally, the Professional Qualifications Directive does not give rules for the applicable deontology in the case of services, something that is central to the Lawyers' Services Directive.

In assessing the viability of a separate system of free movement rules for lawyers, one has to acknowledge the special nature of the legal profession, elaborately indicated above: it is a professionbased on knowledge the content of which very much limits it to the legal system where the lawyer concerned was trained. In that sense, there are comparable legal professions throughout the Member States of the European Union, but the content of these professions (and not so much with regard to the nature of the activities but more so with regard to the content of the knowledge) differs considerably in these Member States. The system provided by the Professional Qualifications Directive, even when the changes proposed to it would be taken into effect, would probably, at least in our view, not be precise and detailed enough to cover all the problems encountered by lawyers. Lastly, none of the respondents have indicated that they seek the abolishment of the Directives in lieu of the Professional Qualifications Directive.

2.7 Systemic Barriers

The system, as described above, relies heavily on the qualification (and registration) as a lawyer in at least one Member State. This demarcation of the system itself inherently leads to some difficulties, in that lawyers have to remain registered with their home bar, and that lawyers who are not yet fully qualified cannot make use of the Directives. Furthermore, there is a number of difficulties inherent to lawyer mobility within the European Union.

[1] Professional Qualifications Directive, article 7.

2.7.1 Continued Registration

Article 3 of the Establishment Directive makes the (permanent) establishment of a lawyer in another Member State dependent on the continued registration of that lawyer in his home Member State, so a lawyer who wants to move to another Member State is forced to continue to deal with registration and other (e.g. continuous education, professional indemnity insurance) obligations in his home Member State in order to make his move to the receiving Member State possible. Although this may be perceived as a barrier upon lawyers who seek to make use of the system, it is a limitation that is imposed by the Directive and probably the system of thought underlying the Directive itself. The Lawyers' Establishment Directive makes exercise under home country professional title dependent on being allowed to practise in the home Member State. Although such a lawyer will most probably leave the home Member State permanently, this link cannot be severed since, otherwise, the lawyer would lose the right to practise in the host Member State. The reasons for this paradox were not specifically addressed in the creation process of the Lawyers' Establishment Directive. Having established that the original proposal of the Lawyers' Establishment Directive by the European Commission was aimed at a temporary right of establishment under home title, as evidenced by the recitals, it is noteworthy to mention that the only way this last link with a home Member State can be severed is by fully integrating in the host Member State legal profession.

Apart from requirements regarding continuous education requirements that the lawyer would have to fulfil in his home Member State in order to maintain his registration there (and therewith his right to practise in the host Member State) which is covered by arrangements made in the context of the CCBE, and other requirements such as the maintenance of infrastructure and the participation in social security or pension schemes, the most visible requirement for lawyers who are established in another Member State exercising their professional activity there is the requirement to pay fees to the Bar Association of both the host and the home Member State.

This requirement must be distinguished from the fee-requirement for registration with the host state Bar on the basis of article 3 of the Directive that will be addressed below. Such a requirement enjoys a doubtful status under the system of the Directive, while fee requirements after registration belong to the third level of regulation above, and must be accepted under the system of the Directive. The country studies have shown that the amount of the registration fee differs considerably in Member States.

Even though the requirement of fees (and continued registration in general) must be accepted under the system of the Directive, it is perceived as a hindrance. One respondent in Spain pointed out that a barrier for the exercise of the profession of lawyer on a cross-border basis is related to the need to pay a fee to the Bar Associations in both the home and the host Member State. The web survey also confirms that these fees are perceived as a barrier (see further section 4.5).

2.7.2 Not Yet Qualified Lawyers

It has been explained above that a category of professionals that fall outside the scope of the Directives are those who are in the process of qualifying for one of the legal professions mentioned in the Directive. The development of the system for the free movement of lawyers has always focused on produit fini (i.e. those who are fully qualified): those who are still seeking to gain qualification are left to the mercy of the regulations in the different Member States, which are, generally speaking, stringent and not tuned to cross-border movement of students and graduates who are undertaking a professional education in order to become members of one of the professions mentioned in the Directives. The impact of this lacuna could be softened by, at least, applying the system of the Professional Qualifications Directive to these prospective lawyers, but the Court of Justice of the European Union refused to accept that the activities carried out by trainee lawyers can be classified as regulated professional activity which is covered by the Professional Qualifications Directive in the *Morgenbesser*-case[1]. The court extended the *Vlassopoulou* judgment (that dealt with a fully qualified lawyer in the years predating the Professional Qualifications Directive and the Lawyers' Establishment Directive) by stating that trainee lawyers were entitled to a comparison between the credentials they had and the credentials they were required to have in order to accede to the traineeship stage in the receiving Member State. The Court of Justice of the European Union did not rule on the extent or content of the review and, in the recent case of *Pesla,*[2] it was made clear that Member States have a great deal of discretion in deciding when and to what extent compensatory measures can be required. In the facilitation of the free movement of lawyers, this lacuna might prove to be a real barrier. At the moment, free movement is only guaranteed to a category of professionals that are fully qualified and that are usually less inclined to become mobile (e.g. because of the investment they made in order to become fully qualified in a Member State, and their age and stage of life) than the prospective lawyers who are less settled and also by profession not bound to any one Member State.

Numerous studies have shown that students who move around are more likely to be working abroad later in life.[3] This means that facilitating law student and lawyer-trainee mobility may also significantly impact lawyer mobility.

Some country studies have also shown that there are problems with regard to free movement of those who are in the process of qualifying. In e.g. Lithuania, it has been noted that there is a growing number of lawyers who are not yet fully qualified but have completed studies abroad and come back to Lithuania to seek admission to the Lithuanian legal profession. A group of applicants have already worked abroad and seek the recognition of their legal professional experience (such experience of 5 years frees them from the requirement to complete a period of training as an assistant lawyer). Since ca. 2009, experience gained abroad can be recognized as relevant professional experience under the same conditions as professional experience gained in Lithuania. There was mention among the respondents

[1] Case C-313/01, *Christine Morgenbesser* v. *Consiglio dell'Ordine degli avvocati di Genova*, [2003] ECR I-13467
[2] Case C-345/08, *Krzysztof Peśla* v. *Justizministerium Mecklenburg-Vorpommern*, [2009] ECR-I, nyp.
[3] See Oliver Bracht, Constanze Engel, Kerstin Janson, Albert Over, Harald Schomburg and Ulrich Teichler, *The Professional Value of ERASMUS Mobility*, 2006, p. xvii (evaluation commissioned by the European Commission - DG Education and Culture).

that there are, annually, about 10 applications for the recognition of such professional experience gained abroad. Such applications are being considered by a commission of recognition under the auspices of the Ministry of Justice, created in 2002. It can be expected that, with the increasing numbers of Lithuanian students abroad, these numbers will grow as well.

A difficulty identified by law firms established in the Netherlands, Belgium and France is that the existing regulations do not make it possible to attract young, talented law graduates from other countries. Because there is shortage of talent in small markets like The Netherlands and Belgium, this leads to pressure on wages. They are rising more quickly than inflation. At the same time there are countries in which there is an abundance of young graduates looking for jobs. However, in the current system they would first have to qualify as a lawyer in their own country before being able to move to another country.

Some bars argue against measures that make free movement of trainee lawyers easier, because of the existing differences with respect to legal education across Member States. This argument, however, could equally be used with regard to fully qualified lawyers.

It may be concluded that the discrepancy between the fully developed system of free movement of fully qualified lawyers and the underdeveloped system of free movement of legal trainees is very big and could be addressed by developing e.g. free movement rules for legal trainees. This is also underlined by the ever-increasing mobility of students (and, in particular, an increasing number of students that completes an entire study program abroad, facilitated by English-language programs) that at least leads to a discrepancy between mobility opportunities for students and fully qualified professionals on the one hand, and the relatively limited possibilities for mobility for those who are in the process of qualifying for a regulated profession on the other.

2.7.3 Inherent Difficulties

Besides the barriers for mobility flowing from the system itself described above and mainly relating to the required membership of the Bar Association in the home Member State, other less concrete or less visible barriers are widely reported in case studies and country studies.

First, there is the problem of language. Since every rule is expressed in language, language is an indispensable tool that lawyers need. The exercise of the profession of lawyer to an acceptable standard normally requires a command of the language that is not even necessarily available to native speakers. A subtle change in formulation of a sentence in a contract, for example, might have a night to day difference with regard to the (legal) meaning of that sentence. Different country studies and case studies show that the knowledge of the language (or lack thereof) is perceived as a real barrier. The system of the Directives chooses to ignore this barrier, or better put, leaves it to the working of the free market. The system of the Directives must, therefore, be seen as a 'facilitating' system, in the sense that it facilitates the free movement of lawyers, but not as a 'guaranteeing' system, in the sense that it guarantees a viable market for lawyers who seek to make use of the of the Directives. A lawyer established under his home country professional title (or providing services) must make a reasoned decision with regard to whether or not he has enough

command of the language of the host Member State to take on a case. Misjudging this capacity could (and more likely would) lead to indemnity issues and perhaps even disciplinary proceedings. It must be mentioned that this problem is more prevalent in Member States with an official language that is sparsely spoken outside that Member State, and that Member States with languages that are spoken as a foreign language in other countries (English, German, French and Spanish for example) will be more attractive for migrating lawyers.

A second, inherent barrier are the differences in legal systems of the Member States. Modern societies are highly regulated and regulation often contains a remarkable amount of detail and nuance. The system of the Lawyers' Directive contains no guarantees making sure that the lawyer who seeks to make use of the regime has adequate knowledge of the law of the host Member State. In this setting, it is again a call of judgment for the lawyer involved to decide whether he has enough knowledge of the national law to take on a case. Again, misjudgement in such a situation might lead to liability or disciplinary proceedings. It must be mentioned that the same is true for deontological rules in force in the host Member State. Unlike language, where the problem is relatively static, the European Union has had, and still has, a considerable influence on the reduction of these differences between Member States. Harmonization measures and other instrument of secondary legislation lead to uniformity across national legal systems in the fields of concern of those measures. Due to the influence of European law, the differences observed above are reduced.

A third set of inherent barriers can be identified as those affecting the movement of professionals (not necessarily linked to the legal profession). Deciding to establish oneself in another Member State may have an enormous impact on social security premiums payable as well as eligibility for certain social security benefits (state pensions for example) later on in life. An in depth study of the social security schemes in Spain and Portugal shows that, where a lawyer seeks to be active in both Member States (he will at least have to be registered in both Member States in order to make use of the system of the Directive) he will have to pay social security premiums in both Member States, leading to a considerable (if not insurmountable) barrier to movement. This type of barrier (which is discussed more in detail in section 4.5.4) adds to the requirement to pay double registration fees for the professions in the host and home Member State (further addressed in section 2.7.1).

A fourth barrier that was encountered in the interviews, country studies and case studies is the inherent distrust displayed by markets, but also professional organizations in different Member States. We have encountered statements to the extent that the free movement of lawyers does not work because foreign lawyers do not know the national law, and that the mentioning of the fact that the lawyer concerned is a 'foreigner' is enough to question the professional capabilities in of the lawyer in question. It is this, ever present, suspicion that is potentially the most damaging to the free movement of legal professionals. It is remarkable, apart from justified concerns with regard to language and knowledge of the national legal system addressed above, that such suspicion should exist, since we have encountered remarkably similar requirements in all Member States with regard to issues such as criminal records, good standing, honour, etc.

3 Implementation of the Lawyers' Directives

Key outcomes

- Both the Lawyers' Services Directive and the Lawyers' Establishment Directive have largely been implemented correctly in the Member States.
- Irregularities are most notably encountered with regard to the administrative requirements for registration under home title
- Both Lawyers' Directives offer some discretionary room to the Member States in the implementation into national law. Notable examples are the requirement of working in conjunction with a local lawyer and the requirement of introduction to the Court and/or Bar president. There seems no need to change the Directives on these two points
- Differences between Member States may sometimes lead to difficulties, for example in the area of deontology

3.1 Introduction

In order to give a detailed answer to the question of whether the system created through the Lawyers' Service Directive and the Lawyers' Establishment Directive actually works in the Member States, a detailed overview of the implementation in the Member States is necessary. In researching this it is adamant to, where possible, look beyond the actual transposition in law of the respective Member States and give an assessment of the practical and factual application of these implanted rules as they are applied by competent authorities in the host Member State. In addition, it must also be seen which efforts have been undertaken on a European Level to make sure that lawyers who make use of their free movement rights are adequately supported. This will be done in this chapter. Therefore, this chapter sets out to meet the research objective of assessing the way in which the legal framework has been transposed and implemented at the national level, and the experiences with implementation. Additionally, it describes challenges and barriers for lawyers that are specifically linked to or are a result of the (differences in) implementation in Member States.

3.2 Implementation at the European Level

In the implementation of secondary legislation the emphasis is placed on the efforts of Member States who will have to bring their legislation and regulations in line with what is required by the Directives in question. With regard to the second level, the factual facilitation of free movement, it is interesting to investigate whether efforts were undertaken on a European level in order to assist and facilitate those lawyers who seek to exercise their profession in another Member State.

As a first observation it may be noted that there is no central European Platform that governs/assists/facilitates/supports the free movement of lawyers specifically. As described above with regard to the organization of the profession, there is no such thing as an over-

arching European Bar that organizes the profession on a European level. It must, therefore, be assumed that a lawyer who seeks to provide services or establish himself in another Member State will have to establish a bilateral contact between the Bar in the host Member State and the Bar in the home Member State.

The European Commission maintains a website for those European citizens and European businesses that seek to move around the European Union. The website, called "Your Europe" (europa.eu/youreurope), offers a wealth of information on the formalities that need to be fulfilled for both citizens and businesses in order to move to another Member States. There is no specific section for lawyers, and perhaps more importantly, there are no sections on the freedom of establishment altogether, bringing one to the conclusion that this specific website is of little help to (potentially) migrating lawyers.

Another initiative that can be identified on a European level is EURES, the European job mobility portal (ec.europa.eu/eures), where both employers and employees can access and search CV's and job openings in a myriad of areas. The legal professions are included in this database and, indeed, numerous job openings are returned in legal professions in the different countries. Although not a direct facilitation to the free movement of lawyers, it is at least a helpful tool for a lawyer who seeks to exercise his professional activities in another Member State.

Although it was established above that there is no overarching European Bar Association, it must be mentioned that there is a Council of Bars and Law Societies of Europe (CCBE). According to its statutes, the CCBE performs the following functions:

a) To represent the Bars and Law Societies of its Members, whether full, associate or observer members, on all matters of mutual interest relating to the exercise of the profession of the lawyer, the developments of the law and practice pertaining to the rule of law and administration of justice and substantive developments in the law itself, both at a European and international level.
b) To act as a consultative and intermediary body between its Members, whether full, associate or observer members, and between the Members and the institutions of the European Union and the European Economic Area on all cross border matters of mutual interest as listed under a) above.
c) To monitor actively the defence of the rule of law, the protection of fundamental and human rights and freedoms, including the right of access to justice and protection of the client, and the protection of the democratic values inextricably associated with such rights.[78]

From this mission statement it becomes clear that the CCBE is mainly an institution that facilitates the liaisons between the national Bar Associations *inter se* and between the EU (and EEA) and the national Bar Associations, respectively. The CCBE has a standing committee that deals with the free movement of lawyers. The CCBE is also active in the third level of regulation identified above since it provides a CCBE code of conduct, a model set of deontological rules, in an effort to self-harmonize this third level of regulation. This effort is limited to cross-border activities.

[78] Statutes of the Council of Bars and Law Societies of Europe, via www.ccbe.eu, last accessed 4-9-2012.

The CCBE is in the process of creating a single access database that would give access to the contact details of all the lawyers in Europe (the so-called "find a lawyer" project). Furthermore, the CCBE website contains links to the national codes of conduct and the national laws regulating the Bars of the Member States.

Although of utmost importance for the legal profession where it comes to influencing and assessing the impact of European legislation on the European legal professions, the CCBE offers little direct assistance to lawyers exercising professional activities in other Member States.

In conclusion, it can be remarked that there is little, if any, direct support available to European lawyers who seek to exercise their professional activity in another Member State.

3.3 Implementation in the Member States

Even though it has been established by cases such as *Wilson*, *Jakubowska* and *Ebert* that at least the Lawyers' Establishment Directive leads to full harmonization of the matter, it cannot be said that Member States are devoid of any leeway when it comes to implementing the Directives. Both Directives offer some discretionary room to the Member States in the implementation into national law, such as whether or not to use requirements of introduction to the court, working in conjunction with local lawyers and rules on joint practice. Barriers and difficulties can arise from residual discretionary room that is left to Member States by the articles in the Directive. This section, therefore, also addresses these kinds of barriers.

The European Commission has started infringement proceedings against Bulgaria because of the incomplete implementation of the Lawyers' directives. The main reason for the infringement procedure is the requirement of Bulgarian nationality for a person to obtain the qualification of Bulgarian lawyer. Besides, EU lawyers do not benefit from the same rights as Bulgarian lawyers for the exercise of their activity. Furthermore, European law firms are unable to establish branches in Bulgaria or use their own company name.[79] This pending case may provide the ECJ with another opportunity to rule on the limits laid down by the Lawyers' Establishment Directive.

In the following paragraphs an inventory will be made with regards to a number of central elements in the Directives that give Member States certain leeway with regard to applying the articles of the Directive.

[79] Press release of the European Commission, 29 October 2009. *Free movement of services: Commission takes action against Bulgaria (law firms), Luxembourg (medical tests) and Austria (bank accounts)*. Brussels, IP/09/1625 (online: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1625&format=PDF&aged=1&language=EN&guiLanguage=en, last accessed 20 April 2012).

3.3.1 Working in Conjunction with a Local Lawyer

The first provision where both the Lawyers' Services Directive and the Lawyers' Establishment Directive allow leeway for the Member State to impose national rules on lawyers providing services or seeking establishment under home title in their jurisdiction is in the field of co-operation with a national lawyer when representing a client in court. It was described above that this leeway is curtailed by the case of *Commission v Germany.* In that case the ECJ ruled that only in situations where the assistance of a lawyer is compulsory the host Member State may enforce conjunction on the visiting lawyer. The judgment further explained that the conjunction should mainly target technical assistance and that the visiting lawyer could still act as the leading lawyer in the case. The requirement to work in conjunction exists in many Member States.

Table 3.1 Requirement for working in conjunction across Member States

Country	When conjunction is required
Austria	In cases where representation by a lawyer is required under national law, working in conjunction with a national lawyer is required for both lawyers providing services and lawyers established under their home country title.
Belgium	Work in conjunction is necessary for lawyers providing services and established under their home country professional title when representing clients in court.
Bulgaria	At least lawyers who provide services must work in conjunction with a local lawyer when representing a client in court in cases where representation by a lawyer is compulsory. The situation with regard to lawyers established under their home country professional title is unclear due to the problematic implementation of the Lawyers' Establishment Directive in Bulgaria that is currently under scrutiny of the ECJ
Cyprus	Working in conjunction is required for both services and establishment under home title when representing clients in court
Czech	Lawyers have to work in conjunction with a local lawyer when national law prescribes the compulsory representation by a lawyer in both the provision of services and while exercising professional activity when established under home-country professional title.
Denmark	Work in conjunction is necessary for lawyers when representing clients in court in those cases when representation is compulsory when providing services and when established under home country professional title.
Estonia	For representing clients in court, at least in the preliminary presentation of the case. Physical presence of the local lawyer is only required in Supreme Court cases.
Finland	Working in conjunction is not necessary
France	When providing services and representation by a lawyer is compulsory. When established no working in conjunction necessary.
Germany	Lawyers have to work in conjunction with German lawyers when they provide services to the extent of representing clients in court where representation by a lawyer is necessary, but no such requirement is imposed for lawyers established under their home country professional title.
Greece	Working in conjunction with a Greek lawyer while providing services consisting of defending a client in court or in front of an administrative body is necessary. With regard to establishment the requirement is upheld for defending clients in court.
Hungary	Working conjunction with a Hungarian lawyer is compulsory in those cases in which legal regulation prescribes compulsory legal representation (to be proved by a collaboration contract).
Ireland	Lawyers providing services and established under their home country professional title must work in conjunction with an Irish lawyer while representing clients in court where such representation is compulsory.
Italy	In civil, criminal and administrative judicial proceedings the foreign lawyer must appear with a local lawyer with right of audience before the relevant court (for services and established lawyers)
Latvia	In cases where representation by a lawyer is mandatory (in criminal cases)
Lithuania	When representation by a lawyer is mandatory (in criminal cases) (both services and establishment)
Luxembourg	Lawyers providing services and established under their home country title must work in conjunction with a Luxembourg lawyer when representing clients in court.
Malta	Lawyers providing services or established under their home country professional title must work in conjunction with a Maltese lawyer when representing a client in court.

Country	When conjunction is required
Netherlands	Lawyers providing services or established under their home country professional title must work in conjunction with a Dutch lawyer when representing a client in court, where such representation is compulsory under Dutch law.
Poland	Conjunction is required when representation by a lawyer is compulsory (this probably means for exceptional cases of representation, like before the Supreme Court, but the law is somewhat ambiguous). An agreement between the lawyers must be submitted to the authority conducting the proceedings. The requirement applies for both temporary services and for established lawyers.
Portugal	For representation before courts (both services and establishment)
Romania	Working in conjunction is not required.
Slovakia	For Services: conjunction necessary when representing before the court, a written agreements must be made. For established lawyers no conjunction is required.
Slovenia	For representation in courts, both for temporary services and established lawyers
Spain	For temporary services and established lawyers: In cases where representation has to be done by a lawyer, and for visiting people in custody or prison. The foreign and the Spanish lawyers are jointly liable in cases of conjunction.
Sweden	No obligation to work in conjunction while providing services or being established under home country professional title.
United Kingdom	If the title of solicitor or barrister is expressed needed when representing a client in legal proceedings, then the registered European lawyer shall act in conjunction with one of them.

From the case *Commission v Germany,* mentioned above, it became clear that the main reason for the possibility to impose working in conjunction on a lawyer providing services or established under his home title is not so much to curtail the lawyer in the exercise of that professional activity, but to help the lawyer concerned in the often detailed and complicated rules in force in the different Member States. This reason can also be distilled from the country studies. The Spanish country study, for example, shows that in Spain the reason for acting in conjunction is to ensure a certain level of quality of service, with regard to the knowledge of Spanish law and regulations. Similar remarks can be found in the Latvian country study. According to the opinion of the Latvian Bar Council, such requirement is necessary as EU lawyers who are entitled to practise in Latvia with their home-country professional title do not always have sufficient knowledge of Latvian legal acts and practice, as well as with the Latvian language itself. So, this requirement is enshrined in the first place in the different Directives to assist the lawyers concerned. In some jurisdictions, the requirement is not imposed, but that does not necessarily mean that the lawyer concerned in those jurisdictions is in a better position. When performing his activity in another jurisdiction a lawyer will always have to ask himself the question whether or not he has enough knowledge to take on the case in order to avoid liability if something were to go wrong (e.g. misplace documents or hand them in with the wrong authority). It may be self-evident that a lawyer must always make a call of judgement whether or not he or she has enough knowledge to take on a case (this might even be the case in wholly national situations where a lawyer who is specialised in penal law for example is requested to take on a case concerning a divorce, or where a divorce lawyer is requested to handle a hostile take-over). Such a call of judgement might even be explicitly required under applicable deontology or terms of a professional indemnity insurance.

It must be noted that Member States seem to stay within the limits of the articles in the respective Directives, as interpreted by the ECJ in *Commission v Germany*. It is noteworthy that some respondents report the obligation to work in conjunction when representing clients in court (without the qualification imposed by the ECJ, where representation by a lawyer is compulsory) but there are no reasons to assume that these Member States impose the condition beyond its legal limits.

Experiences in practice

Of the lawyers that participated in the survey and have made use of either or both the Lawyers' Services Directive and the Lawyers' Establishment Directive, 45% has been required at least once to work in conjunction with a local lawyer. The table below shows the benefits that lawyers have experienced when working together with a local lawyer. More than three quarters of the lawyers (77%) indicates that the local lawyer has provided knowledge of local customs and court procedures. Almost as many lawyers (71%) have profited from advice that the local lawyer can give on the law of the host country. These two could be beneficial not only to the lawyers but also to the client. Almost half of the lawyers (45%) are of the opinion that the conjunction provides a basis for further professional co-operation, and around a quarter (28%) has experienced greater acceptance by the court or administrative body before which they had to appear accompanied by the lawyer. A relatively small group (7%) has experienced no benefits from working in conjunction with a local lawyer.

Table 3.2 Benefits of working in conjunction with a local lawyer

	n	%
The local lawyer can provide knowledge of local customs and court procedures	390	77%
The local lawyer can give advice on national law of the host country	356	71%
The conjunction provides a basis for wider professional cooperation	229	45%
I experience greater acceptance by the court/administrative body before which I appeared	139	8%
No benefits	37	7%
Other	13	3%
Total	504	100%

Multiple responses were possible; percentages based on number of respondents

Besides the benefits of working in conjunction, part of the lawyers (38%) has also experienced difficulties. The most commonly experienced difficulty (by 24% of the lawyers, see table 3.3) is the costs of working in conjunction. Some lawyers (14%) indicated that it limited their ability to do the work independently, and some (10%) have experienced difficulty finding a local lawyer who would agree to work in conjunction. Difficulties are experienced more often by lawyers working in small firms (about half experienced difficulties) than by lawyers working in firms with more than 10 lawyers (only around a quarter of them has experienced difficulties). Lawyers in small firms especially seem to have more difficulties finding a local lawyer to work with.

Table 3.3 Difficulties experienced by lawyers in relation to working in conjunction with a local lawyer

Have you experienced any difficulties in working in conjunction with a local lawyer?	n	%
No	310	62%
Yes, the costs	119	24%
Yes, it limited my ability to do the work independently	73	15%
Yes, difficulty in finding a local lawyer who would agree to work in conjunction with me	52	10%
Other difficulties	14	3%
Total	504	100%

Multiple responses were possible; percentages based on number of respondents

The average extra costs for the client because of the requirement to work in conjunction vary. According to a third of the lawyers, extra costs (if any) are less than 25%. Another third indicates that the extra costs are between 25% and 50%, while another third indicates that average extra costs are over 50%.

In the course of interviews with lawyers, it has been remarked that also when conjunction is not required, lawyers often work in conjunction so that the local lawyer can provide knowledge of local law and customs. Although there are costs involved, the conjunction can also prevent potentially costly mistakes.

3.3.2 Introduction to the Court or Bar President

In relation to the requirement to work in conjunction with a local lawyer, the Lawyers' Services Directive also provides for the possibility for a lawyer providing services to be introduced to the president of the court or the president of the Bar Association. Few countries demand that EU lawyers are introduced to the court, e.g. by a local lawyer. Countries that have prescribed it (such as Belgium, Estonia, France, Greece and Hungary) are generally of the opinion that it is important and that this should remain possible. The reasons as such are not apparent. At least in Belgium, it seems to be a custom that is also applied to lawyers who plead for the first time in a given court or lawyers that plea outside their own constituency. There are some country-studies that include the necessity to proof that a lawyer providing services is actually a lawyer in the answer to this question, whereby it must be remarked that the power of a competent authority of the host Member State to scrutinize (or at least require) the credentials of a lawyer providing services is separately addressed in article 7 of the Lawyers' Services Directive. The introduction requirement itself seems of little importance, and interviews have not provided any indication that it is perceived as a significant obstacle to mobility.

Table 3.4 Introduction by local lawyers necessary or not

Country	Conditions
Austria	Not necessary
Belgium	Introduction to the president of the court and the president of the Bar Association is necessary for both lawyers who provide services and lawyers who are established.
Bulgaria	Not necessary
Cyprus	Not necessary
Czech Republic	When staying longer than one month, lawyers must make their address known to the Bar, no introduction per se.
Denmark	Not necessary
Estonia	When providing services, the lawyer has to submit a note to the board of the Bar Association
Finland	Not necessary
France	When providing services: lawyers are 'encouraged' to introduce themselves to the Bar president
Germany	Not necessary
Greece	No physical introduction.
Hungary	Introduction at the local Bar (with notification to the national Bar Association is necessary).
Ireland	Not necessary
Italy	In civil, criminal and administrative judicial proceedings the foreign lawyer must report his/her presence to the relevant authority and the President of the local Bar Association
Latvia	Not necessary
Lithuania	Not necessary
Luxembourg	Introduction to the president of the Court and the Bar Association is necessary;
Malta	Not necessary
Netherlands	Not necessary
Poland	Not necessary
Portugal	Letter to the dean of the Bar (including a copy of certificates)
Romania	Registration with the Bar is optional for lawyers providing services. Proof of qualification as a lawyer is necessary.
Slovakia	Not necessary
Slovenia	Not necessary
Spain	Introduction to the Dean of the Bar is required
Sweden	Not necessary
United Kingdom	Not necessary

Source: country studies

3.3.3 Administrative Requirements for Establishment

The core of the Lawyers' Establishment Directive is that lawyers qualified and registered in their home Member State have the right to exercise professional activity in other Member States upon registration with the competent authority of the host Member State. Article 3

of the Lawyers' Establishment Directive states that registration will take place upon the presentation of a certificate attesting to registration in the home Member State. The Article further states that the host Member State may require that the certificate is not older than three months. The rationale for this requirement is relatively obvious. In order for a host Member State to allow a person to exercise professional activity in the legal profession it must be objectively assessed that said person is a registered lawyer in his home Member State. Where the provision of article 3 of the Lawyers' Establishment Directive seems like a relatively benign administrative requirement it will be shown that authorities in host Member States (ab)use this leeway (insofar as it can be considered as leeway) to create considerable barriers for lawyers who seek to make use of their rights under the Lawyers' Establishment Directive.

As a general remark, it must be mentioned that, although not specifically required by the Directive, registration as a lawyer establishing under home country professional title is, generally speaking, not possible online. That means that lawyers must go through the more bureaucratic and burdensome physical registration process.

An illustration of such bureaucratic difficulties is provided by one of the lawyers interviewed who referred to some bureaucratic difficulties which hindered his establishment in a different Member State. For example, sometimes the documents that a Bar Association requires from a foreign lawyer in that Member State are different from the documents that the relevant Bar Association in the country of origin of that lawyer is able to provide.

Several other examples of problems with regard to this requirement can be distilled from the country studies:

Slovenia has been confronted with the problem of transposing both the Lawyers' Services Directive and the Lawyers' Establishment Directive at the same time, partly resulting in a mixture of both Directives, thereby causing a lack of clarity and transparency. For example, a lawyer who intends to perform legal services must fulfil some formal requirements in order to do so. He must inform the Bar Association of Slovenia thereof in a written piece of evidence on the qualification for practicing the legal profession. This corresponds with Article 7 (1) of the Lawyers' Services Directive. He must as well deliver a piece of evidence of professional indemnity insurance in the home Member State. This corresponds with article 6(3) of the Establishment Directive, but insurance is nowhere dealt with in the Lawyers' Services Directive (it is however dealt with in the later horizontal Services Directive). The Slovenian Bar Association may furthermore, according to Slovenian law, prevent the EU lawyer from performing legal services in Slovenia if he is deemed not to be reliable for practicing the legal profession.

In Italy, EU lawyers must submit a declaration addressed to the President of the Bar Association, stating his/her name, surname, place and date of birth, citizenship, residence, professional domicile, professional title, professional organization to which he/she is registered and the court to which he/she has the right of audience. He/she must not be in possession of any penal, administrative or professional sanctions, which may inhibit his/her professional practice.

In Portugal EU lawyers must indicate whether they are delivering services temporarily or permanently.

An inventory of all the administrative requirements as indicated in the country study and distilled from other sources looks as follows:

Table 3.5 Administrative proceedings for establishment in detail

Country	Requirements
Austria	EU or EEA citizenship Certificate that certifies the lawyer is allowed to practise in the home Member State Certificate that the lawyer holds a professional indemnity insurance Documents may be no older then three months Documents must be in German (or translated by a certified translator into German)
Belgium	Certificate certifying the right to practise in the home Member State
Bulgaria	Document stating the lawyer concerned is allowed to practise as a lawyer in the home Member State Written consent by a Bulgarian lawyer who will act in conjunction with the lawyer concerned when exercising procedural representation Registration takes the form of an "application" and a "decision" of the competent authority, implying at least some form of assessment.
Cyprus	Document proving that the candidate is a national of a Member State Certificate proving the registration of the candidate with the Bar Association of the home Member State including a document that the lawyer concerned is entitled to provide legal services and his license has not been suspended or annulled.
Czech Republic	Application letter Document proving EU citizenship Proof of indemnity insurance applying to activities within the territory of the Czech Republic with certified translation Proof of payment of Bar fee Certificate of home Bar membership with certified translation Registration fee 4000 CZK For registration at the Bar having an official seat in Czech Republic is compulsory.
Denmark	Certificate certifying that the lawyer is allowed to practise in the home Member State No older than three months Documentation for a degree corresponding with the Danish degree of Master of Law Documentation if a lawyer belongs to a joint practice.
Estonia	Certificate of Bar membership in home country Application Copy of passport Information on the law firm Documents certifying that the associated member is a member of the management of a law office or a shareholder of a company of attorneys in a Member State of the European Union. Proof of Professional liability insurance Translation not necessary for the most common languages (e.g. German, English).
Finland	Application Certificate that certifies the right to practise in the home Member State
France	Registration of business at the Centre de Formalité des Enterprises (CFE) Confirmation that the applicant is indeed registered with the Bar of origin Nationality certificate Statement of criminal record in both the host and home country

Country	Requirements
	ID picture Declaration of honour asserting having never been subject of any disciplinary condemnations or sanctions in breach of honour or having been subject to an insolvency procedure Evidence of insurance coverage providing equivalent protection as that requested in the host Bar A check for registration fees (if the relevant Bar does request such fees from nationals)
Germany	EU or EEA Citizenship Certificate certifying that the lawyer concerned is allowed to practise in his home Member State Certificate may not be older than three months Certificate must be in German or there must be a certified translation accompanying the certificate.
Greece	A certificate proving that the lawyer is registered to the Bar/competent authority of the home Member State Proof of EU nationality A copy of the candidates criminal record and a certificate of good standing (containing disciplinary penalties he might have received) Proof that the candidate is insured for professional indemnity when this is required in the home Member State; such insurance is not (yet) obligatory in Greece.
Hungary	Application form Certificate that certifies the right to practise in the home Member State Evidence of existing professional indemnity insurance. No older than three months Accompanied with a certified Hungarian translation Fee of HUF 140.000 (€490 approximately)
Ireland	Certificate that certifies the right to practise in the home Member State No older than three months Certificate of professional indemnity insurance Translation in English or Irish Appropriate fee.
Italy	certification of citizenship of an EU Member state, certificate of residence/indication of professional domicile certificate of registration with the relevant authority in the applicant's home state Documents must be provided in certified translation See remarks in the text below
Latvia	Certificate of registration with home Bar (no older than 3 months)
Lithuania	Registration with home Bar (no older than 3 months) Proof of indemnity insurance Health certificate Certified translations of documents must be provided (but in practice not always)
Luxembourg	Certificate certifying the right to practise in the home Member State Not older than three months.
Malta	Certificate certifying the right to practise in the home Member State.
Netherlands	Certificate certifying the right to practise in the home Member State Certificate may be no older then three months
Poland	Certificate of the home Bar Association Certificate of citizenship Application in Polish language Translation of official documents, certified by sworn translator
Portugal	Application for registration (indicating among other things the professional address in Portugal) Certification of home Bar (not older than 3 months) Certification of criminal record

Country	Requirements
	Proof of professional liability insurance at least equal to what is required of Portuguese lawyers The Bar may ask for additional documents All documents must be accompanied by a certified translation
Romania	Certificate certifying right to practise in the home Member State The national Bar association must give an advice on the eligibility of the candidate
Slovakia	the original or a certified copy of the confirmation of his admittance to the Bar a proof of having passed a Bar examination a sworn declaration that he is subject to no pending criminal or disciplinary proceedings a photocopy of his passport; an enhanced criminal records certificate of the candidate from the home state; information on the office seat in Slovakia, including a proof of permission from the owner of the premises; a photograph for the professional card; a proof of indemnity insurance in one of the EU Member States with a minimum coverage at amount of €100.000 All documents must not be more than three months old and must be presented with their certified translation to the official language.
Slovenia	Evidence to prove that the lawyer is business active and in general health condition and have an active command of the Slovenian language, and dispose of equipment and premises required and suitable for practising the legal profession Passing an examination which tests knowledge of the Slovenian legal order Certificate of (EU) Citizenship, evidence that he is entitled to practise law in his home country evidence of insurance against professional liability evidences on the possible membership of law firms in his Member State of origin All documents must not be older than three months and shall be submitted under the form of a certified translation into Slovenian
Spain	Registration form Documents proving nationality and the possession of professional title in the home country Certified translation of documents The local Bar may ask for additional documents and for a registration fee (which is no higher than the fee for Spanish lawyers)
Sweden	Certificate proving his entitlement to practise law in the home Member State Certificate detailing any disciplinary sanctions/proceedings that the lawyer has been subject to (if any) Certificate of registration of self-employment All documents my not be older than three months
United Kingdom	England & Wales & Northern Ireland: Certificate certifying the right to practise in the home Member State Appropriate fee
	Scotland: Certificate certifying the right to practise in the home Member State Appropriate fee

Source: country studies

The overview above shows that the requirement laid down in Article 3 of the Lawyers' Establishment Directive may appear simple (certificate of registration, no older than three months), but leads to a myriad of different implementations. In *Wilson* the ECJ made clear that the requirement of article 3 leads to exhaustive harmonization meaning that Member States are not allowed to impose any other criteria than those mentioned in the Article. It would, however be too simple to conclude that any Member State which asks for more or other information than what is provided for in article 3 acts in violation of the Directive. When combined with other Articles in the Directive (6 and 11) and with other EU law provisions (such as Directive 2004/38/EC), it may be concluded that requirements that include proof of professional indemnity insurance and joint practice constructions as well as proof of EU nationality are, in our view, permissible. With regard to the requirement for proof of professional indemnity insurance, it must be mentioned that it may only be required when the host Member State requires insurance for its own lawyers. In that respect, the requirement in Greece, that makes having insurance dependable on rules in force in the *home* Member State is not in line with the Directive.

Any *other* requirements imposed must be deemed in excess of the Directive, such as proof of good standing that is observed in a number of countries, fees, health certificates, residence requirements and even tests of knowledge of national law (Slovenia) and perhaps even translations. This leads to the conclusion that many countries still require more than what is prescribed by the Directive on this point. Issues that were specifically addressed in *Wilson* (i.e. language proficiency tests and continued repetition of proof of registration in the home Member State) have not been encountered.

The case of Spanish Lawyers in Italy

In Italy, a frequent practice has been observed in both the country study and in a case study researching the cooperation between the different regional bars in Italy. The information is corroborated by interviews held with Italian law firms. In Italy, there is a trend of Italians who qualify, much like Mr. Koller mentioned earlier, as an *abogado* in Spain, after which they return to Italy to practise under the home country professional title. This was more attractive since Spain did not require a professional training until recently. In the view of the Italian bars this constituted abuse of the freedoms given by the Directive. Therefore, the bars required additional proof (such as a list of cases actually dealt with in Spain). Although abuse of the right is theoretically possible, it is still our belief that the Italian requirements fail to honour the rules of the Directive.

The country studies sketch a practice that could be just as hindering to the exercise of the free movement rules as the hindrances identified above. The Hungarian country study shows that *after* registration with the Bar (on the basis of the Hungarian implementation of article 3, which already potentially violates that article with regard to translation and fees), the lawyer established under his home country professional title must provide *additional* information to the Bar Association, such as (and most notably) proof of academic degrees. The country studies indicate that a number of Member States also apply this system with regard to fees. The problem with the Hungarian requirement (unlike the similar requirement to provide evidence for an academic degree, imposed in Denmark, which is in excess of the requirements of article 3 of the Directive) belongs to the third level of regulation of the profession, identified above, and would therefore fall under the deontological rules in force in Hungary. The Directive states, in article 6, that a lawyer is subject to deontological rules of the host Member State. The Hungarian example at least proves that it is theoreti-

cally possible for Member States to impose hindering criteria *behind* the formal registration provided for by article 3 of the Directive.

As indicated by the quote of one of the lawyers interviewed in the course of this study, the extensive variation of implementations (and violations) of article 3 of the Directive may be explained by the fact that it is a system that requires lawyers to bring proof from their home Member State that has to fit in the system of the host Member State (so the problem can arise that the host authority requires documentation in a form that is not available in the home Member States).

3.3.4 Cooperation between Bars

The excessive requirements that bars impose on lawyers seeking to establish themselves in other Member States may indicate that bars do not communicate enough with each other. This is exemplified by comments made in the course of this study. Some bars (e.g. those from Bulgaria, Spain) have identified the co-operation with other bars, for example in relation to disciplinary proceedings, as a practical barrier, as this co-operation may be inefficient and time-consuming, even to the extent that starting disciplinary proceedings appears to be pointless. Different interviewees of major law firms underlined the need to improve cooperation between Bar Associations of different Member States as well as between Bar Associations and public entities.

The CCBE reported that its commission on cross-border disciplinary proceedings is not active anymore, because there was not much work to do. To facilitate cross-border disciplinary proceedings, the CCBE has published on its website a document with guidance on the implementation of the Lawyers' Directives, a document with recommendations on disciplinary processes for the legal profession, and a document with a summary of disciplinary proceedings and contact points in the EU and EEA Member States.[80]

Since the Lawyers' Establishment Directive explicitly requires communication between competent authorities (mainly with regard to disciplinary proceedings) and the system of both the Lawyers' Services Directive and the Lawyers' Establishment Directive at least implies extensive co-operation between the different competent authorities, it may be interesting to research the actual co-operation between competent authorities.
To that end, a case study was undertaken to see whether and to which extent Bars communicate with one another in the context of the system of the Lawyers' Directives. Unfortunately, this case study has not unearthed the information we needed to assess whether Bar Associations communicate with each other to a satisfying extent. In the case study the Latvian Bar Association responded with saying that much of the communication between Bars takes place in the context of the CCBE. It may, however, be assumed that the Bar Association was referring to more general co-operation in the sense of reacting to policy decisions or commenting on proposed legislation rather than the specific concrete communication that has to take place in the context of the Directive, mainly with regard to the initiation and result of disciplinary proceedings.

[80] See the webpage of the CCBE discipline working group (http://www.ccbe.eu/index.php?id=94&id_comite=24&L=0, accessed 25/9/2012)

That means that on the basis of the scarce information collected in the country studies and the case study, an assumption needs to be made to the extent that there is insufficient communication between bars and that a coherent infrastructure to establish co-operation is not present.

That last element is somewhat surprising since, on an EU level, big steps have been taken to implement such infrastructure. Both the Professional Qualifications Directive and the Services Directive benefit from the Internal Market Information System (IMI). This IMI provides a comprehensive infrastructure where competent authorities can contact each other in order to verify information that is provided by a candidate who seeks to exercise services or seeks access in a regulated profession in another Member State. It must be mentioned that the IMI system is not applied to the Lawyers' Directives. Applying the IMI to the Lawyers' Directives would immediately address the problems encountered in the country studies with regard to disciplinary proceedings, but would also solve the problems encountered with regard to registration as a lawyer under home country professional title, as described above.

3.3.5 Access to the Supreme Court

Introduction

The Lawyers' Establishment Directive states in article 5(3): "in order to ensure the smooth operation of the justice system, Member States may lay down specific rules for access to supreme courts, such as the use of specialist lawyers." The eleventh recital of the Directive makes clear that these rules must not hinder the integration of European lawyers that fulfil the necessary requirements. That means that a Member State may not reserve access to its Supreme Court exclusively for its own national lawyers.

Table 3.6 Access to the Supreme Courts in EU countries

Country	*Regulation on access to the supreme court*
Austria	No restrictions apply for lawyers
Belgium	Only a selected group of 20 lawyers can plead before the Supreme Court (Hof van Cassatie). They have to be registered with the Bar for at least ten years and pass an examination.
Bulgaria	After five years of experience[81]
Cyprus	Depending on the years of practice lawyers gain the right of access before higher courts
Czech Republic	No restrictions
Denmark	After the completion of two test cases[82]
Estonia	No restrictions
Finland	No restrictions
France	Access to the highest courts is restricted to avocats au Conseil d'État et à la Cour de Cassation. Admission to this group of lawyers, for which a special Bar exists, is possible after special training and examination.
Germany	Access to the Bundesgerichtshof is restricted to a government-elected group of lawyers (*Rechtsanwalt beim Bundesgerichtshof*).
Greece	After at least four years of practice for appeal courts and eight years for the Supreme Courts
Hungary	No restrictions apply to lawyers
Ireland	No restrictions apply
Italy	For the Court of Cassation, the Council of State (i.e.: the last instance administrative court) or the Military Court twelve years of experience as a lawyer is needed, or five years plus an examination (Court of Audit, Supreme Tribunal for Public Waters).
Latvia	No restrictions for lawyers
Lithuania	European lawyers have no access to the Supreme court, for domestic lawyers no restrictions apply
Luxembourg	No restrictions for lawyers
Malta	Advocates have access to all courts; legal procurators have no access to the higher courts.
Netherlands	From 1 July 2012 every lawyer established in the Netherlands (including EU lawyers) can qualify for access to the Supreme Court (before this was restricted to the The Hague arrondissement). A lawyer can qualify temporarily for a maximum of three years after fulfilling some educational requirements and after finishing an oral exam. To qualify permanently, a lawyer must finish another exam. The lawyer furthermore must have participated in continuous education on the subject of cassation, and must have conducted a number of cases. A lawyer has to request re-qualification every three years.
Poland	EU lawyers may appear before the Supreme Court in conjunction with a domestic lawyer

[81] Source:http://trifonov.info/en/reviews/2011-lawyer-solicitor-barrister-attorney-advocate-bulgaria.html
[82] S. Claessens, *Free Movement of Lawyers in the European Union*, 2008.

Country	*Regulation on access to the supreme court*
Portugal	No restrictions
Romania	No restrictions for lawyers
Slovakia	No restrictions for lawyers
Slovenia	After two years of practice and a State examination
Spain	No restrictions
Sweden	No restrictions
United Kingdom	
- England and Wales	Solicitors need to pass an advocacy assessment to qualify for rights of audience before the Crown Court, the High Court, the Court of Appeal and the House of Lords. Barristers have a right of audience before all courts.
- Scotland	For advocates no restrictions apply; solicitors need to qualify as a 'solicitor advocate'.
- Northern Ireland	Solicitors have no rights of audience before the Higher Courts, but a legislative provision to enable solicitors to exercise such rights is expected to be brought forward by the Northern Ireland Assembly.[83] Barristers have a right of audience before the Higher Courts.

From this overview above, it may be clear that most Member States apply this criterion in compliance with the Directive. One implementation must however be mentioned. Article 5(3) of the Directive comes down to a non-discrimination (or national treatment) criterion. With regard to the implementation in Lithuania it must be established that it is in clear violation of the Directive since it discriminates between national lawyers and lawyers established under their home country professional titles.

3.3.6 In-house Counsel

The Lawyers' Directives

The Lawyers' Services Directive states that any Member State may exclude lawyers who are in salaried employment of a public or private undertaking from pursuing activities relating to the representation and defence of that undertaking in legal proceedings, in so far as lawyers established in that State are not permitted to pursue those activities.[84]

The Establishment Directive introduced a subject which had not been specifically regulated before, namely the right of establishment for salaried lawyers. The Lawyers' Establishment Directive's aim is to remove obstacles to freedom of movement for lawyers, whether they are in salaried practice or not.[85] The Directive, however, does not overrule existing regulations in Member States that preclude lawyers from functioning in a salaried capacity.

[83] Source: http://www.lawsoc-ni.org/role-of-the-law-society/influencing-law-reform/policy-issues/solicitor-advocacy/

[84] Lawyers' Services Directive, article 6. The English version of Article 6 of the Lawyers' Services Directive only refers to activities related to the representation of the undertaking in legal proceedings, whereas e.g. the French and German versions refer to (translated) the representation *and defence* of the undertaking (see annex 4).

[85] Lawyers' Establishment Directive, consideration 1.

Therefore, lawyers practising in a salaried position and who wish to continue to do so in another Member State can only establish in those Member States that also allow their own lawyers to work in a salaried position.[86]

As can be concluded from the above, the possibility to restrict salaried practice in the Lawyers' Services Directive is limited to representation of the employer in legal proceedings, whereas the Establishment Directive does not contain this limitation.

Rules on salaried practice are especially important for lawyers working as in-house counsel. Characteristic for an in-house lawyer is that the lawyer is in a salaried position[87], and works only for the company that employs him or her. Besides that company the in-house lawyer generally does not have a client base.[88] Lawyers can, of course, be employed by law firms as well; these are not in-house lawyers because the law firm is not their client.

Regulation on in-house practice in Member States

In most Member States in-house practice in a salaried capacity is, in principle, not allowed for lawyers. When lawyers want to practise in-house in e.g. France or Italy they should ask for suspension from the Bar (and give up their status as being a lawyer). Common reasons for this prohibition are that working in-house bares the risk of jeopardizing values like professional independence, the absence of conflicts of interests and maintaining professional secrecy/confidentiality. On the other hand, it can be argued that the in-house lawyer is not more dependent than external lawyers, as external lawyers are vulnerable to loss of mandate while in-house counsels are protected by labour law.

In nine Member States (Denmark, Germany, Ireland, Malta, The Netherlands, Portugal, Poland (for legal advisors), Spain and the UK) it is permitted to practise as in-house counsel and be a member of the Bar at the same time. In some of these countries certain conditions apply. In Germany, for example, in-house lawyers are denoted by the name *Syndikusanwalt*. A *Syndikusanwalt* is not permitted to represent its employer in legal or arbitration proceedings as a lawyer.[89] Furthermore, to be admitted to the Bar, the person must prove that his permanent employment relationship does not endanger his independence when acting as *Rechtsanwalt*.[90]

In Belgium, the situation is unique. Lawyers are prohibited to work as in-house counsel. However, there is a separately organized profession of legally trained professionals who work as in-house counsel (*juristes d'entreprise* or *bedrijfsjuristen*) and enjoy professional privilege.

---

[86] Lawyers' Establishment Directive, article 8.

[87] The relationship between the in-house lawyer and the company may sometimes take the form of a medium or long-term contract for services, e.g. under the condition of exclusivity. This construction is not discussed here, because it is outside the scope of article 8 of the Lawyers' Establishment Directive. That article is only concerned with lawyers in an employed position.

[88] There are some exceptions to this rule. For example, in The Netherlands the in-house lawyer can work for third parties under some conditions. In Germany it is possible for one individual to be both an in-house lawyer (Syndikusanwalt) and a regular lawyer. In his capacity as a Syndikusanwalt, it is not possible to represent third parties (his communication is also not protected). However, in his capacity as a lawyer this is possible. The German approach is unique in Europe.

[89] Art. 46 Bundesrechtsanwaltsordnung (BRAO).

[90] Article 7 Nr.8 Bundesrechtsanwaltsordnung (BRAO).

The in-house lawyer often has certain advantages over a non-lawyer working as in-house counsel. Which advantages these are differs across countries. Some examples of advantages are professional privilege, a right of representation and a right of litigation.

The educational and qualification requirements may be different for lawyers on the one hand and in-house counsels (who are not lawyers) on the other. An individual may often serve as an in-house counsel after obtaining a university degree in law, but without an apprenticeship and without taking a Bar exam. This is for example also the case for *juristes d'entreprise* in Belgium.

Growing importance of in-house lawyers

In the nineties, the role of in-house counsel in Europe was relatively limited, especially in comparison with the United States. Since the turn of the 21st century, however, the power and influence of in-house counsel in Europe has been growing, particularly in large companies.[91]

One of the interviewees remarked that, starting with the crisis in 2008, the growth of the number of company lawyers has been slowed down. Many companies have introduced halts on vacancies, or have cut back expenses on staff support services, including in-house counsel. At the same time, the crisis has contributed to a growing importance of company lawyers. The crisis increased competition for external lawyers, leading to external lawyers becoming more dependent on in-house counsels who decide on the allocation of cases to external lawyers.

The number of lawyers that are employed as in-house counsel can be substantial in some Member States. In Scotland, for example, between a quarter and a third of solicitors are employed as in-house counsel. According to the Law Society of Scotland, the in-house sector is currently busier than ever despite the downturn.[92] In England and Wales 30,010 solicitors were employed as in-house counsel in 2011, which amounted to 25% of all solicitors with a practising certificate.[93]

The European Company Lawyers Association (ECLA) allegedly represents more than 32,000 in-house counsels on a European level.[94] It must be noted that not all these company lawyers are also lawyers in the meaning of the Lawyers' Directives, as in many Member States lawyers are precluded from in-house practice.

Mobility of in-house lawyers

[91] See: David B. Wilkins, "Is the In-house Counsel Movement Going Global? A preliminary assessment of the role of internal counsel in emerging economies", in: *Wisconsin Law Review* 251, 2012, p. 263; Association of Corporate Counsel, *The Role of In-House Counsel: Global Distinctions,* 2010, reprinted 2012. The growing importance of company lawyers has also been confirmed in the interview with the NGB.

[92] According to the website of the Scottish Law Society (http://www.lawscot.org.uk/members/in-house-lawyers/working-in-house, accessed 27/9/2012)

[93] Law Society of England and Wales, *Trends in the solicitors' profession: Annual statistical report 2011*, 2011.

[94] www.ecla.org (accessed 20/8/2012).

According to a publication by ECLA, the in-house counsel is accustomed to mobility, within countries but also across border.[95] Based on a survey of 63 law firms and 65 in-house legal departments, the Law Society of England and Wales concluded, in 2010, that in-house solicitors advised on deals governed by laws of other jurisdictions within and outside of the EU slightly more often than private practitioners.[96] Interviewees also stress that many in-house lawyers are used for cross-border work.

An explanation of the cross-border mobility of in-house lawyers is that they usually are employed by big firms. Many big firms are internationally active. International activity leads to increased risks and legal complexity, increasing the need for legal services. This means that many internationally active firms employ in-house lawyers.

Just like lawyers in private practice, in-house lawyers sometimes hire or co-operate with local lawyers in cross-border cases.

Obstacles

As a result of differences in regulation of in-house counsel across Member States, lawyers working as in-house counsel may encounter a number of obstacles. This section describes four important obstacles specific to in-house lawyers.

1. Establishing in a country in which in-house practice is forbidden

One implication of the provision on salaried practice in the Lawyers' Establishment Directive is that an in-house lawyer who wishes to establish in a country in which salaried in-house practice is not allowed for lawyers, cannot make use of the Lawyers' Establishment Directive to register with the Bar under his home title. If he establishes in the host State, he presumably cannot act as a lawyer (e.g. he cannot make use of the title) and would not be regarded as a member of the profession.[97]

Our case study shows that this obstacle may not always occur in practice. In Belgium for example this obstacle does not occur. Belgian lawyers are not permitted to work as a salaried in-house counsel. However, lawyers coming from other Member States who are allowed to practise as employees in their home Member State may retain that status when they establish in Belgium.[98]

The Dutch and French bars have also signed a protocol agreement with the Belgium institute of company lawyers in September 2010, which makes in-house practice possible for temporary secondments. The protocol states that a lawyer who has been sent on temporary secondment with a company remains a registered lawyer with the bar, and must comply with the professional rules of the bar. During the secondment, the lawyer has to sign every document with the statement 'attorney seconded to the company' (or likewise in other languages). Correspondence of the lawyer remains confidential. The lawyer has to comply with

[95] Com Mannin, *The profession of in-house counsel in Europe*, 2001.
[96] Law Society of England and Wales, *Firms' Cross-Border Work*, 2010.
[97] In countries without legal monopolies, such as Sweden, a lawyer can still carry out his activities (including representation activities before courts) but he may not be able to use his or her title.
[98] Brussels Bar Association, Vade-mecum on the establishment in Belgium of European and non-European lawyers, § 7.2.

all bar regulations on conflicts of interest. Furthermore, the lawyer has to conduct his or her work independently; the secondment may not compromise his or her independence.

It has been remarked by two interviewees that it is mostly not an obstacle when an in-house lawyer is not permitted to pursue activities in legal proceedings in another country, as the in-house lawyer would be inclined to work together with a local lawyer anyhow, as he usually lacks the necessary knowledge of the law and court procedures of the host country. The *Prada report*[99] notes that in-house lawyers are not inclined to litigate, even in their own country, in cases where they are permitted to do so, as they are not specialized enough.[100]

Although in-house lawyers cannot register with the Bar in some Member States, this does not wholly preclude in-house lawyers from working in those Member States. The Lawyers' Services Directive enables in-house lawyers to provide services temporarily. Interviews show that, in practice, in-house lawyer may work for a long period of time in a host state without registering with the local Bar. In France, for example, UK solicitors work as in-house counsel for French firms, while only being registered in the UK.[101]

The *Prada report* notes that large French companies have a tendency to recruit foreign lawyers (American, British or German) to key positions in the legal departments at the expense of French jurists, because of their clear status (as lawyers) and the supposedly effective protection (e.g. of confidentiality) they enjoy in their home country.[102]

2. Lawyers coming from a country in which in-house practice is forbidden
It is not clear whether article 8 of the Establishment Directive applies also to situations in which a lawyer from a Member State that prohibits in-house counsel can establish as an in-house lawyer in a country in which that is permitted. The article only refers to regulations of the host country, not to those of the home country. Therefore, article 8 at least does not expressis verbis offer home Member States the possibility to preclude lawyers from working as in-house counsel in a host country that permits this practice. A liberal interpretation would be that article 8 permits lawyers to work as in-house counsel in host countries where that is permitted, irrespective of the rules in the home Member State. However, in practice,

[99] This is a French study published in 2011 which was commissioned by commissioned by the Ministry of Economy, Finance and Industry and the Ministry of Justice. One of the main subjects of the study is the position of French in-house counsel. In the course of the study all relevant institutional stakeholders have been consulted, as well as a large number of professionals. Furthermore, the researchers have made a survey of existing qualitative and quantitative studies on in-house lawyers in France. This report will be referred to below as the *Prada report,* after the name of the leading researcher. (Ministère de l'Économie, des Finances et de l'Industrie, Ministère de la Justice, *Rapport sur certains facteurs de renforcement de la compétitivité juridique de la place de Paris*, 2011 (Établi par Michel Prada, Inspecteur Général des Finances Honoraire)

[100] Ministère de l'Économie, des Finances et de l'Industrie, Ministère de la Justice, *Rapport sur certains facteurs de renforcement de la compétitivité juridique de la place de Paris,* 2011, p. 30 (arguing that since very few in-house lawyers represent their company before Labour and Commercial courts (Prud'hommes et les Tribunaux de commerce), which they are permitted to do, in-house lawyers are generally not interested in litigation).

[101] One interviewee remarked that an additional reason not to register with the local bar is the costs involved (bar fees, mandatory insurance and social security/pensions).

[102] Ministère de l'Économie, des Finances et de l'Industrie, Ministère de la Justice, *Rapport sur certains facteurs de renforcement de la compétitivité juridique de la place de Paris,* 2011, p. 20 (the report argues that this is shown by 'recent cases').

there are difficulties for those lawyers when in-house practice is in conflict with the professional deontological rules of the home Member State.

3. Confidentiality not protected in all Member States

Professional privilege protects the communication between lawyer and client from being disclosed.[103] An obstacle for mobility within the EU is that, although professional privilege applies to in-house counsel in some Member States (e.g. the United Kingdom, Germany, Ireland, Denmark, Portugal, Spain, The Netherlands[104]), it does not apply in most Member States. This means that an in-house lawyer coming from a Member State in which he enjoys professional privilege runs the risk that information does not stay confidential when he is involved in cross-border activities in which, or is communicating to countries where professional privilege does not apply to in-house counsel. The lack of protection of confidentiality in many countries has been identified by interviewees as the most important obstacle for in-house lawyers in the EU. The lack of protection can make in-house lawyers hesitant to communicate in writing (for example, about legal risks or about observed non-compliance) for fear that the information will be used in legal proceedings against the company.[105]

To ensure confidentiality, in-house lawyers may, in practice, communicate via an external lawyer, so that the communication is protected. This, according to an interviewee, has become common practice in competition matters. It does not only increase costs but can also lead to delays. Other ways to protect communication are exchanging information by phone only and abandoning all communication in writing. Another way could be to relocate the legal department to another country in which confidentiality of in-house lawyers is protected.[106]

Some interviewees warned that the necessity to engage an external lawyer may lead to extra costs for companies, since the costs for hiring an external lawyer are usually higher than asking advice from an in-house counsel.

In France, lawyers cannot work as in-house counsel. However, the *Prada report* recommended that a separate list of in-house lawyers should be kept by the Bar. Lawyers registered on this list would get some confidentiality rights, but not as comprehensive as other lawyers.[107]

4. Confidentiality not protected regarding EU competition matters

In 2010, the European Court of Justice ruled that communications between in-house counsel and their in-house client regarding EU competition matters (under European Union law) are not protected by legal professional privilege (case *Akzo Nobel Chemicals Ltd. and Ak-*

[103] There are differences between Member States as to who exactly professional privilege / secrecy is regulated. This report does not go into these detailed differences.
[104] Source: http://www.acc.com/legalresources/quickcounsel/troicgd.cfm (accessed 21/8/2012). The situation in the Netherlands is at the moment somewhat unsure. On 28 February 2012 the court of Groningen in the Netherlands has decided that an in-house lawyer does not have a right of professional privilege. The case has been taken to the Supreme Court. The case is expected to be handled in the beginning of 2013.
[105] See also Ministère de l'Économie, des Finances et de l'Industrie, Ministère de la Justice (2011), p. 20.
[106] See also idem, p. 20.
[107] Idem.

cros Chemicals Ltd. v. European Commission). The Court reasoned that the in-house counsel, being an employee of a company, is not as independent as a lawyer outside the company.

5. Representation before the European Court not possible
In most Member States, but not in all, in-house counsel are not allowed to represent their company before courts. The question whether in-house lawyers are allowed to represent their company before the European courts was considered by the European General Court in the case *Prezes Urzedu Komunikacji Elektronicznej v European Commission* (Case T-226/10). The Court decided that in-house lawyers could not represent their company. The decision has been appealed to the European Court of Justice. On 6 September 2012 the ECJ confirmed the Decision of the European General Court.[108] In its decision it made reference to the Akzo Nobel case and held that a lawyer must be independent to be able to stand before the European courts, and that, therefore, the lawyer may not be in an employment relationship with his or her client.

3.3.7 Double deontology

Art. 4 of the Lawyers' Services Directive of 1977, with a few exceptions, declares both home country and host country regulation to be applicable in parallel – the so-called Double Deontology (DD).

The article states that the host State can only apply rules to the extent to which their observance is objectively justified to ensure, in that State, the proper exercise of a lawyer's activities, the standing of the profession and respect of the rules concerning incompatibility.

For Establishment, the issue is somewhat more complicated as the Directive seems to differ according to the language in which it is written. In German, for example, Article 6, with a few exceptions, declares both home country and host country regulation to be applicable in parallel. The English version seems to give priority to host country regulation.

During the legislative process, at no time was there a discussion about whether the system of double deontology, used in the Services Directive, should be replaced by another system. It could, therefore, be argued that it may have been the intention of the legislator to retain the system of double deontology, as has been clearly done in the German version. Furthermore, the ECJ in CILFIT[109] of 1982 has held that, in connection with the interpretation of a European norm, all language versions have equal relevance. That means that a lawyer, when establishing in another Member State, cannot with certainty assume that on the basis of the English version host country regulation has priority. Thus, such a lawyer, if he wants to be on the safe side, must assume that both host and home country regulation are applicable in parallel, i.e. that DD in practice applies also in the case of the Establishment Directive.

[108] Joint cases C-422/11 P and C-423-P
[109] Case 283/81 Srl Cilfit and Lanificio di Gavardo SpA v Ministry of Health, [1982] ECR 3415.

Recognition of the problem

Double deontology can be the cause of difficulties for cross-border activities of lawyers. This seems to have been recognized by both the European Commission and the CCBE.

Article 16 of the horizontal Services Directive prohibits Member States to impose restrictions on the provisions of services except for reasons of public policy, public security, public health or the protection of the environment. If restrictions imposed for other reasons would not cause difficulties for the free provision of services, the list in the Services Directive would not have been limited to four reasons only. One could even say, then, that this article would not have to exist. The drafter of the Services Directive thus recognized that restrictions would cause difficulties for the free provision of services. Reasoning from analogy, this must mean that restrictions resulting from the application of deontology, and especially double deontology (for reasons other than the four mentioned in the Services Directive) will cause difficulties for the free provision of services.

The CCBE Code of Conduct is meant to be applicable only to cross-border and not to domestic activities. The CCBE Code of Conduct was aimed at reducing barriers related to double deontology. Its existence thereby testifies to the existence of difficulties with double deontology, at least at the moment of its drafting. It specifically states that the purpose of its rules is "to mitigate the difficulties which result from the application of 'Double Deontology', notably as said out in arts. 4 and 7.2[110] of Directive 77/249/EEC".

The CCBE Code of Conduct

Despite their good intentions, the CCBE's Code of Conduct did not succeed in completely taking away the difficulties, because of the way it has been implemented in the Member States.[111] This has a number of causes. The first is that professional rules applicable to lawyers are, totally or to a large extent, within the competence of national legislators. National legislators are not members of the CCBE; only the Bar Associations are. National legislators have not brought their regulations in line with the CCBE code of conduct. The result is that implementation of the CCBE code of conduct differs from country to country and has not taken away problems of double deontology. The second cause is that even the members of the CCBE, the national Bar Associations, have not, for matters within their competence, implemented the CCBE Code of Conduct in the same way. Some have given the CCBE CoC priority over their own Code of Conduct for cross border cases. In other Member States the situation is inverse: Whenever there is a difference between the CCBE CoC and the national Code, then the national Code prevails. And there is also a third group of countries where the interrelationship between the two codes has not been dealt with *expressis verbis* so that the answer is left to interpretation. There is, fourthly, also a group that did not implement the CCBE CoC literally, but they have implemented the principles of it only. When a principle was already deemed to be contained in the national regulation, nothing has been taken over from the CCBE CoC. Only those provisions of the CCBE CoC were implemented where the essence was not yet to be found in national regulation and, in those cases, not the text but only the principle of the relevant CCBE CoC provision was implemented into national regulation.

[110] Article 7.2 deals with disciplinary proceedings.
[111] The CCBE has no formal regulatory powers over its members.

Another difference of implementation stems from the fact that some countries have implemented the CCBE CoC only for outbound legal services, while in other countries both outbound and inbound legal services are covered.
Lastly, there are differences in implementation from country to country as far as the various versions of the CCBE CoC are concerned. There are several countries where the implementation refers not to the most recent version of 2006 but rather to older versions such as 2002 or 1998.
Because of this 'patchwork' implementation of the CCBE CoC it did not succeed in taking away double deontology difficulties; it can even be said that it has added to the complexity of regulations.

Differences between the CCBE CoC regulations and national regulations are another problem. As a consequence of national liberalizations in lawyer regulation in various Member States, cross-border activity may be more strictly regulated by the CCBE CoC than national activity regulated by the national regulation, with the effect of restricting competition of international lawyers with domestic lawyers. For example: the CCBE CoC regulations on success fees are stricter than the current regulations in e.g. Germany, the UK, Belgium, The Netherlands,[112] France and Italy. This results in a discrimination of lawyers working cross-border versus lawyers only working domestically.[113]

Article 101 of the Treaty on the Functioning of the European Union (TFEU) prohibits resolutions by associations of undertakings that can restrict trade or competition within the EU. The European Court of Justice has held in *Wouters* and *Arduino* in 2002[114] that lawyers are undertakings and their professional organisations are associations in the meaning of art. 101 TFEU. This means that professional organizations may not be permitted to adopt rules for cross border activities that are stricter than rules covering domestic activities. But this is the case in those Member States where the CCBE Code of Conduct is adopted, and where this code in the meantime has become stricter than the national professional regulation.

A third problem is that some provisions of the CCBE CoC, just like many national regulations applicable to lawyers, may be in violation of the horizontal Services Directive (and the

[112] Winand Emons, "Conditional versus contingent fees", in: *Oxford Economic Papers* 59, 2007, p. 89–101.
[113] For example: According to art. 3.2.4 CCBE CoC the prohibition to act in a conflict of interest situation is applicable to all members of an association of lawyers, i.e. to all lawyers working in the same firm wherever in the world. Art. 3 para 2 Berufsordnung (BORA – the selfregulatory Code of Conduct for German lawyers) in the past used to provide in the same fashion for the law firm wide dimension of the conflict of interest prohibition provided for in German statutory law. The German Constitutional Court in 2003 declared art. 3 para 2 BORA as unconstitutional and void because it did not allow for a balancing out of the various interests involved (freedom of profession of the individual lawyer, clients' interests, and interests of the justice system). Art. 3 para 2 BORA thereafter was amended to read that the firm wide dimension does not apply where in a given case the clients concerned based on detailed information give their express consent and aspects of the justice system are not opposed. In 2006 this new regulation has been declared to be constitutional. Before this background art. 3.2.4 CCBE CoC not only differs from the German professional rules, but even contradicts German Constitutional Law.
A second example: Art. 3.3.1 CCBE CoC provides for a strict prohibition of quota litis/success fee agreement. The provisions of German statutory law that contained a similar outright prohibition, in 2006 were declared by the German Constitutional Court to be unconstitutional and void because they did not allow success fees in those cases where they were needed in order to ensure access to justice. In reaction to that decision the national legislator modified the statutory provisions so as to allow for access to justice. Before that background art. 3.3.1 CCBE CoC contradicts German constitutional and statutory law.
[114] Cases C-35/99 (Arduino) and C-309/99 (Wouters), both decided on 19 February 2002.

fundamental freedom to provide services), which only allows restricting the freedom to provide services for reasons of public policy, public security, public health or the protection of the environment (see also section 2.5.2). As a result of the Services Directive, restrictions on the provision of services that have been imposed for reasons of consumer protection and the proper administration of justice may not be valid anymore. The CCBE Code of Conduct may conflict with EU law, because it does not make a clear distinction between temporary services and established cross border activity.

Remaining Difficulties for Lawyers

The severity of issues with double deontology changes under the influence of developments in national regulation. Because of liberalizations, for example, in the UK but also in other countries, differences between countries have become bigger and new issues related to double deontology have arisen.[115]

In this context it must be noted that the SRA is considering an approach that may reduce difficulties in the area of deontology for English solicitors. In its Green Paper "The regulation of international practice" of 16 February 2012 the Solicitors Regulation Authority (SRA) proposes an approach to regulation of international firms based on a single, group-level recognition which would cover all of the individual entities under that group. The group would only have to apply the SRA principles in its offices outside England and Wales; the rest of the SRA handbook, including the 'outcomes in the Code of Conduct' would be disapplied (Individual solicitors practising abroad would still be governed by these principles regardless of where they were practicing). This could mean that double deontology requirements would de facto disappear for foreign offices of England-headquartered law firms.[116] It must be realized that this approach is only described in a Green Paper and has not been adopted yet; other countries also do not use a similar approach, and there are no signs that such an approach will be considered in the near future.

Below, some of the most important areas of difficulty for lawyers related to double deontology are described, together with some information based on interviews on how lawyers and law firms deal with those difficulties in practice.

Determining which regulations apply

A first obstacle is that it is unclear or difficult to determine which regulations apply. In interviews, it has been remarked that this can discourage lawyers, especially sole practitioners and lawyers working in small firms, from providing services temporarily in another Member State, in particular, when the case concerned is small. A lawyer, before engaging in cross-border activities, must ascertain what his professional obligations are under both home and host country regulation. This means that a lawyer must check which version of the CCBE CoC has been implemented, what the implementation looks like with respect to the inbound/outbound issue, how the CCBE CoC has been implemented, to which extent such implementation is valid or invalid in view of the borderline between national legislation and self-regulation, and, lastly, said lawyer must also check on the interrelationship between CCBE CoC and the national Code of Conduct.

[115] Robert G Lee, *Liberalisation of Legal Services in Europe: Progress and Prospects*, 2010, p. 28.

[116] The SRA has carried out a consultation about this Green Paper. The deadline for submissions of responses was 15 February 2012. As on 6 June 2012, the analysis of responses was in progress.

Another issue is which rules apply to lawyers who are qualified in multiple Member States. There are no rules with regard to dually-qualified persons to help indicate when they are, can or should be working under the title of the first country or that of the second country, and, consequently, which regulations apply to them.[117]

It can even become more complicated in cases where more than two sets of rules are involved. For example: a German Rechtsanwalt and a UK solicitor meet in Denmark to discuss a case for a Swedish client, about a transaction carried out under English law (an example mentioned by one of the interviewees of a major law firms). Which set of deontological rules applies here? Should they, besides the deontological rules of their respective home countries, respect the Danish deontology because they are there physically? Does the origin of the client determine that they also should respect Swedish deontology? Or should they respect all of them?

Some lawyers have, in interviews, showed that they were unaware of the double deontology requirement when they were advising on the law of their home country in another country. They thought that double deontology would only apply if they were practicing in the law of the host state. It has been reported by lawyers that they have the impression that Bar Associations generally do not enforce requirements of double deontology when lawyers from other Member States are only advising on the law of their home country.

Another situation which may arise is that of a lawyer travelling to another country, for example on vacation, but meanwhile still providing services to clients in his home state.[118] Formally, he would have to comply with the deontological rules of both his home country and the country in which he is staying. However, this can hardly have been the intention of the legislator.

A number of big, international law firms have stated that deontology is very important to them to prevent the risk of violating deontological rules for fear of reputation damage. For some, specifically the issue of *double* deontology was not a familiar problem because they use their own (worldwide) code of conduct, which allegedly is stricter than the deontological rules of the bars.

Problems because of differences in deontological rules

Complying with different sets of deontological rules can be an obstacle for lawyers. The web survey example shows that 18% of the lawyers that established in another country encountered difficulties related to double deontology, and that 12% of the lawyers have experienced difficulties related to the observance of differing deontological rules and other applicable legal provisions when making use of the services of lawyers from another Member State (see further sections 4.5.1 and 5.2.4).

[117] See J. Lonbay, "Legal Ethics and Professional Responsibility in a Global Context", in: *Washington University Global Studies Law Review,* 2005, p. 611.

[118] For this example, see: Matthew T. Nagel, "Double Deontology and the CCBE", in: *Washington University Global Studies Law Review*, VOL. 6:455, 2007, p. 468.

Problems because of the need to take into account different sets of deontological rules do not arise only when double deontology applies to lawyers working in a host Member State, but can also arise in other circumstances, e.g. when lawyers, law firms or offices in different Member States co-operate across borders.

Differences in deontological rules across countries exist primarily in the areas of professional secrecy, confidentiality, legal privilege, minimum and maximum fees, prohibition of conflicts of interest, publicity and advertising.

Differences in rules on conflicts of interest can be most critical from an economic point of view, as they can prohibit a lawyer from acting for and/or from accepting certain clients. Regulations on conflicts of interest are highly complicated and may differ across countries in a number of ways:

- whether the prohibitions extend only to the matters of a case or to a client;
- whether only current clients are taken into account or also former clients;
- whether the interest of third parties with whom the lawyer has some relation are considered relevant or not;
- whether conflicts of interest can be waived by clients;
- whether lawyers who have moved to another firm should also take into account clients of their former firms;
- whether only clients of a firm office should be taken account, or the clients of all offices of a firm, and
- whether so-called Chinese walls are recognized as a sufficient measure to prevent conflicts.

Furthermore, there is generally a difference between common law countries, in which the regulations are very elaborated and detailed, and continental countries, which usually only have general rules.[119] The differences can lead to competitive disadvantages for lawyers from certain countries. In Austria, for example, a broader definition of conflicts of interests

[119] In England and Wales the SRA has been moving away from this approach. In 2011, outcomes-focused regulation was introduced. Outcomes-focused regulation focuses on the high-level principles and outcomes. It replaces a detailed and prescriptive rulebook with a targeted, risk-based approach concentrating on the standards of service to consumers. There is greater flexibility for firms in how they achieve outcomes (standards of service) for clients (source: http://www.sra.org.uk/solicitors/freedom-in-practice/outcomes-focused-regulation.page, accessed 26/9/2012).

is used than in Germany[120], resulting in a competitive disadvantage for Austrian lawyers as compared to German lawyers when working in Germany. Another example reported by Swedish law firms is that they have a disadvantageous position in relation to international law firms because Swedish professional rules prohibit them to assist multiple bidders in a competitive auction, whereas law firms in some other countries such as the UK and Germany are permitted to do so (under some conditions, such as client consent and Chinese walls within the firm). The existence of competitive disadvantages as a result of differences in deontology was also mentioned in an interview with a major French law firm.

A consequence of different rules on conflicts of interest is that it can lead to complex and costly checking before a client can be accepted. The bigger the firm is, the greater the complexity. One of the largest law firms headquartered in Europe, Clifford Chance, was reported to have employed 50 legally trained staff globally with its four clearance centres in 2004. These specialists check whether a new client would create an immediate or future conflict of interest. They also look for money laundering issues, political sanctions in effect in concerned jurisdictions, the effect on the firm's reputation and any credit risk.[121]

Differences in rules on professional secrecy can also have a great impact on lawyers, since a breach of professional secrecy is considered a criminal offence in many Member States, possibly resulting in fines or imprisonment. Professional secrecy regulation differs between continental and common law jurisdictions (such as the UK and Ireland). In most continental jurisdictions (e.g. France), professional secrecy is a duty imposed by law on the lawyer, whereas under the common law system secrecy is considered a right of the client, and therefore the applicability of the rules is dependent on the legal relationship between the lawyer and the client. A consequence is that, as a general rule, the obligation can be waived by the client in certain circumstances. Furthermore, the criteria for when the right to secrecy applies are laid down by the courts. Scandinavian countries (Sweden, Finland and Denmark) and also Germany occupy an intermediate position. Waiving by the client is possible in Denmark, Finland, and Sweden. In Denmark, additionally, the court determines to some extent how far the right of secrecy reaches. For example, the court may cancel the right to secrecy when evidence is considered decisive for the outcome of the case, and

[120] In Germany a legal definition of conflicts of interest is used; A conflict of interest only arises where a law firm is acting or was acting for both parties involved in one and the same case ("The Rechtsanwalt must refrain from acting for a new party if he has advised or represented another party in the same matter, if there is a conflict of interest or if he has been seized with the matter in any other professional way as defined in § 45 and § 46 of the Federal Lawyers' Act.", translation of the German Rules of Professional Practice in English by the German Federal Bar (Bundesrechtsanwaltskammer). Other professional ways are for example acting as a judge, arbitrator, prosecutor or notary). In Austria a broader definition is used; the individual lawyer must not act for a client in one case and act against him in another, even if the two legal matters are completely different (Article 12a of the Austrian professional rules RL-BA states "Wenn dies die Wahrnehmung der Interessen der jeweiligen Parteien in den jeweils anvertrauten Mandaten beeinträchtigt, darf der Rechtsanwalt - in Wahrung seiner Treuepflicht - ein neues Mandat dann nicht übernehmen und muss ein bestehendes Mandat gegenüber allen betroffenen Parteien unverzüglich niederlegen, insbesondere wenn und sobald (1) die Gefahr der Veretzung der Verschwiegenheitspflicht bezüglich der von einder früheren Partei anvertrauten oder im Zuge der Vertretung sonst erlangten Information besteht oder (2) die Kenntnisse der Belange einer früheren Partei der neuen Partei zu einem unlauteren Vorteil gereichen würden oder (3) es zu einem Interessenkonflikt zwischen diesen Parteien kommt oder (4) die Unabhängigkeit des Rechtsanwaltes bei der Mandatsausübung auch nur gegenüber einer der Parteien nicht gesichert erscheint.") (Cf. Hans Jürgen Hellwig, "The difficulty of diversity" in *The European Lawyer,* July/August 2002, p. 38-41).

[121] Joanne Harris, "How do you check yours?", In: *The Lawyer*, 2004, Vol. 18 Issue 22, p2.

when the nature of the case and its importance to the party concerned or to society is found to justify a requirement that evidence should be given.[122] This all shows that there are important differences in the area of professional secrecy.

Conflicting deontological rules

Besides just being different, deontological rules can also be conflicting. One typical example is that under some circumstances, a lawyer involved in cross border activities can be simultaneously obliged to supply information in one country (e.g. as a witness in a court case), and be obliged to observe professional secrecy by the professional rules of another country. One illustrative example is regulation on correspondence in Germany and France. If a French lawyer communicates with another French lawyer about a case, the receiving lawyer is, in principle, not permitted to communicate the information to the client, unless the correspondence between lawyers has been marked as 'officiel' by the sending lawyer.[123] In Germany, on the other hand, the client has a statutory right to be informed by the lawyer about all information relevant to his case. It is clear that a lawyer cannot comply with both regulations at the same time.

Another example is an English lawyer sending a letter marked 'without prejudice' which means that the recipient lawyer must in no way use the letter against the client of the sending lawyer, e.g. in court or in settlement negotiations. A recipient German lawyer however has the statutory duty to serve only the interests of his clients and to follow his instructions which can mean that he is obliged to give the letter.

Art. 5.3 of the CCBE Code of Conduct tries to solve these problems by recommending the sending lawyers before actually sending the intended letter to check with the receiving lawyers whether he can ensure vis-à-vis his client the status of the intended letter as confidential or without prejudice, and by recommending the receiving lawyer to inform, without delay, the sender if he is unable to ensure the status of confidentiality or 'without prejudice'.

In interviews, lawyers have stated that differences with regard to (expectations of) confidentiality of correspondence can be a serious difficulty. Some lawyers have confirmed that they indeed try to come to an agreement with the other lawyer beforehand, for example, by phone, before sending any communication in writing.

Another well known example of conflicting regulations is the conflict between professional secrecy obligations on the one hand and reporting obligations in the fight against money laundering and organised crime on the other hand: many countries have gold-plated the relevant EU Directives, with the effect that the scope of reporting obligations varies considerably from country to country. English and Dutch regulations have the greatest scope of reporting obligations. Lawyers from other countries that render legal services in England or the Netherlands thereby become subject to the stricter reporting obligations prevailing in those countries, even if they work abroad only temporarily, and these reporting obligations

[122] Sources: International Association of Defense Counsel, *Multi-National Legal Privilege Report*, last updated May 2011 (http://www.iadclaw.org/multi-nationallegal%20privilegereport.aspx); Linklaters, *Privilege review 2009*, 2009; CCBE, *Regulated legal professionals and professional privilege within the European Union, the European Economic Area and Switzerland, and certain other European jurisdictions: A report by John Fish, Former President of the CCBE and Solicitor, Dublin,* 2004.

[123] Réglement Intérieur National de la profession d'avocat, article 2.2.

conflict with their home country secrecy obligation, which in Germany, France and a few other countries is an obligation not only under professional rules but also under criminal law.

Disciplinary proceedings
When a lawyer does not comply with deontological rules, Bar Associations of the host state may start disciplinary proceedings. The Lawyers' Directives regulate that the Bar Association of the host state should inform the Bar of the home state of the lawyer. It may also request 'professional information' from the home Bar. According to the CCBE this procedure has been rarely, if ever, used.

Possible solutions
In principle, different courses could be taken to reduce difficulties related to double deontology.

1 Harmonization of deontology. The CCBE is working on a harmonization of deontology, but this project is unlikely to be finished in a short amount of time. National culture, traditions and client expectations are very different. Besides, there are a number of difficulties related to harmonization. As has been noted before, the CCBE can only influence harmonization of those regulations that are within the competence of their member Bar Associations and not the professional rules regulated by law. Besides, harmonization may lead to the outcome that the strictest or most extensive rules will come to apply everywhere in Europe. Furthermore, deontological rules are often interdependent. The deontological rules are meant to safeguard core values of the profession of lawyer, such as safeguarding the independence of the lawyer. In some countries, this is, for example, done by strict rules on conflicts of interest, in other countries the emphasis is more on detailed rules on professional secrecy. Solutions can, therefore, not be aimed at deontological rules in isolation, but must take into account their interdependence, making the process very complex. Harmonization will not be a solution, at least not in the near future.
2 Double deontology is maintained as a basic rule in the Lawyers' Directives, but conflict rules are introduced to prevent that a situation arises in which lawyers are confronted with the impossible demand to comply with incompatible rules. For example: if rules are conflicting, the stricter (or softer) state rules are given preference. Although this solution may seem to take away the problem of contradictory rules, many problems remain. The lawyer still has the difficult task of identifying which rules apply. Furthermore, the lawyer must establish whether there is a conflict of rules in the first place. Although there are some clear examples of conflicting rules, in most cases it will be difficult to establish whether there is indeed a conflict. If a lawyer additionally has to find out which regulation is stricter or softer, this adds another burden as it can be very difficult to establish which rules are stricter when the underlying concepts of regulation are different.
3 Double deontology is maintained, but in case of conflicting rules the regulation of the host country applies. This takes away the burden of establishing which rule is stricter, however, the difficulty of establishing which rules apply and whether there is a conflict are not solved. Furthermore, giving preference to host country rules may be meaningful for lawyers established in a host country, for temporary services it would often not be an obvious solution, as many temporary services are provided in the law of the home country.

4 The reverse option: Double deontology is maintained, but in case of conflicting rules the regulation of the home country applies. Similarly, it does not take away the problems identified above under 3. Preferring home country rules would be the most obvious option for temporary services, however, for lawyers established in another country it would not be.
5 Double deontology is dismissed as a 'general rule'; instead, a single set of deontological rules applies. For services, home country rules apply (analogously to the horizontal Services Directive and the E-commerce Directive, and de facto already the case for e-services); for establishment, host country rules.[124] Host country rules are applied to established lawyers because, although they may be working under their home-country title, they are established in the host country and are also registered with the bar in the host country and it could, therefore, be expected that they are complying with host state regulation. This seems even more logical when it is considered that three years of establishment can lead to automatic, full integration into the profession of the host country. Home country rules are more logical for lawyers providing temporary, cross-border services, as their linkage with the home country is much stronger than with the host country; they are also not registered with the host country Bar.

Option 5, dismissing double deontology in favour of single deontology, will likely be the most effective in taking away the difficulties in the area of deontology that have been identified in this evaluation study. It not only removes the problem of conflicting and contradictory rules, it also relieves the burden for lawyers of establishing which regulations apply and it has the biggest potential of reducing the competitive disadvantages resulting from the application of double deontology, because of the application of host rules to established lawyers. Admittedly, it does not create a level playing field between lawyers providing temporary cross-border services and lawyers established in a certain country, but this is hardly new as it is already the case for e-services.

It must be noted that as long as there is no complete harmonization of deontology in Europe, double deontology problems will remain, also when one of the solutions offered above would be adopted, for example, in some cases in which lawyers or law firms from different countries co-operate across borders for the same client, or in cases where offices of an international law firm work together across borders.

Whatever the course taken, it is obviously necessary to bring the relevant articles on deontology in different language versions of the Lawyers' Establishment Directive in conformity with each other, as they are a source of legal uncertainty.[125]

[124] A possible difficulty is that firms may evade application of host country professional rules for establishment by 'only' providing services. They may establish a branch office in another country, with lawyers flying in and out. Those lawyers are individually not established in that country, and therefore home country professional rules would apply. But de facto their firm is established in the other country.
[125] See Annex 4.

3.3.8 Admission to the Profession

Next to the establishment of lawyers under their home country professional titles in other Member States, the most revolutionary aspect of the Lawyers' Establishment Directive is arguably the fact that lawyers are given the opportunity to integrate in the host Member State profession without using the system provided for in the Professional Qualifications Directive. The Directive states, in article 10(1):
"A lawyer practicing under his home country professional title who has effectively and regularly pursued for a period of at least three years an activity in the host Member State in the law of that State including Community law shall, with a view to gaining admission to the profession of lawyer in the host Member State, be exempted from the conditions set out in Article 4(1)(b) of Directive 89/48/EEC, 'Effective and regular pursuit' means actual exercise of the activity without any interruption other than that resulting from the events of everyday life". The article provides further for a safeguard procedure where there is less experience than three years (but at least three year activity) in the law of the host Member State including Union law.

The actual implementation of this article leads to a great deal of uncertainty among the Bar Associations and lawyers that mainly seems to centre around the amount of national law necessary, and the influence of European law thereon, and the meaning of 'effective and regular pursuit'. A respondent from the UK mentioned that the Directive does not take into account the possibility that someone has practised the law of a country without being established there.

Table 3.7 Requirements on article 10 of Directive 98/5/EC & number of applications

Country	Requirements
Austria	Three years of practising law Three years in Austrian law (or prove sufficient knowledge and experience by interview), EU law is not mentioned No info on applications
Belgium	Three years legal practice Three years of experience in Belgian and EU law (or prove knowledge and experience when less experience). Deliver all information necessary No info on applications other than the fact that there is few demand
Bulgaria	Not addressed in the country study; No applications (no integration at all)
Cyprus	Application Three years of legal practice Three years of experience in Cypriot and European Law (special courses for those who have less experience) No interruptions, other than those resulting from everyday life No info on applications
Czech Republic	Application Three years' experience in Czech Law (EU law is not mentioned); or (after having been active for at least three years), proof of knowledge of Czech law and professional rules Swear an oath No information on applications
Denmark	Three years of legal practice in a Danish law firm Three years in Danish law or European Law (or prove knowledge and experience No info on applications (2 integrations reported by 2006)
Estonia	Three years of legal practice Three years in Estonian law (or prove knowledge and experience where less) 1 application so far; persons studied law in Estonia on the side
Finland	Legal practice for at least three years (registered for at least three years in the EU register) Proof of activities At least 25 years old Good honour Correct characteristics for the profession Enough practical skills and experience demanded by the by-laws of the Bar Association Person may not be bankrupt Full legal capacity
France	Three years of practising law Three years in French or European Law No info on applications
Germany	Three years of practising law Three years in German law, including European Law (or where less, prove experience and knowledge; take into account lectures seminars and conferences on German law; interview focuses on German Law No interruptions longer than three weeks Include lists of cases No info on number of applications

Country	Requirements
Greece	Three years of legal practice Three years' experience in Greek and European Law (or where less: special courses on Greek law and deontology) 20-30 applications, 15-20 allowed. When an interview is conducted, it is conducted in Greek. Appeal procedure never used Documents to prove
Hungary	Always an interview Clear proof that applicant has regularly handled Hungarian and EU cases Interview is also used to test the command of the Hungarian language
Ireland	Three years of practice Three years in Irish law (or proof of knowledge and experience in Irish law when there is less than three years in Irish law Necessary documents
Italy	Three years of legal practice Three years in Italian law Relevant documentation
Latvia	No official guidelines to the amount of national law One application pending Certification of language capabilities
Lithuania	No info on number of applications The applicant must provide information and documents on the number and nature of cases dealt with, to show that the lawyer has provided permanent legal services for three years in Lithuanian law The Lithuanian Bar Association has the right to verify the information and if necessary, ask the lawyer to submit written or oral comments on the information or documents or to provide additional detailed information
Luxembourg	Three years of experience No mention of the content of the experience. From the country study it may be implied that three years of experience in Luxembourg law is requested Number and nature of cases dealt with Information on knowledge and professional experience of the applicant in Luxembourg law Verification of language capacity by means of an oral exam
Malta	Three years of experience Three years of experience in Maltese law No mention of European Law
Netherlands	Three years of experience in practicing law in the Netherlands Three years of experience in Dutch law, including European law (in legislative history → only EU law is not enough)(or proof of experience and knowledge of Dutch law including conferences and seminars, where there is less than three years experience) Overview of the nature and number of cases Document with regard to conduct
Poland	Three years of practice in law Three years in Polish law (including European law) (or prove knowledge and experience by means of seminars etc. in an interview focussing on Polish law Include a list of cases No info on number of applications
Portugal	Three years of practice in law Three years of experience in Portuguese law (including EU law) (or proof of knowledge and experience where less than three yeas experience) Various documents

Country	Requirements
Romania	Three years of legal practice Three years in Romanian and European Law No info on applications No further info provided by the Bar
Slovakia	Three years of legal services in the Slovak republic without any significant interruption Three years experience in Slovak law (or when less; prove necessary knowledge and experience; take into account lectures seminars and conferences on Slovak law) Swear an oath No applications yet
Slovenia	Three years of actual and permanent practice Three years in Slovenian law No mention of the option contained in 10(3) of Directive 98/5/EC
Spain	Three years of regular and effective practice Three years of experience in Spanish law (or proof of knowledge or experience where there is less than three years of experience in Spanish law)
Sweden	Experience of three years or evidence of enough competence and experience. Experience necessary mainly in Swedish law (not only EU Law)[126] No integration yet
United Kingdom	Three years of legal practice Three years in the law of England & Wales or Scotland (or prove knowledge and experience when shorter) No info on number of applications

Source: country studies

It may be remarked that there are very little (if any) major requirements beyond the system in the Directive in the implementation of this article in the different Member States. One of the few remarks that must be made in this respect is the fact that in Latvia the lawyer must certify his knowledge of the Latvian language. It is doubtful whether this criterion can be upheld legally. In Cyprus and Greece, if lawyers have not been practicing on cases of national law in all three years, they have to attend special courses or seminars on national law (including professional rules). It must be noted that this is a very loose interpretation of the rules laid down in Article 10(3) of the Lawyers' Establishment Directive. The Directive speaks about taking into account courses, seminars, knowledge and professional experience, but states at no point that courses or seminars are necessary in order to integrate into the host Member State's profession. In other words, where somebody acquires enough knowledge without taking courses or seminars, he should still be eligible to be integrated into the legal profession of the host Member State. The way in which the implementation of this article is formulated in Greece and Cyprus, however, implies that following courses is, either way, obligatory.[127] Slovenia did not implement article 10(3) of the Lawyers' Establishment Directive, which is about admission to the profession after three years of establishment when the lawyer has practised the law of the host state for less than three years, in the Bar Act. The only option implemented is the possibility to gain admission after at least three years of practicing Slovenian law (possibly implying also EU law).

[126] There is an exception for lawyers qualified in Norway, Finland, Iceland and Denmark; three years of practice is enough, without specifications whether such practice needs to be in Swedish law.
[127] Cf. S. Claessens, *Free Movement of Lawyers in the European Union*, 2008, p. 230.

Another observation that must be made is that there are a number of Member States that require additional things from lawyers who seek to integrate into the legal profession of the host Member States: requirements such as producing a certificate of honour or good standing, health certificates or swearing an oath. It would be premature to class these requirements as being in excess of the Directive. Article 10 provides for a way for lawyers to circumvent the aptitude test that, in principle, would assess whether a lawyer has the necessary qualifications to enter into the legal profession of the host Member States. Professional qualifications in many Member States are only a part of what is required for practice of the legal profession and, additionally, certificates, as mentioned above, are often required by Member States. In our opinion, the system of article 10 of the Lawyers' Establishment Directive 'relieves' the lawyer in question only from the requirement to prove the equivalence of his professional qualifications, but Member States are free to impose, albeit in a non-discriminatory manner (and that is where the problems with Luxembourg, Greece and Cyprus arise), additional criteria for entering the host Member State legal profession, such as the requirements mentioned above.

It must be noted that none of the implementations and none of the country studies shed any light on the most pressing questions flowing from the wording of article 10 of the Lawyers' Establishment Directive and its subsequent national implementations: How much national law must be dealt with during the three years (since the Directive explicitly mentions the fact that European law also counts as national law) and what constitutes interruptions other than those resulting from everyday life. With regard to the latter question, only the German implementation sheds some light on the matter, since it stipulates that every interruption longer than three weeks is not an interruption resulting from everyday life. These two criteria obviously touch the core of the potential effectiveness of the potential circumvention of the aptitude test under the Professional Qualifications Directive. There were very few reports of this way actually functioning and respondents in general have indicated that they have not noticed a decrease in the number of requests for aptitude tests under the Professional Qualifications Directive in favour of the system laid down in article 10 of the Lawyers' Establishment Directive. The uncertainty at the level of the individual applicant with regard to amount of national law required and the nature of interruptions other than those resulting from everyday life might well contribute to that observation. Another reason for this observation might be the extent of the aptitude test required. In the case study on Greek lawyers established in other Member States it was indicated that the aptitude test for the Paris Bar merely consists of an exam on the deontology in force in the Paris Bar. That requirement was deemed so lenient by respondents that it was (much) preferred over the possibility to integrate after three years of experience. Although no such evidence was encountered, this may also take place in other jurisdictions, therewith explaining the relatively low numbers of lawyers who seek integration in this manner.

3.3.9 Limitation on the exercise of professional activity.

A last set of potential barriers that are imposed by Member States and that were encountered while reviewing the implementation of the Lawyers' Services Directive and the Lawyers' Establishment in different Member States, are the potential limitations with regard to the exercise of professional activities that are placed on lawyers providing services or established in other Member States. The Lawyers' Services Directive does not define the ex-

tent of professional activities that the lawyer providing services may pursue. It merely states that Member States may reserve the exercise of professional activity consisting in the preparation of formal documents for obtaining title to administer estates of deceased persons and the drafting of formal documents creating or transferring interests in land may be reserved to prescribed categories of lawyers. With regard to the Lawyers' Establishment Directive, article 5 specifies the professional activity lawyers may carry out. In this regard, it must be mentioned that article 5(2) contains the same exception as the one encountered under the Lawyers' Services Directive.[128] In addition, article 5(1) underlines that lawyers established under their home country professional title may exercise the same professional activity as lawyers established under the professional title of the host Member State, where it is specifically mentioned that the lawyer concerned may, inter alia, give advice on the law of his home Member State, EU law and the law of the host Member State. In *Wilson* and *Commission v Luxembourg* the ECJ ruled in clear terms that the restrictions laid down in article 5 were exhaustive and no further limitations could be imposed.

When reviewing the implementation as reported in the country studies, a number of violations were encountered. Slovenia's Bar Act prevents registered EU lawyers from being elected into the bodies of the Bar Association of Slovenia, from training pupils and prospective entrants and from being appointed "the proxy of the client that is fully exempt from the payment of the costs of procedure or assistance in accordance with the Act regulating the procedure before the courts or legal assistance, or being appointed attorney ex officio". Austria imposes similar limitations. Lawyers established in Austria under their home country professional title are not allowed to train potential lawyers, may not be elected into representative bodies and may not work in a legal aid scheme. A European lawyer registered in Romania has all of the same rights as a Romanian avocat. European lawyers are permitted to work in Romania according to Romanian law; however it seems that they do not have the right to give legal advice on matters of Romanian law. In Greece lawyers established under their home country professional title are not allowed to exercise certain public functions such as taking part in the organization of elections.

With regard to the majority of these limitations, it can be concluded that these are in excess of the Directive. With regard to the right of being elected in representative bodies it must be mentioned that article 6 of the Lawyers' Establishment Directive states that lawyers established under their home title must, at least, have the right to vote in the elections of representative bodies (i.e. the Directive does not guarantee the right to be elected). Since this issue was covered separately by the Directive it can be questioned whether the right to be elected in representative bodies is covered by article 5 of the Lawyers' Establishment Directive. With regard to the limitations imposed in Greece we are of the opinion that these are objectively justified since they touch upon the exercise of actual state sovereignty on the basis of the Treaty on the Functioning of the European Union.

[128] Article 5(2) of the Lawyers' Establishment Directive reads: "Member States which authorise in their territory a prescribed category of lawyers to prepare deeds for obtaining title to administer estates of deceased persons and for creating or transferring interests in land which, in other Member States, are reserved for professions other than that of lawyer may exclude from such activities lawyers practising under a home-country professional title conferred in one of the latter Member States."

3.4 Summary and Concluding Remarks

The goal of this chapter was to meet the research objective to assess the way in which the legal framework has been transposed and implemented on a national level and the experiences with implementation. Additionally, challenges and barriers for lawyers that are specifically linked to or are a result of the (differences in) implementation in Member States have been discussed.

Implementation of the Directives

Both Lawyers' Directives offer some discretionary room to the Member States in the implementation into national law, such as whether or not to use requirements of working in conjunction with local lawyers, and introduction to the court and/or Bar president.

Working in conjunction

The requirement to work in conjunction in court proceedings exists in many Member States. The main reason is to help the lawyer concerned in the often detailed and complicated rules in force in the different Member States. The survey shows that lawyers that have been required to do this generally see a number of benefits of working in conjunction. More than three quarters of the lawyers (77%) indicates that the local lawyer has provided knowledge of local customs and court procedures. Almost as many lawyers (71%) have profited from advice that the local lawyer can give on the law of the host country.

Besides the benefits of working in conjunction, part of the lawyers (38%) has also experienced difficulties. The most commonly experienced difficulty (by 24% of all lawyers that have worked in conjunction) is the costs of working in conjunction. The average extra costs for the client because of the requirement to work in conjunction vary. According to a third of the lawyers, extra costs (if any) are less than 25%. Another third indicates that the extra costs are between 25% and 50% extra, while another third indicates that average extra costs are over 50%.

Although some difficulties have been experienced, we conclude that the requirement to work in conjunction is implemented in many Member States, is being used often and that many lawyers experience benefits from working in conjunction. Therefore there is no pressing need to change the Directives in this regard.

Introduction to the court

In country studies, it was found that some form of introduction to the court is required in ten Member States. Countries that have prescribed it are generally of the opinion that it is important and that this should remain possible. The introduction requirement itself seems of little importance, and the study has not provided any indication that it is perceived as an important obstacle to mobility. Therefore, we conclude there is no need to change the Directives on this point.

Registration in the host country

The core of the Lawyers' Establishment Directive is that lawyers qualified and registered in their home Member State have the right to establish and exercise professional activity in other Member States upon registration with the competent authority of the host Member State. This registration requirement may appear simple but leads to a myriad of different

implementations. Countries have implemented a wide variety of requirements for registration of which some are in excess of the Directive.

Cooperation between bars
On the basis of scarce information collected in the country studies and a case study it seems that close cross-border co-operation between bars has generally not been established and that a coherent infrastructure to establish such co-operation is not in use.

In-house Lawyers
The Lawyers' Services Directive states that any Member State may exclude lawyers who are in salaried employment of a public of private undertaking from pursuing activities relating to the representation of that undertaking in legal proceedings in so far as lawyers established in that State are not permitted to pursue those activities. The Lawyers' Establishment Directive permits in-house lawyers to establish in a host state to the extent that in-house practice is permitted for lawyers of that host state. Currently, in-house practice is permitted for lawyers of nine Member States and forbidden in the other Member States. The number and the importance of in-house lawyers have grown in Europe since the turn of the 21st century. Many in-house lawyers are carrying out cross-border activities.

Three obstacles to cross-border mobility of in-house lawyers have been identified in this study:
1 Under the Lawyers' Establishment Directive in-house lawyers cannot register with the Bar in countries in which in-house practice is prohibited for lawyers. In practice bars may be flexible and permit in-house lawyers from other Member States to register (e.g. in Belgium). Some lawyers do not register and thus are, formally, not established but are working as in-house lawyers permanently and so are *de facto* established without being registered.
2 It is unclear whether article 8 permits home bars to forbid their lawyers to act as in-house counsel in a host country that permits that activity for its lawyers.
3 Communications between in-house counsel and their in-house client regarding EU competition matters are not protected by legal professional privilege. Besides, in many countries communications of in-house counsel are not protected at all. To protect communication, in-house lawyers have to communicate via an external lawyer.
4 Finally, the European Court of Justice Court decided that in-house lawyers cannot represent their company before the European Courts.

As the regulation of in-house lawyers and the extent to which in-house counsel has developed is still very different across countries, there is no need to change the basic approach of the Lawyers' Establishment Directive, at this point. However, the uncertainty of the applicability of article 8 may potentially hinder cross-border movement of lawyers.

Double Deontology
Art. 4 of the Lawyers' Services Directive of 1977, with a few exceptions, declares both home country and host country regulation to be applicable in parallel – the so-called Double Deontology (DD). For establishment, the issue is somewhat more complicated as the Directive seems to differ according to the language in which it is written. In German, for example, Article 6, with a few exceptions, declares both home country and host country

regulation to be applicable in parallel. The English version seems to give priority to host country regulation.
Double deontology can be the cause of difficulties for cross-border activities of lawyers. The CCBE Code of Conduct (CoC) had as its aim to reduce difficulties related to double deontology, but not all difficulties have been successfully resolved.

Because of developments in the national regulations applicable to lawyers in various Member States, the differences between regulations, hence also the difficulties related to double deontology, have grown bigger. To summarize, there are difficulties of three kinds:

- It is not always clear which regulations apply, resulting in legal uncertainty, risks and extra costs for lawyers when determining what regulations apply
- There are differences in deontology between Member States resulting in competitive disadvantages for lawyers working abroad
- In some cases it is impossible to comply with double deontology, because rules are contradictory

These problems can be a deterrent for both clients and lawyers to engage in cross-border activities. This is confirmed both in interviews and through the survey.[129] In principle, different approaches could be taken to reduce difficulties related to double deontology. The researchers think that dismissing double deontology in favour of single deontology (home country rules for temporary services; host country rules for established lawyers) will likely be the most effective in removing the difficulties in the area of deontology.

Admission to the profession
Next to the establishment of lawyers under their home country professional titles in other Member States, the Lawyers' Establishment Directive gives lawyers the opportunity to integrate in the host Member State profession without using the system provided for such integration in the Professional Qualifications Directive. The actual implementation of this article leads to a great deal of uncertainty among the Bar Associations and lawyers that mainly seems to centre around the amount of national law necessary, the influence of European law thereon and the meaning of the requirement of 'effective and regular pursuit' for at least three years.

Limitation to the exercise of the profession
A last set of potential barriers that are imposed by Member States are the potential limitations with regard to the exercise of professional activities that are placed on lawyers providing services or established in other Member States. With regard to the majority of these limitations, it can be concluded that they are in excess of the Directive(s).

Conclusion
In general, it can be mentioned that both the Lawyers' Services Directive and the Lawyers' Establishment Directive have largely been implemented correctly in the Member States. It must be mentioned that, where irregularities are concerned, these are most notably en-

[129] Compare the reasoning behind the Common European Sales law: "The 27 different sets of national rules can lead to additional transaction costs, a lack of legal certainty for businesses and a lack of consumer confidence. These can act as a deterrent for both consumers and businesses to shopping and trading across EU borders. Small and medium-sized companies are particularly affected by higher transaction costs." (source: http://ec.europa.eu/justice/newsroom/news/20111011_en.htm, accessed 31/8/2012).

countered with regard to the administrative requirements for registration under home title (on the basis of article 3 of the Lawyers' Establishment Directive) and, to a lesser extent, in relation to limitations on professional activity. Since it was made clear by the ECJ that the Directive leads to exhaustive harmonization, it may be assumed that the established irregularities are, indeed, violations of the Directive, although a ruling of the ECJ would be necessary to definitively qualify them as such.

4 Results of the Legal Framework

Key outcomes

- There is a large market for temporary cross-border legal services
- Around 3.5 thousand lawyers have made use of the Lawyers' Establishment Directive to establish in another Member State; a few hundred have gained admission to the profession of the host country after three years of establishment
- More than 3.5 thousand lawyers have gained admission to the profession of another Member State by making made use of the Professional Qualifications Directive
- Commonly experienced by lawyers established in another Member State are difficulties related to professional indemnity insurance, requirements of the bar in the home Member State, and double deontology
- Lawyers that have provided cross-border services have encountered fewer difficulties than those that have established in another country

4.1 Introduction

How and to what extent the provisions of the Lawyers' Directives have been used by lawyers in practice is discussed in this chapter. It also discusses barriers and difficulties that lawyers have encountered. This emerges from the research objective to assess the extent to which the Lawyers' Directives have contributed to the integration of the Internal Market for legal services and the legal profession and to evaluate the extent to which the Directives have facilitated lawyers' cross-border mobility in the EU. In that context, it identifies the most common categories of users of the Directives, their reasons for mobility, and other characteristics of users. Furthermore, it discusses barriers that users have encountered in practice.

The chapter first discusses temporary cross-border services, and subsequently establishment in another Member State. Furthermore, admission to the profession of another Member State is discussed. The chapter ends with an overarching analysis of the results and a discussion of barriers and difficulties.

Preliminary remarks

Some preliminary remarks are necessary before presenting the results of this chapter. It must be realized in advance that, in practice, the distinction between providing services and establishing is not always easy to make.

In the *Gebhard* case, the ECJ ruled that it was inherent in the provision of services that they are to be performed on a temporary basis. However, this does not preclude the lawyer from providing these services within a certain infrastructure, i.e., an office at his disposal. The time factor, although that goes beyond duration alone, is the decisive element distinguishing between providing services temporarily and establishment. Additionally, Directive 2005/36/EC states, in Article 5(2), that the temporary nature of the services shall be decided on a case by case basis. This means that the Member States cannot impose fixed

time limits or limit recurrences of certain activities. On the other hand, it is now clear that the provision of services is limited in time and an 'endless' installation limitée is no longer reconcilable with the law as it stands today.[1]

However, law firms may establish a permanent office in which no individual lawyers are established permanently, so that these lawyers do not fall under the Establishment Directive with its obligation of bar registration. In a number of interviews, it has been confirmed that this is indeed happening. This is possible because the Directives only apply to individual lawyers and not to firms and offices.

It must, furthermore, be noted that the use of the Lawyers' Directives does not cover all cross-border activities of lawyers in the European Union. Lawyers do not only assist foreign clients by providing services or establishing in another country, but also by co-operating with foreign lawyers. Many law firms cooperate within a network of law firms in other countries.[2] An example of a well-known network is Lex Mundi. Networks may be more or less formally organized.

Familiarity with free movement rights for lawyers

The use of the Lawyers' Directives is partly dependent on how well-known the provisions of the Directives are. If a lawyer is familiar with the possibilities that the legal framework for free movement offers, this might enhance the chances that the lawyer will, indeed, make use of these possibilities.

Lawyers that did not make use of these possibilities have, therefore, been asked in the web survey to what extent they are familiar with some of the main possibilities that the legal framework offers, namely:

- the possibility of providing legal services in another EU Member State under the professional title of the home country (made possible by the Lawyers' Services Directive)
- the possibility to establish as a lawyer in another EU Member State under the professional title of the home country (made possible by the Lawyers' Establishment Directive)
- the possibility of obtaining the right to use the professional title of another EU country by completing an aptitude test (under the Professional Qualifications Directive)
- the possibility of obtaining the right to use the professional title of another EU country after being established there for three years under home-country professional title, without needing to complete an aptitude test (made possible by the Lawyers' Establishment Directive)

[1] S. Claessens, *Free Movement of Lawyers in the European Union*, 2008.
[2] See www.chambersandpartners.com/pdfs/LegalNetworks-Global2011.pdf for a list of leading law firm networks.

Figure 4.1 Familiarity with cross-border possibilities of lawyers who have not made use of free movement possibilities (n=1.185)

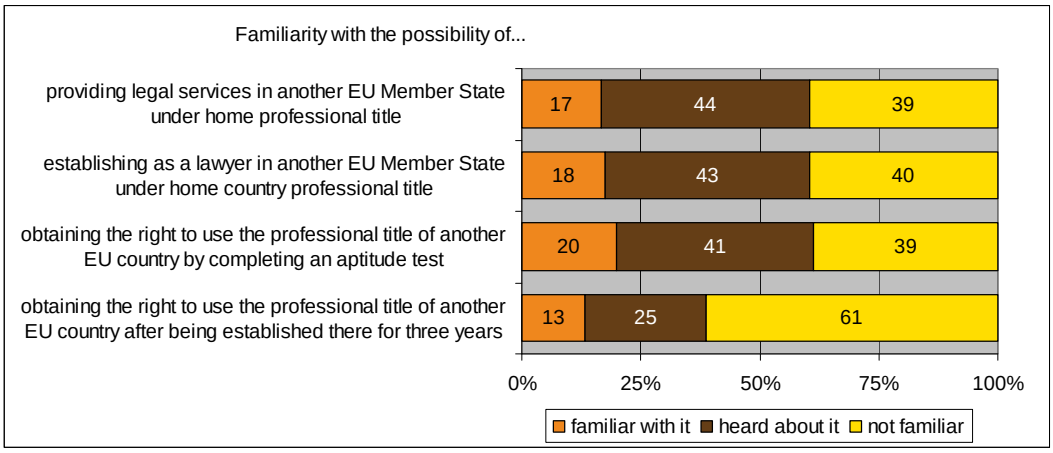


Figure 4.1 shows that, compared to other possibilities, the possibility to integrate into the profession of another country after three years of establishment, without needing to complete an aptitude test, is least known among lawyers. Well over half (61%) stated that they were not familiar with this possibility.

Lawyers that are interested in establishing or providing services abroad are, on average, somewhat more familiar with the possibilities. However, of this group, still little more than 30% is not familiar with the possibilities of providing cross-border services under home country title, establishing under home country title and obtaining the title of another country through successful completion of an aptitude test. The possibility of obtaining the title after three years of establishment is also, within this group, the least known possibility: a little over half is not familiar with it.

A case study on French lawyers that have been admitted to the profession in Belgium confirms this relative lack of knowledge about the possibility that article 10 of the Lawyers' Establishment Directive offers. The majority of the interviewees were not familiar with this possibility. However, some of them were aware of the route of the Professional Qualifications Directive. Some of the lawyers that have been interviewed have pursued an additional study in the form of a complementary Master's Degree in the host state. It is questionable, in retrospect, whether this was the result of a lack of information or whether it constituted a wilful choice.

4.2 Temporary Cross-Border Services

4.2.1 Use of the Lawyers' Services Directive

Introduction

As registering is not required when lawyers provide services temporarily in other Member States, there are no official statistics available on the number of lawyers providing services in other countries.[1] There are, however, some statistics that can give an indication of the volume of cross-border services. This section will, therefore, first discuss some statistics from Eurostat. Results from the web survey, that will subsequently be discussed, give insight into some characteristics of lawyers that have provided services in other Member States.

Many lawyers may provide services to clients in other countries without being physically present in another country, because they provide the service by telephone and/or e-mail. They may not realize they are carrying out services covered by the Lawyers' Services Directive. In this report, we assumed that the Directive applies to all services that are provided to clients in another EU Member State, regardless of whether the lawyer is in that other Member State physically.

Turnover for clients in other EU Member States

Eurostat statistics are available on the turnover generated by clients in other EU Member States. The turnover comprises the totals invoiced to those clients by a firm during the reference year (the total value of market sales of goods and services to third parties).[2]

This data can serve as an indicator for the volume of cross-border legal services, provided under the Lawyers' Services Directive. The data is not limited to formally qualified lawyers, but includes also other legal activities. It comprises advocates, barristers, solicitors and registered lawyers but also notaries and legal consultants.
A certain kind of mobility might be unnoticed in these statistics, namely those lawyers that move temporarily to a branch of the same firm in another country. They are not permanently establishing themselves in another country, but they may not be providing services to customers in another country than the country in which they are working either.

---

[1] In Slovenia and Portugal lawyers wishing to provide services formally must make themselves known with the bar. In Portugal five lawyers have made themselves known in 2010. In Slovenia, only two lawyers have done this. It is likely that more European lawyers provided temporary services in Portugal and Slovenia without registering, as the requirement to register can hardly be supervised.

[2] Turnover, in the context of Eurostat structural business statistics (SBS), comprises the totals invoiced by the observation unit during the reference period, and this corresponds to the total value of market sales of goods and services to third parties. Turnover includes: all duties and taxes on the goods or services invoiced by the unit (firm) with the exception of the value-added tax (VAT) invoiced by the unit vis-à-vis its customer and other similar deductible taxes directly linked to turnover; all other charges (transport, packaging, etc.) passed on to the customer, even if these charges are listed separately on the invoice.
Reductions in price, rebates and discounts as well as the value of returned packing must be deducted. Excluded are: income classified as other operating income, financial income and extraordinary income in company accounts; operating subsidies received from public authorities or the institutions of the European Union (EU) (source: Eurostat SBS glossary on turnover, http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Glossary:Turnover_-_SBS, last accessed 24/7/2012).

In the table below, the turnover of legal activities provided to clients in other EU Member States is shown for the year 2008 in twenty-two countries. This data is based on sample surveys.[1]

Table 4.1 Turnover or gross premiums written (in million Euros), by residence of client (2008), legal activities (7411)

	Total turnover	Place of residence in the declaring country	Place of residence outside the declaring country	Place of residence outside the declaring country but in another EU country	EU exports as % of total turnover
Belgium	733,0	516,0	217,0	152,8	21%
Denmark	1.058,5	1.010,6	47,9	38,1	4%
Germany	7.963,6	6.623,7	1.340,0	767,8	10%
Ireland	1.210,4	1.093,9	116,4	55,3	5%
Greece	118,2	64,5	53,7	40,6	34%
Spain	2.668,0	2.274,1	393,9	270,2	10%
Italy	1.081,5	955,6	125,9	59,5	6%
Cyprus	77,7	56,6	21,1	14,0	18%
Lithuania	65,7	62,2	3,6	0,5	1%
Luxembourg	388,3	324,8	63,5	:	:
Hungary	120,2	64,1	56,2	29,7	25%
Austria	536,7	393,8	142,9	94,4	18%
Poland	424,9	336,6	88,4	24,0	6%
Portugal	202,1	156,3	45,8	32,2	16%
Slovenia	18,5	13,1	5,4	4,4	24%
Finland	327,2	221,4	105,8	74,9	23%
Sweden	807,9	603,2	204,7	133,1	16%
United Kingdom	24.356,7	19.686,6	4.670,1	2.364,4	10%
Total	42.159,1	34.457,1	7.702,3	4.155,9	10%

Source: Eurostat, SBS database.

Based on survey data[2], in 2008 twenty-two countries together accounted for a turnover of 4.2 billion Euros for clients residing in another EU Member State. The legal sector in the United Kingdom had the highest turnover in other EU countries in absolute terms (2.4 bil-

[1] These sample surveys are exhaustive for enterprises with more than 50 employees (for smaller countries with 20 or even 10 employees) or with turnover above certain threshold. Smaller enterprises are sampled; business registers are used as sampling frames. Source: Eurostat, *Structural Business Statistics,* (summary of methodology) (online http://epp.eurostat.ec.europa.eu/cache/ITY_SDDS/en/sbs_esms.htm, accessed 17 April 2012).

[2] The survey that is referred to is carried out by Eurostat, and is part of Structural Business Statistics (SBS). Eurostat reports about the accuracy of the data: "The SBS Regulation is an output-oriented Regulation, leaving data providers the choice of data sources. In most countries a combination of survey and administrative data is used. It is very hard to assess the accuracy of the administrative data. No quantitative indicator is available." Furthermore, Eurostat reports about sampling error: "For the data covered by survey the coefficients of variation have to be transmitted. Work is ongoing to calculate an overall EU coefficient of variation, but this is not available yet. Data of individual countries cannot be published." Source: Eurostat, *Structural Business Statistics,* (summary of methodology) (online http://epp.eurostat.ec.europa.eu/cache/ITY_SDDS/en/sbs_esms.htm, accessed 17 April 2012).

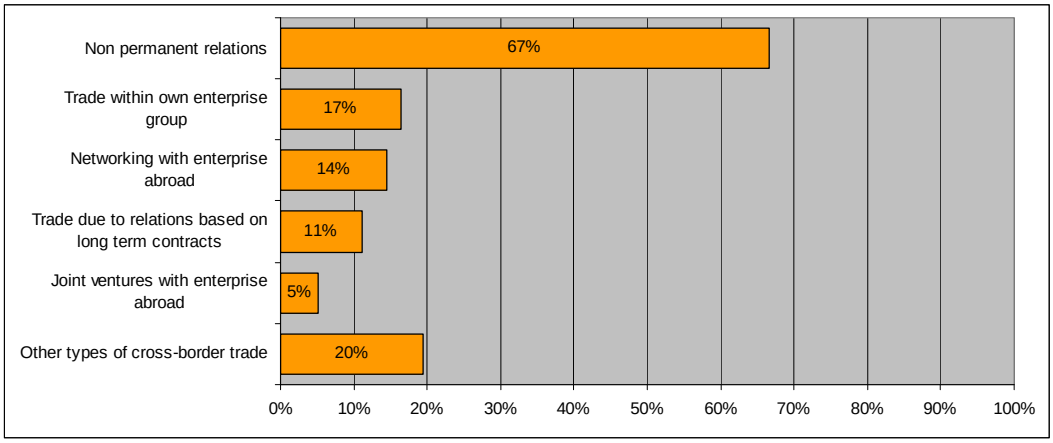
lion Euros), followed, at a distance, by Germany (0,8 billion Euros). Other countries with a relatively high turnover for clients in other EU countries are Spain (270 million), Belgium (152 million) and Sweden (133 million).

Although this data is from 2008 and limited to a number of Member States, it can, at least, be concluded that the provision of cross-border services accounts for a turnover that is much higher than the turnover generated by lawyers who have established in another Member State (see section 5.3.1). That the Lawyers' Services Directive is economically much more important than the Lawyers' Establishment Directive has also been stressed in numerous interviews.

Types of cross-border trade

Eurostat has carried out a voluntary survey in 2005 (reference year 2004) in the sector of business services. The legal sector is a part of this sector. The survey was carried out in fifteen countries (including Norway)[1] and addressed the type of exports.[2] The figure below shows the types of exports that the enterprises in the legal sector were active in. Since enterprises can make use of multiple types of exports, the percentages of the different types of export in the figure do not add up to one hundred.

Figure 4.2 Types of export, average of available countries*, share of exporting enterprises, legal activities, 2004



** DK, DE, EL, ES, LV, LT, MT, PL, RO, SI, SK, FI, SE, UK & NO*

Source: Eurostat, SBS Database.

Two thirds of the enterprises said that their relations with clients in other countries were non-permanent. This is higher than the average of European enterprises in all economic sectors taken together (53%).[3] More than one in every six enterprises exports within their

[1] Romania was also included in the survey, although it was not formally a Member State yet at the time of the survey.

[2] Source: Eurostat, "Exports of business services", *Statistics in Focus,* 74/2007, Brussels, 2007. Barriers were also a subject of the survey. This is discussed in section 6.2 of this report. A similar but more recent survey is unfortunately not available.

[3] Source: Idem, p. 4.

own international enterprise group, a slightly smaller amount is exporting by networking with other enterprises abroad. Joint ventures are employed by one in twenty firms active in exports. A little more than one in ten enterprises (11%) in the legal sector had long term contracts with clients in other countries.

The differences between countries are considerable. Trade within an enterprise group was the dominant type of export in Greece (100%) and Poland (81%), and was also common in the United Kingdom (41%). Networking is quite often used in Denmark (53%) and also in the United Kingdom (41%). In Finland almost half of exports (49%) were due to long-term contracts. Joint ventures were most commonly used in Latvia (38%) and Poland (35%).

4.2.2 Characteristics of users

Countries in which services are provided

The table below gives insight into the countries in which the lawyers originating from a number of countries[1] and who have participated in the survey have provided cross-border services.

[1] The table does not show those countries of establishment of which only a few lawyers have participated in the survey (Austria, Denmark, Estonia, Greece, Hungary, Latvia, Poland, Slovak Republic, Portugal).

Table 4.2 Countries in which services have been provided, by country of establishment

	Country of establishment											
	BE	CY	CZ	FI	FR	DE	IT	LU	NL	ES	SE	ENG/WS
AT	9%	19%	43%	13%	19%	48%	13%	11%	11%	10%	20%	8%
BE	9%	19%	14%	33%	50%	20%	11%	61%	48%	11%	34%	17%
BG	4%	19%	7%		13%	1%	2%		5%		2%	4%
CY		8%	5%	7%		3%		7%	5%	1%	2%	8%
CZ	4%	19%	7%	3%	13%	7%	3%	4%	4%	3%	3%	4%
DK	4%	8%	12%	30%	13%	8%		4%	5%	4%	66%	21%
EE		12%	2%	40%	13%	2%	2%		2%	1%	11%	4%
FI	9%	8%	5%	3%	6%	3%	2%		4%	4%	49%	8%
FR	39%	31%	12%	33%	13%	37%	35%	82%	27%	56%	38%	42%
DE	35%	31%	38%	33%	31%	2%	22%	50%	55%	30%	54%	58%
EL		77%	2%	7%		7%	5%	4%	4%	1%	7%	17%
HU		12%	14%		6%	4%	2%		5%	1%	5%	
IE		8%	5%	3%	25%	4%	2%	11%	11%	3%	10%	25%
IT	30%	15%	5%	13%	56%	22%	10%	18%	21%	49%	34%	33%
LV		12%	2%	3%		1%			4%		8%	4%
LT		8%	5%	3%	6%	2%	2%		2%		5%	4%
LU	30%	12%	7%	10%	50%	11%	6%		13%	10%	18%	8%
MT	4%	15%			13%	1%	3%	4%	2%	3%	8%	
NL	52%	15%	24%	27%	38%	27%	6%	14%	4%	14%	39%	25%
NO	4%	12%	5%	20%		2%					49%	
PT[1]		15%	26%	7%	19%	13%	5%	4%	7%	7%	18%	4%
PL					6%	2%	2%			21%	2%	4%
RO		19%	5%	3%	13%	4%	6%			3%	2%	
SK		8%	60%	3%	6%	3%			4%		3%	4%
SI		8%	7%			2%	2%		2%			
ES	13%	23%	5%	17%	38%	23%	29%	18%	23%	8%	25%	29%
SE	4%	12%	5%	83%	6%	6%	2%	4%	9%	5%	11%	21%
ENG/WS	17%	69%	33%	50%	56%	33%	29%	29%	36%	33%	70%	17%
SCT		23%	2%	3%	13%	3%	3%	4%	5%	5%	5%	17%
N-IRL		8%	2%		19%	1%	2%	4%	2%		3%	8%
Total n	23	26	42	30	16	473	63	28	56	73	61	24

Multiple responses were possible; percentages and totals are based on the number of respondents.

[1] The numbers in Portugal may be higher in reality; in some versions of the survey Portugal was unfortunately mistakenly left out as an answer category.

What can be concluded from the table is that services are commonly provided in countries that are geographically near to the country in which the lawyer is established. For example, many lawyers established in Germany provided services in Austria, and France; two thirds of the lawyers established in Sweden provided services in Denmark. There is one exception: lawyers established in many different countries (e.g. Cyprus, Sweden, France, Finland) have provided services in the UK. Possible explanations are the use of the English language and the fact that London is a major centre for legal services in Europe; many big law firms are headquartered there.

Lawyers from non-EU countries were not included in the survey. However, in the Portuguese country study it has been noted that Brazilian lawyers can integrate automatically into the profession of lawyer in Portugal. Once they are a Portuguese lawyer, they can make use of the provisions of the Lawyers' Services Directive (but not the Lawyers' Establishment Directive, as the scope of this Directive is limited to nationals of Member States). It has been reported that a large number of Brazilian lawyers have made use of this possibility.

Table 4.3 Fields of law practised vs. whether cross-border services have been provided

Provided cross-border services?	Yes	No	Total n
EU and international law	60%	40%	319
Arbitration	56%	44%	140
Intellectual property	53%	47%	261
Corporate and company law	47%	53%	824
Tax	46%	54%	227
Property/real estate	42%	58%	486
Financial law	41%	59%	185
Constitutional and administrative law	41%	59%	198
Contract law	41%	59%	1170
Criminal law	37%	63%	420
Family law	36%	64%	634
Tort	35%	65%	638
Employment/social security	34%	66%	618
Other	41%	59%	617
No answer	31%	69%	13
Total n	956	1409	2365

Multiple responses were possible; percentages based on number of respondents

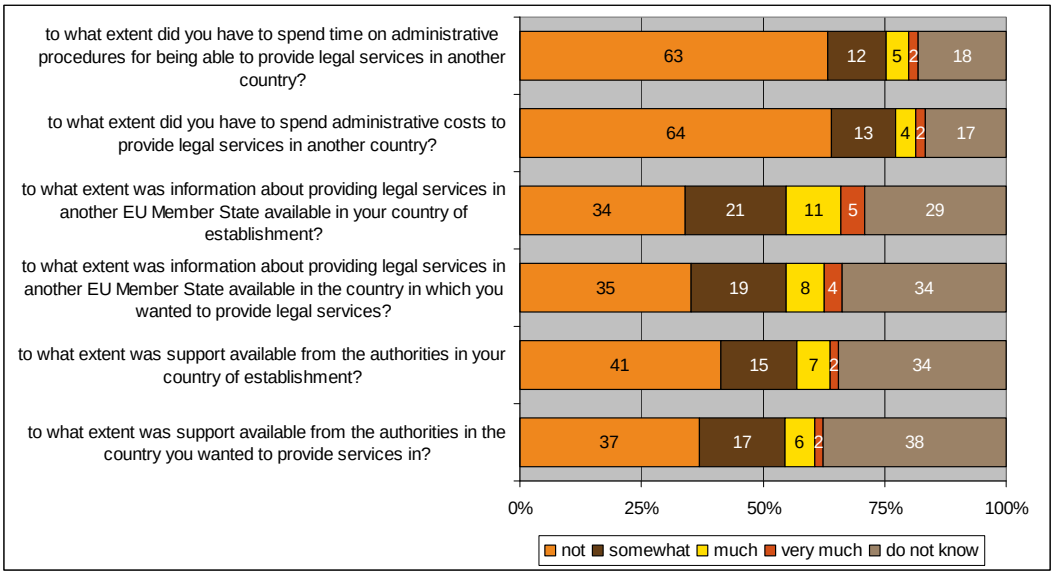
The survey shows that in some practice areas lawyers are more often providing cross-border services than in others (see table 4.3). Practice areas in which relatively many lawyers are providing cross-border services are EU and international law, arbitration, intellectual property, corporate and company law and tax law. Relatively fewer lawyers are providing services in the areas of criminal law, family law, employment and social security and

tort law. However, in interviews many respondents have noted that, nonetheless, there is a shift occurring in cross-border legal activities from mainly commercial/company law to also more and more private international law and family law, due to both migration and some harmonization.

Correspondingly, lawyers providing services mainly to large enterprises generally are more often providing cross-border services than lawyers who mainly provide services to small and medium sized enterprises, to the public sector and especially to private individuals. Accordingly, lawyers working for large law firms (with more than 50 lawyers) and for law firms that have offices in other countries provide cross-border services more often than lawyers working for smaller firms or in a self-employed capacity.

Administrative burden, information and support

Figure 4.3 Administrative burden, information and support for providing cross-border services



In principle, there are (almost) no administrative requirements for a lawyer to provide legal services on a temporary basis. The Lawyers' Services Directive only gives Member States the opportunity to require lawyers to be introduced to the presiding judge and/or the president of the relevant Bar, when a lawyer is pursuing activities related to the representation of a client in legal proceedings. The absence of administrative requirements is reflected in the results of the web survey, as most lawyers did not spend time or costs to be able to provide services in another country. A minority, however, reports that they have spent (very) much time (7%) or (very) much money (6%) on administrative requirements.

Around a third of the lawyers do not know whether information and support was available from authorities in the home and in the host state. This shows and confirms what has been said in interviews, namely that, for many lawyers, the possibility to provide cross-border

services within the European Union has since 1977 become obvious and is now taken for granted within the profession.

Clients and kind of services rendered

More than half (55%) of the lawyers have provided their temporary cross-border services mainly to clients settled in the lawyers' home country, for example by travelling together with a client to another country. Around a quarter (26%) of the lawyers has provided their cross-border services mainly to clients that are settled in another country, but who originally come from the home country of the lawyer. Almost half of the lawyers (45%) have (also) provided services to clients from other countries than the lawyers' own country.[1]

Most lawyers (88%) have provided (part of) their last cross-border services at a distance, from their own home country to a client in another country, for example, by e-mail or by telephone. This also explains, partly, why lawyers have generally not met with many administrative requirements. Almost a third (32%) (also) travelled to the client, who was in another Member State, while 11% of the lawyers were themselves in another Member State, providing services to a client in the home country of the lawyer.

Over half (53%) of the lawyers has provided services mainly in the law of their home country, whereas over a quarter (27%) practised in both the law of the home country and in the law of the host country and EU/international law. A relatively small group has practised mainly in the law of the host country (8%) or EU/international law (8%). Almost all lawyers worked under their home country professional title; some lawyers (4%) worked under the professional title of the country in which the services were provided.

The reason to provide temporary cross-border services was to serve existing clients for more than half of the lawyers (56%). More than a quarter (29%) has provided these services because of business opportunities. Some lawyers (15%) wanted to improve professional skills by providing cross-border services. In southern and eastern Europe, this group is somewhat bigger (30%). Examples that have been mentioned in interviews are mostly young lawyers in international law firms that work temporarily in an office in another country, for example, in London, to improve their professional skills.

The most important services that lawyers have delivered are legal advice (by 83% of the lawyers) and drafting contracts (49%). Over a fifth (22%) has carried out court work or representation. Of the lawyers that have provided services in the UK, only 10% carried out court work or representation.

[1] It is likely that the percentage of lawyers providing cross-border services to clients from other countries than the lawyers' own country is somewhat lower in reality. The reason is that lawyers that are providing cross-border services regularly could have been more inclined to fill in the web survey (self-selection) than those lawyers that are providing cross-border services only occasionally. Lawyers providing these services only occasionally might more often provide these services to existing clients from the lawyers' own country and not to clients from other countries.

4.3 Establishment in another Member State

4.3.1 Use of the Lawyers' Establishment Directive

Number of established lawyers from other Member States

From 2004 onwards, the CCBE has assembled reports on the number of lawyers that is making use of the Lawyers' Establishment Directive. The numbers have been provided by the Bar Associations at the request of the CCBE. In the interviews with Bar Associations that have been conducted in this study the bars were asked to provide the most recent numbers. The table below shows the most recent available number of established lawyers from other EU countries that have registered with the bars. The numbers add up to a total of almost 3.5 thousand lawyers that are established in another country, thereby making use of the Lawyers' Establishment Directive.

Table 4.4 Number of established lawyers from other EU Member States under the Establishment Directive (article 2), most recent numbers provided by Bar Associations

	Total number of lawyers (Bar members)	Number of established lawyers from other EU countries
Austria	5,496	82
Belgium	16,065	647
Bulgaria	11,829	34
Cyprus	2,056	65
Czech Republic	9,526	111
Denmark	5,562	15
Estonia	792	16
Finland	1,893	4
France	53,744	226
Germany	153,251	350
Greece	41,000	137
Hungary	11,784	175
Ireland	9,346	8
Italy	207,240	264
Latvia	1,363	12
Lithuania	1,796	12
Luxembourg	1,831	346
Malta	393	3
The Netherlands	15,542	46
Poland	34,181	51
Portugal	27,188	102

	Total number of lawyers (Bar members)	Number of established lawyers from other EU countries
Romania	16,998	
Slovak Republic	5,098	182
Slovenia	1,330	14
Spain	118,775	160
Sweden	5,063	19
United Kingdom	158,002[1]	368[2]
Total	917,144	3,449

Sources: CCBE Lawyers' statistics 2010, CCBE Lawyers' Statistics 2008 (Italy, Malta, the Netherlands, Poland, Romania), interviews with Bar Associations (March/April 2012).

The numbers in the above table have to be interpreted with some caution, for the following reasons.

- The date of validity of the statistics differs from 2008 to 2012, as not all bars provided recent statistics.
- In some countries, it is difficult for the national bars to give exact numbers, as there are many regional bars with a considerable degree of autonomy (e.g. Greece, Italy, France).
- Some bars distinguish between active and non-active lawyers while other bars do not make this distinction.
- It is, in most cases, not clear whether lawyers that have proceeded to full integration in the profession are still counted with the registered EU lawyers.

It has been noted that some firms establish a branch office in another Member State, without permanently establishing lawyers in that office. Lawyers temporarily work in those offices, without having to register with the local Bar. These lawyers will also not turn up in the above numbers.

That being said, the above table shows that Belgium is the country in which most lawyers from other EU Member States are established under the Lawyers' Establishment Directive. This is mainly due to the presence of EU institutions in Brussels. Other countries in which relatively many lawyers are established are the UK, Germany, Luxembourg (the seat of the European Court of Justice), Italy, and France.

A remark of a more general nature is that the activities that lawyers exercise differ from one Member State to another, which also influences whether it is necessary for foreign lawyers to register at the local Bar or to integrate into the profession. Legal advice, for exam-

[1] Bar Council (England and Wales): 15.387 (Practicing barristers, Bar Standards Board Statistics, data 2010); Law Society (England and Wales): 128.240 (Practicing solicitors, SRA statistics of April 2012); Northern Ireland: 2.444 (CCBE statistics of 5/2010); Northern Ireland (Bar Council): ±600 in private practice (Office of Fair Trading Press Release of 5/1/2011); Scotland (Faculty of Advocates): 758 (CCBE statistics 2006); Scotland, The Law Society: 10.573 (2011 Annual Report of the Law Society).

[2] Bar Council (England and Wales): 22 registrations (as of 1/1/2011); Law Society (England and Wales): 343 (SRA statistics of April 2012); Northern Ireland: 0 registrations (CCBE statistics 2010); Scotland (Faculty of Advocates): 1 (CCBE statistics 2005); Scotland, The Law Society: 2 (CCBE Statistics 2008).

ple, is not a regulated activity in Finland, Sweden and the Netherlands, and a foreign lawyer who limits himself to giving legal advice there does not necessarily turn up in the above statistics, as he does not need to register with the Bar to carry out the work.

Offices of the Largest European Law Firms

The Lawyers' Establishment Directive is aimed at individual lawyers. However, the establishment of offices by international law firms can also provide some insight into the integration of the market for legal services within Europe. Furthermore, the establishment of offices in other EU Member States has been facilitated by the Lawyers' Establishment Directive, something to which a number of major law firms testified in interviews. Before, in some countries it was, for example, necessary to have at least one 'local' lawyer as partner in a firm. This kind of restriction could not be maintained after the adoption of the Lawyers' Establishment Directive. So, the increasing number of offices abroad is also partly an effect of the Directive.

Based on the interviews with major law firms, generally two groups of major European law firms can be distinguished. The first group is composed of global firms with branches in many of the European countries. Lawyers in these branch offices are often locally qualified. These global firms have often expanded by mergers with and/or acquisitions of local law firms.

The second group is composed of large law firms with a home market, and branches in other countries, used mostly to assist clients from the home country that have activities abroad. Those 'representative' offices often are generally staffed with a limited number of lawyers working under their home country professional title, who provide services in the law of their home country. The office also functions as a bridgehead for clients in the host country, and it coordinates cooperation with local law firms for matters in the law of the host state. Some of the lawyers may be doubly qualified in both home and host state. This can be helpful when communicating and co-operating with local lawyers; but even the doubly qualified lawyers do generally not work on cases in the law of the host country without the help of local lawyers. This second kind of firm often actively maintains a network of befriended law firms with expertise in the law of other countries.

It must be mentioned that Brussels is an exceptional location. Most law firms from the second group do have an office there that is more than only a representative office. Of course, this has to do with the EU institutions that are seated in Brussels.

Most branch offices abroad were established in the Eighties and the Nineties. This was before the introduction of the Establishment Directive. The firms made use of the case law of the European Court of Justice, in particular, the judgment in the *Klopp* case. Following their entry into the Union, international law firms have also established in the New Member States. However, currently they seem to withdraw somewhat from these countries.

The table below shows in which Member States the largest European headquartered law firms have established at least one office.

Table 4.5 Country of headquarters (HQ) and other EU Member States in which firms have established at least one office, largest EU law firms , June 2012

Law firm	HQ	AT	BE	CZ	DK	FR	DE	EL	HU	IE	IT	LV	LU	NL	PL	PT	RO	SK	ES	SE	UK	Total
UK law firms																						
Clifford Chance	UK		X	X		X	X		X		X		X	X	X		X		X		X	12
Linklaters	UK		X			X	X				X		X	X	X	X			X	X	X	11
Freshfields Bruckhaus Deringer	UK	X	X			X	X				X			X					X		X	8
Allen & Overy	UK		X	X		X	X	X	X		X		X	X	X		X	X	X		X	14
Hogan Lovells	UK		X	X		X	X		X		X			X	X				X		X	10
DLA Piper International	UK		X	X		X	X		X		X			X	X		X	X	X	X	X	13
Ashurst	UK		X			X	X				X								X	X	X	7
Herbert Smith	UK		X			X															X	3
Slaughter and May	UK		X																		X	2
Eversheds	UK	X	X	X	X	X	X		X	X	X	X		X	X		X		X	X	X	16
Norton Rose	UK		X	X		X	X	X			X			X	X						X	9
Salans	UK		X	X		X	X		X						X		X	X	X		X	10
Non-UK law firms																						
Garrigues	ES		X												X	X			X		X	5
Fidal	FR		X			X																2
Loyens & Loeff	NL		X			X	X						X	X							X	6
Cuatrecasas Gonçalves Pereira	ES		X			X										X			X		X	5
Gide Loyrette Nouel	FR		X			X			X								X				X	5
Hengeler Mueller	DE		X				X														X	3
Uria Menendez	ES		X												X	X			X		X	5
Nauta Dutilh	NL		X										X	X							X	4
Noerr	DE			X			X		X						X		X	X	X		X	8
Gleiss Lutz	DE		X	X			X		X						X							5
Bonelli Erede Pappalardo	IT		X								X										X	3
Chiomenti Studio Legale	IT		X								X										X	3
De Brauw Blackstone Westbroek	NL		X											X							X	3
Mannheimer Swartling	SE		X				X													X		3
Houthoff Buruma	NL		X											X							X	3
Stibbe	NL		X										X	X							X	4
Arthur Cox	IE									X											X	2
Vinge	SE		X																	X		2
Kromann Reumert	DK		X		X																X	3
McCann Fitzgerald	IE		X							X											X	3
Total		2	30	9	2	15	15	2	9	3	11	1	6	13	12	4	7	4	13	6	28	192

Source: Websites of law firms (accessed June 2012)

Belgium (in particular, Brussels) and the UK (London) are the Member States in which most firms have established an office. Other Member States in which relatively many firms have established offices are France, Germany, the Netherlands, Spain, Poland and Italy. The

largest firms shown in the table do not have offices in Bulgaria, Cyprus, Estonia, Finland, Lithuania, Malta, and Slovenia.

Firms headquartered in the UK have established by far the most offices in other Member States. Seven UK firms have established offices in ten or more Member States, whereas all of the law firms headquartered in other countries than the UK have established offices in, at most, eight (Noerr from Germany) and, usually, less Member States.

The foreign offices serve as an indication of foreign activity of law firms. Foreign offices can be full-fledged offices or a rather small representative offices; on the other hand, firms without an office in a certain country may be active there, for example, through an international desk in their home country to cover the other country without having established an office there.

A foreign office does not always mean that lawyers will make use of the provisions of the Establishment Directive. It has been noted that major law firms may regularly send out lawyers to their offices in other Member States for a limited period of time, up to some years. These lawyers have no need to gain admission to the profession, or to formally register as an established lawyer.[1]

A report published by TheCityUK[2] in 2011 states that the largest international law firms in London have between 45% and 65% of their lawyers based outside the UK (in continental Europe and in other parts of the world) and many other London-based firms have between 10% and 20% of lawyers overseas. Many of the larger international law firms in the UK have adopted a strategy of establishing a substantial international network of offices.

According to the same report, there are over 200 foreign law firms with offices in London. Around half of these are from the US, with the remainder mainly from Europe, Australia and Canada. Many of them have developed capability in both English law and other forms of law. They can be divided into full service firms, specialist or niche firms and those firms that service clients looking to invest in the UK and continental Europe.[3]

Reasons for mobility for major law firms

In the literature, various reasons have been identified for (major) law firms to become active in another jurisdiction:

- The firm offers services that are only loosely connected to a single jurisdiction (e.g. services to clients in the main financial centres of the world)
- The firm offers services to support clients in cross-border trade (by opening an office or, as firms do especially in the first stages of internationalization, by partnering).

The economist Frank Stephen has argued that law firms from highly competitive and liberalized countries are more used to working efficiently, and will, therefore, have a stronger

[1] Some law firms also have exchange programs for trainee lawyers with other law firms in other Member States.

[2] TheCityUK is an independent membership body promoting the UK financial and related professional services industry.

[3] The CityUK, *Professional Services Series: Legal Services*, 2011.

incentive to start business in a more highly regulated country than the other way around.[1] This can be done by opening an office, merging with, or acquiring a local firm. An illustration of this, identified in an article by Robert Lee, is the interest of English law firms (low level of regulation) in the German market (more highly regulated). However, as Scandinavian firms (also low level of regulation) have entered the German market less than the English firms, mobility may also be influenced by factors such as relative size and available resources, language, the strength of the English (London) market and the frequent use of common law to govern commercial contracting.[2]

Mergermarket Statistics

Mergermarket is a mergers & acquisitions (M&A) intelligence service. Among other things, it publishes information about mergers and acquisition deals with a value over US$5m. It also provides information about the law firms that have assisted in deals. Based on Mergermarket data, the table below provides insight in the origin of the law firms that have assisted in M&A deals in different geographical areas of Europe in the period from 1 January 2011 to 31 December 2011.

Table 4.6 Location of head office of law firms assisting in M&A deals, % of deals, 1 January – 31 December 2011

Location of law firm head office	Location of M&A deal									
	Benelux	CEE*	French	Germanic	Iberian	Irish	Italian	Nordic	UK	Total
Benelux	38%									5%
CEE*		17%								1%
France			21%							2%
Germanic**		4%		25%						4%
Iberian***					51%					4%
Ireland						58%				2%
Italy							63%			4%
Nordic****								95%		14%
UK	54%	49%	43%	54%	32%	41%	15%		86%	47%
US	9%	30%	36%	21%	17%	2%	22%	5%	14%	17%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Mergermarket (2012) Press release: Mergermarket League Tables of Legal Advisers to M&A for Year End 2011 January 13 2012; edited by Panteia.

**CEE = Central and Eastern Europe; this comprises Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Ukraine.*

*** Germanic = Germany, Austria and Switzerland*

**** Iberian = Portugal and Spain*

***** Nordic = Denmark, Sweden, Finland, Norway, Faroe Islands, Greenland and Iceland*

[1] F.H. Stephen, "The European Single Market and the Regulation of the Legal Profession: An Economic Analysis", in: *Managerial and Decision Economics*, 23, 2002, p. 115-125.

[2] Robert G. Lee, *Liberalisation of Legal Services in Europe: Progress and Prospects*, 2010, p. 12-13.

The table shows that the market for mergers and acquisitions is very international. In many areas in Europe (e.g. Benelux, France, Germany) the firm acting as legal advisor of the majority of M&A deals has its head office in another region. The table also shows that UK and, to a lesser, extent US law firms dominate the market for advising on mergers and acquisitions in Europe.

4.3.2 Characteristics of users

Characteristics of lawyers established in another Member State

The results of the web survey give some insight into the characteristics of lawyers that are or have been established in another EU country than the one in which they first obtained their lawyer qualification. In total 267 lawyers that are or have been established in another Member State have filled in the survey.[1]

Fields of law most practised by lawyers that have established in another Member State are EU and international law (practised by 37% of the lawyers established in another country) and financial law (16%). Other fields of law practised by relatively many lawyers that have established abroad are tax (14%), corporate and company law (14%), intellectual property (14%) and arbitration (14%). As can be expected, the fields of law where there is the most mobility are the fields in which differences in national law are least significant.

Lawyers working for big law firms (more than 20 lawyers) are about twice more likely to be established abroad than lawyers working for smaller law firms or working alone. More than two thirds of those lawyers established abroad work for a law firm that has offices in other countries. Interviews with major law firms indicate that in many cases lawyers from these firms establish in another country for a relatively short period (3 to 6 years). Often, these are young lawyers wanting to gain some international experience. Some law firms even have an exchange program for young lawyers together with other law firms in other countries. Those lawyers that establish permanently mainly do so for family reasons, or to head a (new) foreign branch office.

Around two thirds (68%) of the lawyers established abroad regularly work for small and medium-sized enterprises. Less than half works generally for private individuals (47%) or large enterprises (45%). However, of all the lawyers that mainly work for large enterprises, a proportionally large amount of them is established abroad compared to lawyers working for smaller firms or individuals.

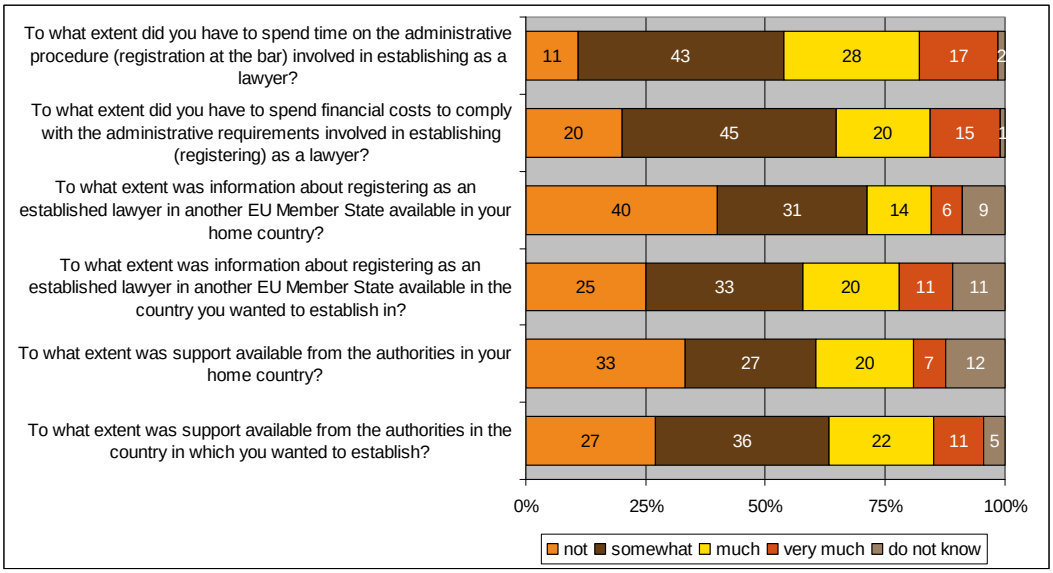
In numerous interviews it has become clear that European lawyers established abroad are mostly based in major cities, often in economic and financial centres. Luxembourg, as host of the European Court of Justice, also has an increasing number of lawyers established under their home country's professional title, as well as Brussels, where the European Com-

[1] This is 11% of the survey participants. By way of comparison: 7% has studied in another country than the country in which they have first registered with the bar and 10% has done their traineeship in a country different from that in which they first registered with the bar. This comparison has to be interpreted carefully; as a result of self-selection relatively more lawyers who have made use of the Establishment Directive may have contributed to the survey.

mission has its seat. In addition to working in the big cities of Europe, lawyers have also established in border regions in which there is a lot of mobility.

Administrative procedure, information and support

Figure 4.4 Administrative procedure for registration as an established lawyer (n=267)



Well over half of the lawyers are of the opinion that not much time was involved in registering with the Bar in the other Member State. Some lawyers (17%, figure 4.4), however, indicate that very much time was involved in the process of registering. A slightly smaller amount of lawyers (15%) considers that registering as a lawyer costs very much. In southern European countries (Cyprus, France, Greece, Italy, Spain and Portugal) 58% of the lawyers established there state that there was much or very much time involved in registering as a lawyer.

The majority of the lawyers indicate that not much information and support was available from the competent authorities in both the home and host country.

Types of activity and clients

Table 4.7 Type(s) of professional activities that the lawyer has engaged in while being established in another EU country

	n	%
Providing legal advice	223	84%
Drafting contracts	191	72%
Court work / representing clients in court / before administrative authorities	136	51%
Conveyance	53	20%
Wills, trusts	34	13%
Drafting legislation/regulations etc.	12	5%
Other	37	14%
No answer	1	0%
Total	267	100%

Multiple responses were possible; percentages based on number of respondents

Providing legal advice and drafting contracts are the most important activities that lawyers established in another EU country engage in (see table 4.7). Around half (51%) of the lawyers have carried out court work and/or representation.

Table 4.8 Origin of the lawyers' clients

	n	%
Mainly clients from the home country	74	28%
Mainly clients from the host country	69	26%
About as many clients from the home and host country	75	28%
Other	39	15%
No answer	10	4%
Total	267	100%

Over a quarter (28%) of the lawyers established abroad mainly provides services to clients from his home country (the country in which he originally obtained his qualification, see table 4.8). Around a quarter (26%) mainly serves clients from the host country (the country in which the lawyer has established), however, it must be noted that half of these are Italian lawyers that have first registered in Spain and have thereupon established in Italy and are serving Italian clients now. Well over a quarter (28%) provides services to clients both from his home and his host country.

Table 4.9 Kind of law practised by the lawyer established in another EU Member State

	n	%
Mainly the law of the home country (country of initial qualification)	25	9%
Mainly the law of the host country (country of establishment)	103	39%
Mainly EU/international law	21	8%
A mixture of the above	108	40%
Other	7	3%
No answer	3	1%
Total	267	100%

Although over a quarter mainly serves clients from his or her home country, this does not mean that lawyers established abroad also mainly practise the law of their home country. Less then 1 in every 10 lawyers mainly practises the law of the home country; most lawyers either practise mainly in the law of the host country (39%) or a combination of the law of the home and host country and EU/international law (40,4%). It is noteworthy that the group of lawyers that mainly practise the law of the host country is, for a large part (38%), composed of lawyers established in Italy (mainly qualified in Spain) and in Luxembourg (20%, possibly lawyers from Luxembourg qualified outside Luxembourg). A large part (38%) of the lawyers mainly practicing EU/international law is established in Belgium.

Over a third of the lawyers established abroad have acquired the right to use the professional title of the country in which they have established, besides the title of their home country (either by making use of the route of the Establishment Directive, the Professional Qualifications Directive or another route).[1] The lawyers that have done so have served clients from the host state slightly more often than lawyers that have not done so. The survey shows that lawyers that mainly practise EU/international law more often work under home country professional title. In interviews, it has been noted that in the field of EU/international law it is considered of less importance in which country the lawyer title has been obtained.

[1] See section 5.4 for more survey results on acquiring the right to use the title of another EU Member State.

Reasons for establishing in another country

Table 4.10 Reasons for establishing in another EU country

	n	%
Private/personal/family reasons	154	58%
Business opportunities in the other country	87	33%
Improvement of professional skills	71	27%
Employment opportunity	62	23%
Better quality of life	55	21%
To serve existing clients	47	18%
Better working conditions	37	14%
Other reasons	13	5%
No answer	5	2%
Total	267	100%

Multiple responses were possible; percentages based on number of respondents

Lawyers may have different reasons for establishing in another EU country. It is notable that well over half (58%) has at least private, personal and/or family reasons for establishing abroad. This has been mentioned (almost) two times more than business opportunities and improvement of personal skills. Private reasons are more often important for lawyers in smaller firms (with less than 50 lawyers), while improvement of professional skills and employment opportunities are relatively more important to lawyers in major firms (50+ lawyers).
Serving existing clients has been a reason for establishing abroad for 18% of the lawyers established in another Member State.

Half of the lawyers established in England and Wales has done so for improvement of professional skills. In interviews, it has also been remarked that experience in England and Wales, in particular in London, can be advantageous for lawyers. One of the reasons is that English law applies to many (international) contracts.

In the interviews with major law firms it has also been noted that movement of lawyers to branches in other countries occurs mainly for career and family reasons.

Serving migrant communities: the case of Spain

A typical reason for lawyers to establish in another country is to assist communities of migrants from their home country. A case study has been carried out to study the experiences of lawyers who have established in Spain. Many foreigners live in or own a house in some regions in Spain. Large numbers of (generally wealthy) immigrants from Northern and Western Europe, especially from the United Kingdom and the Netherlands, form a market for lawyers in Spain.

The case study shows that lawyers have established in Spain because of the presence of a market of non-Spanish settlers and businesses looking for legal advice and assistance in their own language. The market is attractive because these lawyers are able to offer cross-border law services to both Spanish and non-Spanish clients.

Netherlands and UK-based law firms in Spain often claim to offer a wide range of services, but, in practice, the core business consists of legal advice and assistance on real estate issues and litigation (civil and penal law). A limited number of firms offer business law services.

The core clientele of foreign lawyers practising law in Spain is clients from their home country in first place, other non-Spanish clients in second place, and Spanish citizens in third place. The unique selling point of these lawyers is that they are able to speak the clients' language, know both the clients' and the Spanish culture and are familiar with the law system in Spain. The fact that the lawyer shares the clients' language and culture creates trust.

In court cases, representation by an *abogado* (or working in conjunction with an *abogado*) is mandatory. The main obstacle for foreign lawyers in Spain is, therefore, to qualify as an *abogado*. In practice, excellent knowledge of Spanish language and of Spanish procedural law are prerequisites for access to a Spanish court as a licensed *abogado* and to conduct court cases in a satisfactory manner. Also for this reason, a lot of non-Spanish law firms in Spain are, in fact, international law firms, employing both Spanish and non-Spanish lawyers. Furthermore, many non-Spanish founders of a law firm in Spain have Spanish roots. They have knowledge of the Spanish language and culture, for example, through family ties.

4.4 Admission to the Profession of another Member State

4.4.1 Use of the Professional Qualifications Directive

Number of successful applicants and country of destination

According to the Regulated Professions Database, 3.544 lawyers have had their qualifications recognized by making use of Directive 2005/36/EC or its predecessor Directive

89/48/EEC (see table 4.11 below) in the period from 1997 to April 2012.[1] As not all countries seem to have contributed to the regulated professions' database consistently, the number may be higher in reality. Recognition of qualifications was obtained either automatically, after the successful completion of an aptitude test, or after an adaptation period.

The qualifications of around one third of the lawyers were recognized automatically, so that there were no compensatory measures imposed (1.235 lawyers, 35%). Almost three quarters of these were lawyers moving between Ireland and the United Kingdom (881 lawyers, 71%).

Almost two thirds of the lawyers (2.295 lawyers, 65%) obtained the recognition after the successful completion of an aptitude test. More than two thirds of these were obtained in the United Kingdom (69%). Other countries where relatively many lawyers successfully applied for and completed an aptitude test are Italy (220 lawyers, 10%), Germany (166 lawyers, 7%) and Belgium (104 lawyers, 5%).

There were only fourteen lawyers that had their qualifications recognized after an adaptation period. Ten of these recognitions took place in Denmark.

The profession of lawyer, based on the regulated professions database, appears to be one of the most mobile compared to other professions, such as accountants.

From 1991-1995

Some numerical evidence on the use of the Diploma Directive 89/48/EEC (the predecessor of the Professional Qualifications Directive) was presented by the European Commission in its report to the European Parliament and the Council on the implementation of the Directive.[2] The European Commission states that, in the period between 1991 and 1995, a total of 620 lawyers obtained recognition under the system of Directive 89/48/EEC and more than 400 of them were granted immediate recognition (the vast majority being Irish lawyers recognized in the United Kingdom and vice versa). 214 lawyers successfully completed the aptitude test, around half of them in the United Kingdom. The numbers are considerably lower than in the period after 1995. In its report, the Commission explains the relatively low numbers by pointing out that many Member States were late in implementing the Diploma Directive or, as it was the case especially for Spain, had not yet created the possibility for lawyers to make use of the Directive.

Countries of origin and destination

The countries where most lawyers are coming from are the United Kingdom (19% of total),

[1] Source: European Commission, Regulated professions database (http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm, last accessed 18 April 2012. As table 5.11 also shows, some countries are missing in the statistics; this could mean that no lawyers had their qualifications recognized in these countries, but it could also mean that the countries did not provide information to the database. The website of the database states that each country is responsible for updating information on its regulated professions, competent authorities and statistics, and that the Commission can not be held responsible for any missing or outdated information).

[2] Commission of the European Communities, *Report to the European Parliament and the Council on the state of application of the general system for the recognition of higher education diplomas*, Brussels, 15-02-1996, COM(96) 46 Final.

Germany (15%), Spain (15%), Ireland (12%), Italy (11%) and France (10%). The majority of the lawyers coming from the United Kingdom went to Ireland. Most of the lawyers qualified in other countries have gone to the UK. However, Spain is an exception. Many Spanish qualified lawyers went to the UK, but also a substantial amount, of around one third, of them went to Italy (see for an explanation section 3.3.3).

Table 4.11 Number of successful applicants for recognition of qualifications for the professions of lawyer, barrister, solicitor and advocate, EU countries, 1997-2010

Country of qualification	Host country																										
	AT	BE	BG	CY	CZ	DK	EE	FI	FR	DE	EL	HU	IE	IT	LV	LT	LU	MT	NL	PL	PT	RO	SK	SI	ES	SE	UK	Total
Austria (AT)		4				0	0		0	13	0		0	3		0			0	0	0	2	1	2	0	0	14	39
Belgium (BE)	0				0	1	0		9	2	0		0	6		0			2	1	0	0	0	0	4	0	56	81
Bulgaria (BG)	0	0				0	0		0	1	0		1	0		0			0	0	0	0	0	0	0	0	10	12
Cyprus (CY)	0	0				0	0		0	0	0		0	0		0			0	0	0	0	0	0	0	0	9	9
Czech Republic (CZ)	0	0				0	0		0	2	0		2	0		0			0	0	0	3	4	0	0	0	13	24
Denmark (DK)	0	0					0		0	11	0		0	0		0			0	0	0	0	0	0	1	1	41	54
Estonia (EE)	0	0							0	0			0	0		0			0	0				0	0	0	1	1
Finland (FI)	0	0					1		0	5			0	0		0			0	0				0	0	0	11	17
France (FR)	1	74			0	0	0			29	0		3	9		0			0	3	3	2	0	1	14	2	218	359
Germany (DE)	6	2			10	3	0		11		1		6	18		0			9	24	9	2	1	0	51	20	373	546
Greece (EL)	0	2				0	0		2	18			0	1		0			0	0	0	1	0	0	0	1	146	171
Hungary (HU)	1	1				0	0		0	0	0		0	1		0			0	0	0	0	1	0	0	0	10	14
Ireland (IE)	0	0				0	0		0	1	0			0		0			0	0	0	0	0	0	2	1	407	411
Italy (IT)	2	6			3	1	0		1	11	0		3			0			0	0	1	5	1	1	3	0	337	375
Latvia (LV)																0												
Lithuania (LT)	0	0			0		0		0	0			0	0					0	1				0	0	0	1	2
Luxembourg (LU)	0	0					0		5	0			0	3		0			0	0				0	0	0	13	21
Malta (MT)	0	0				0	0		0	0	0		0	0		0			0	0	0	0	0	0	0	0	11	11
Netherlands (NL)	0	14				0	0		1	17	0		0	1		0				0	1	0	1	0	3	1	51	90
Poland (PL)	0	0				0	0		0	3	0		2	1		0			0		0	0	0	0	0	0	11	17
Portugal (PT)	0	1				1	0		0	0	0		0	0		0			0	0		2	0	0	1	0	47	52
Romania (RO)	0	0					0		0	0			0	0		0			0	0				0	0	0	16	16
Slovakia (SK)	0	0			13		0		0	1			0	0		0			0	0				0	0	0	6	20
Slovenia																0												
Spain (ES)	1	0			1	2	0		10	17	0		8	166		0			1	4	61	3	0	0		1	241	516
Sweden (SE)	0	0				0	0		0	2	0		0	2		0			0	2	0	0	0	0	1		15	22
United Kingdom (UK)	3	1			6	3	0		10	33	0		561	9		0			1	9	6	2	1	0	16	3		664
Total	14	105			33	11	1		49	166	1		586	220		0			13	44	81	22	10	4	96	30	2058	3544

Source: European Commission, Regulated professions database.

The route to admission of the Lawyers' Establishment Directive

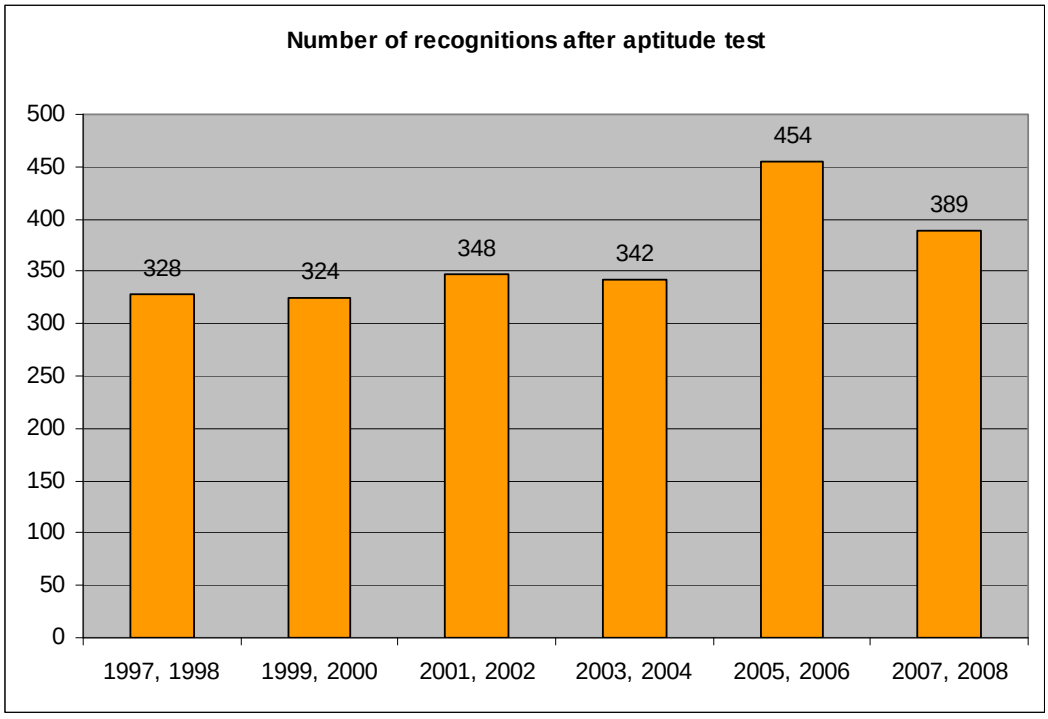
Besides the Professional Qualifications Directive, the Lawyers' Establishment Directive also gives lawyers the possibility to integrate fully into the profession of another Member State, after three years of regular practice without having to complete an aptitude test first.

With regard to the number of lawyers that have gained admission to the profession of the

host Member State using the route of the Establishment Directive, it is very difficult to give exact numbers, as lawyers that have fully integrated often disappear from lists of foreign lawyers and, therefore, most bars cannot provide exact numbers retrospectively. However, judging from what the bars have provided, the number is somewhere between 200 and 300 lawyers in all Member States taken together. Most lawyers have gained admission to the profession in this way in Germany, France, and Austria.

Result of the introduction of the Lawyers' Establishment Directive may be that fewer lawyers choose to make use of the route involving an aptitude test of the Professional Qualifications Directive. The figure below shows the number of successfully completed aptitude tests in the years from 1997 until 2008. The Establishment Directive should have been implemented by the Member States on 14 March 2000.

Figure 4.5 Number of recognitions of qualifications of lawyers after completion of aptitude test under Directive 2005/36/EC, EU countries, 1997-2008



Source: European Commission, Regulated professions database.

Judging from the above figure, the implementation of the Lawyers' Establishment Directive around 2000 does not seem to have led to a reduction of the number of lawyers applying for recognition of their qualifications under Directive 2005/36/EC. Indeed, the number of successfully completed aptitude tests has remained fairly constant in the years 1997-2004. From 2005 the number has even increased.

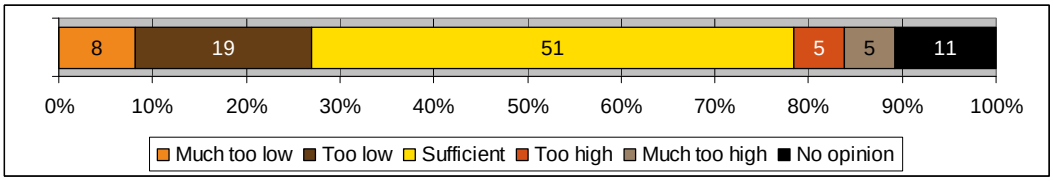
The results of the survey show that important reasons to prefer the route of the Professional Qualifications Directive over that of the Establishment Directive is that lawyers want

to integrate earlier than after three years (reported by 50% of the lawyers that could choose between both routes), or did not want to establish in the host country (36%). This shows that the Lawyers' Establishment Directive is complementary with the Professional Qualification Directive, since both routes are used, for different reasons.

As an example, in an interview with a Spanish law firm, it was mentioned that young Spanish graduates aiming to exercise the profession of lawyer in another EU Member State tend to choose the route of the Professional Qualifications Directive in order to fully integrate as swiftly as possible in the host Member State and compete with other lawyers on equal footing. Moreover; law firms in the host Member States often require Spanish lawyers to fully integrate in the profession to stay with the firm as a lawyer.

In addition, many lawyers do not consider the aptitude test to be too complex, considering its objective to assess the ability of the applicant to pursue the profession of lawyer in the host country (see figure 4.6). More than a quarter even considers the complexity of the aptitude test to be (much) too low, while half (51%) considers it to be sufficient.

Figure 4.6 Complexity of the aptitude test (n=37)



It must be noted, however, that the complexity of the aptitude test can differ substantially across countries. In interviews with international law firms it has been remarked that the aptitude test can be a serious obstacle to integration into the profession in some countries. For example, in various interviews it has been noted that the aptitude test in Italy is very difficult; in comparison the aptitude test in the United Kingdom is rather easy.

There are, likely, also other reasons why the route to admission of the Professional Qualifications Directive has often been chosen instead of the route of the Lawyers' Establishment Directive. First of all, the latter provision is not very well-known compared to other possibilities that the legal framework offers (see section 4.1, above). Second, as was concluded in chapter 3, the practical implementation is surrounded by a great deal of uncertainty among the Bar Associations and lawyers that mainly seems to centre around the amount of experience with national law necessary for integration, the influence of European law thereon and what is necessary to fulfil the requirement of three years of 'effective and regular pursuit'. As this uncertainty will only be settled after at least three years of practice, this may motivate lawyers to opt for a route that offers more certainty in the short-run, and sit an aptitude test, under the Professional Qualifications Directive. This will be, all the more so, the case in countries in which the aptitude test is considered not to be that difficult. Third, an additional difficulty is that insurers in general seem to be hesitant to accept a lawyer that has gained admission to the profession of another country via the route of the Lawyers' Establishment Directive. They are more inclined to accept a lawyer who has proven his or her abilities by taking a test.

4.4.2 Characteristics of users

Typical users

A number of lawyers (154) that has obtained the right to use the professional title of another EU Member State participated in the survey. Therefore, the survey can give some insight into those who have made use of this possibility, their reasons and the way in which they have gained admission to the profession in another Member State (e.g. by making use of the Establishment Directive or the Professional Qualifications Directive).

A number of common combinations of home and host country can be distinguished in the response. Of those lawyers admitted in France (18), many have come from Germany (14). More than half (14 of 24) of the lawyers admitted in Italy were first registered in Spain. Almost half of the lawyers that integrated in Spain were first registered in Germany (12 of 23).
Fields of law that are practised by a large part of the lawyers that have integrated into the profession of another country are contract law (practised by 55%) and corporate and company law (practised by 51%). Relatively many lawyers that practise EU/international law and financial law have obtained the right to use the title of another country.

More than three quarters of the lawyers that have integrated in another country regularly work for small and/or medium-sized enterprises. Less than half works frequently for private individuals, and less than half for large enterprises.
Lawyers working in large firms have relatively more often obtained the right to use the title of another country than lawyers working in smaller law firms or alone.
A little less than half (39%) of the participating lawyers have obtained the right to use the professional title of another Member State by making use of the Lawyers' Establishment Directive. Around a quarter has made use of the Professional Qualifications Directive or its predecessor, the Diploma Directive 89/48/EC. A comparison with the totals provided by the CCBE and the Professional Qualifications Database shows that lawyers that have made use of the Lawyers' Establishment Directive are overrepresented in the survey.[1]

Around one fifth (19%) of the participating lawyers has been admitted to the profession before 1998. Therefore, this group was in any case not able to make use of the possibility to integrate into the profession through the Lawyers' Establishment Directive, but had to make use of other provisions (such as the 89 Diploma Directive or bilateral agreements between Member States).[2]

In Germany, over half of the participating lawyers (52%) have done an aptitude test. Other means that lawyers mention are mostly special university training programs, and variants of an aptitude test.

---

[1] As was presented above, in total 200-300 lawyers have made use of article 10 of the Establishment Directive, while around 3.5 thousand lawyers have used the route provided by the Professional Qualifications Directive. A possible explanation for the overrepresentation in the survey is that the invitation for the survey mentioned the goal of evaluating the Lawyers' Establishment Directive explicitly. Furthermore, bars may have invited especially those lawyers that have made use of the Establishment Directive.

[2] It must be noted that are also other lawyers that were not able to make use of the Directive *after* 1998, e.g. lawyers from countries that joined the EU after 1998.

Reasons to seek admission to the profession

Table 4.12 Reasons to seek admission to the profession

Why did you obtain the right to use the title of another country?	n	%
It enhances my professional status	94	61%
I wanted full rights to practise the law of that country	92	60%
To enhance my career opportunities	69	45%
To be able to deliver more comprehensive services to clients	65	42%
Because I expected clients from that country to make more use of my services if I use the title of that country	55	36%
To avoid being required to work in conjunction with a local lawyer	17	11%
Other, namely	11	7%
No answer	9	6%
Total	154	100%

Multiple responses were possible; percentages based on number of respondents

The main reasons why lawyers sought admission to the profession are, based on the survey, to enhance their professional status (mentioned by 61% of the lawyers) and to obtain full rights to practise the law of the other country. Career opportunities (45%), the ability to deliver more comprehensive services (42%) and attracting clients from the host country (36%) have played a role for a smaller part of the lawyers. Remarkably, 62% of the lawyers who integrated in Germany indicate that they expected that German clients would make more use of their services once they would use the professional title of Germany. Around a tenth of the lawyers (11%) wanted to avoid the requirement to working in conjunction with a local lawyer.

It is striking that a number of the major law firms that have been approached in the course of the study do not attach much importance to article 10 of the Establishment Directive or the Professional Qualifications Directive. In a number of fields of law (e.g. EU law, M&A, finance) they do not see a particular need for lawyers to integrate into the local profession.[1] Because they usually have a very specialized practice, their day-to-day experience is much more important than the country of their qualification. A lawyer qualification is only a minimum requirement. Even if a lawyer would have his title recognized, this would not lead to true integration in practice, as clients look for experienced and specialized lawyers in some field of law. In these fields of law, language is also often not a major barrier, as English is frequently being used.

There is, however, a situation in which qualification is important also in major law firms. It concerns those major law firms that have a clear 'home' country client base. Foreign lawyers working for those firms often proceed to integration of the profession of the 'home'

[1] In an interview it was remarked that this is even more so in situations where the title is linguistically the same (e.g. avocat in both Belgium and France, Rechtsanwalt in both Austria and Germany).

country of the firm, to become eligible for partnership. In those firms, it is also important that foreign lawyers have sufficient knowledge of the language of the 'home' country of the firm. Many of these law firms maintain close contacts with befriended law firms in other countries for work that needs to be done in the law of other countries.

Table 4.13 Administrative requirements for admission under the Lawyers' Establishment Directive

	n	%
Providing a list of cases / a description of work experience in the host country	42	70%
A formal interview with the Bar Association	24	40%
Providing translation of official documents from the home country	24	40%
A fee (besides fee for registration at the Bar)	21	35%
A language ability test	7	12%
A course / seminar	6	10%
An aptitude test / exam	2	3%
None of these	5	8%
Other, namely	13	22%
Total	60	100%

Multiple responses were possible; percentages based on number of respondents

Article 10 of the Lawyers' Establishment Directive describes the procedure for integration into the profession after three years of practice in the host State. It states that the lawyer shall provide the host Member State's competent authority with all the relevant information, notably on the number and nature of the matters he has dealt with. The competent authority of the host Member State has the right to verify the information and can, to that end, require the lawyer to provide, orally or in writing, clarification of, or details on, the information provided.

Table 4.13 provides some insight in the practical experiences of lawyers with the procedure. As could be expected on the basis of the Directive, a large part of the lawyers (70%) were required to provide a list of cases and/or a description of work experience in the host country. A smaller group also had a formal interview with the Bar Association (40%) and/or had to provide translation of official documents (40%). A third (35%) of the lawyer reports that they had to pay an additional fee. It was reported multiple times in Spain (6 lawyers), France (3) and Italy (3). Some lawyers state that they had to provide references/recommendations by other professionals.

A number of lawyers indicates that a language ability test (12%), a course/seminar (10%) or an aptitude test (3%) were required at the moment of their integration. These requirements are not in accordance with the Directive. In most of these cases, it was reported by only one lawyer per country. However, the requirement of a language test was reported by three lawyers that were admitted to the profession in Luxembourg. A language test has, in-

deed, been a formal requirement in Luxembourg. However, the requirement of a language test now has been abandoned.

Qualitative Case Study: Major Law Firms

One of the case studies was focused on practical experiences with integration into the profession of another country for lawyers working in a major law firm, as the experience and reasons of lawyers who are working in a major law firm may differ from lawyers in small law firms or self-employed lawyers. In the context of this case study five interviews with lawyers have been carried out. Countries involved are The Netherlands, Belgium, France, Italy and England and Wales.

The lawyers interviewed have taken very diverse routes to gain admission to the profession of lawyer in another country. Two of them have made use of special admission tracks in countries or bilateral agreements between countries (e.g. between France and Belgium) before the Lawyers' Establishment Directive was implemented.

One lawyer had to do an aptitude test. His firm assisted by paying courses and granting the hours to study. One interviewee furthermore reported that the head office of his firm has facilities to accommodate (international) trainees to qualify as solicitors in London. One lawyer who gained admission via a quite exceptional national route to could not be assisted by his firm with information or guidance, as the firm also did not have experience with this route.

Common reasons to seek admission to the profession were to be eligible for partnership, to gain status and trust in communicating with clients and other lawyers and to be able to serve clients better and/or attract new clients.

It has been noted that English and New York law are most frequently chosen by lawyers who qualify in a second jurisdiction, as much international legal work is done under English or New York law. To some continental law firms it is attractive to hire lawyers trained in common law in addition to lawyers trained in other legal systems, for example, for their transaction practice. In some very international practice areas, such as EU competition law or mergers and acquisitions, it does not matter very much in which country someone is qualified as a lawyer, as long as he or she is qualified as a lawyer somewhere.

The lawyers who have a double qualification, in general serve clients from both countries. Some work in an international practice serving clients globally. There are, basically, two kinds of cross-border work. A lawyer may provide services himself to clients in other countries, or the lawyer may make use of local lawyers when a client needs legal services in other countries. Often, the lawyer from the client's home country will coordinate the work of local lawyers in other countries, so that the client will not need to deal with foreign lawyers directly, but only via a lawyer from his home country.

The following barriers have been mentioned by the interviewees:

- The level of the aptitude test varies considerably across countries.
- Dual qualification can result in double payments for social security.
- Fees of bars differ considerably, especially when social security payments are included. This can be a reason not to register.
- Some lawyers do not see the need to register with the Bar in a host state, when they are not carrying out reserved activities. The question is whether article 3 of the Lawyers' Establishment Directive

requires lawyers in this situation to register with the Bar per se, even when the host state does not require registration.
- A barrier for international law firms is that they cannot easily recruit foreigners directly from university to their offices, as they may need to go back to their home country to do their traineeship there to qualify as a lawyer.
- Because of the differences across countries with regard to qualification, lawyers from some countries are 'handicapped' on the market in comparison with those from other countries. For example, in some countries lawyers are more trained for the business environment than in others, in which qualification may be more academically oriented. The moment at which lawyers enter the market also differs across countries.

Future mobility

Of the lawyers that have not yet obtained the right to use the title of a Member State besides that of their home country, 18% would consider obtaining this right sometime in the future, while 36% would maybe consider it. Reasons why lawyers would consider it are listed in the table below. Less than a tenth (9%) does not consider obtaining the right because they expect too many difficulties.

Table 4.14 Reasons why lawyers would consider obtaining the right to use the professional title of another country

Why would you want to obtain this right?	n	%
It enhances my professional status	681	59%
To be able to deliver more comprehensive services to clients	594	52%
To enhance my career opportunities	491	43%
I want full rights to practise law of that country	425	37%
Because I expect clients from that country to make more use of my services if I use the title of that country.	412	36%
To avoid being required to work in conjunction with a local lawyer	105	9%
Other	36	3%
No answer	60	5%
Total	1.149	100%

Multiple responses were possible; percentages based on number of respondents

The most frequently mentioned reason (by 59%) why lawyers would want to obtain the right to use the title of another country is that it enhances the professional status of the lawyer. Around half (52%) of the lawyers would consider obtaining the right because it enables them to deliver more comprehensive services to clients. Other frequently mentioned reasons are to enhance career opportunities (43%), to have full rights to practise the law of the other country (37%) and the expectation that clients of another country will make more use of the lawyer's services when he uses the title of their country.

A comparison of the results above with the reasons mentioned by lawyers that have already gained admission to the profession leads to the following results. Both groups have equally often mentioned that it enhances their professional status, their career opportunities and that clients from the other country are expected to make more use of their services. Lawyers that have gained admission have more often mentioned that they wanted full rights to practise the law of the other country (mentioned by 60%) than those that have not (yet) done so (37%).

4.5 Barriers and Difficulties

This section discusses barriers and difficulties that have been encountered by lawyers that have made use of the Lawyers' Directives. First, barriers and difficulties with regard to establishment in another country are discussed; second, barriers and difficulties related to the temporary provision of services. Two important areas of difficulty, professional indemnity insurance and social insurance, will be discussed more in depth.

4.5.1 Establishment

Difficulties experienced by lawyers established in another country

Lawyers that have established in another country may have encountered difficulties while being established. Table 4.15 gives some insight in difficulties experienced by lawyers established abroad.

Table 4.15 Difficulties related to practicing the profession of lawyer encountered while being established abroad

	n	%
No difficulties related to practicing the profession	75	28%
Difficulties related to professional indemnity insurance	86	32%
Continuing requirements of the Bar in the home country	63	24%
Difficulties in getting admission to the profession by recognition of professional qualification	62	23%
Difficulties related to observance of professional rules of more than one country	48	18%
Lack of understanding and acceptance by other professionals	46	17%
Lack of professional expertise in the law of another EU Member State	45	17%
Difficulties related to the requirement to work in conjunction with a local lawyer when representing a client in legal proceedings	40	15%
Difficulties related to language	37	14%
Lack of understanding and acceptance by clients of the other country	34	13%
Some professional activities were reserved for local lawyers	30	11%
Difficulties because I was employed by another lawyer	10	4%
Difficulties because I was working in a grouping or firm in which some persons are not lawyers	7	3%
Difficulties because the managers/owners of my firm were not all lawyers	1	0%
Other, namely	28	11%
Total	267	100%

Multiple responses were possible; percentages based on number of respondents

Almost a third of the lawyers did not experience difficulties related to practicing the profession of lawyer while being established in another country. The other lawyers have experienced diverse difficulties.

One third (32%) of the lawyers has experienced difficulties related to professional indemnity insurance. Below the issue of indemnity insurance will be discussed more in depth (see section 4.5.3). One quarter experienced difficulties because of continuing requirements of imposed by the Bar in the home state, resulting from the obligation to stay registered with the home Bar (see also section 2.7.1). A substantial number of lawyers in their explanation pointed in particular to the costs associated with double Bar membership, especially when the fee also involved social insurance and liability insurance contributions.

A little less than a quarter (23%) encountered difficulties in getting their qualifications recognized. As it is very likely that not all lawyers have attempted to get their qualifications recognized, a quarter seems to be a rather large group, indicating that recognition of qualifications can be a troublesome process for lawyers. It must thereby be noted that half of

these lawyers are established in Italy after qualifying in Spain. It is known that it has been difficult for Spanish lawyers to qualify as an Italian lawyer, because it was thought that Italians would qualify in Spain first and afterwards integrate into the profession in Italy only to evade the traineeship requirements in Italy.

This can be seen, for example, in the cases handled by SOLVIT. SOLVIT is an on-line problem solving network in which EU Member States work together to solve problems caused by the misapplication of Internal Market law by public authorities without legal proceedings. SOLVIT deals with cross-border problems between a business or a citizen on the one hand and a national public authority on the other, where there is possible misapplication of EU law. SOLVIT has handled seven cases on the Establishment Directive. They were all submitted in 2010 and 2011 and concerned the same issue, namely the difficulty of mainly Spanish qualified lawyers to obtain their registration in Italy.[1]

Double deontology has led to problems for 18% of the lawyers (see section 3.3.7 for an elaborated discussion about double deontology). Of those lawyers that work in an MDP, a small proportion (6%) reports difficulties because there were non-lawyers in the firm or grouping.

Difficulties related to language are not among the most mentioned. In interviews, it has been remarked that in major law firms language is in most cases not an issue as English is often the primary language in the market for corporate legal services; this is confirmed in the web survey.

Quite a few lawyers that participated in the survey noted a lack of co-operation by the Bar Associations in the host states. Some also reported a lack of knowledge and even obstruction. Although this has been reported in numerous countries, Italy does stand out with regard to the number of lawyers that reported difficulties.

Lawyers in firms with offices in other countries also experience fewer difficulties in getting recognition of qualifications than self-employed lawyers or lawyers in firms that do not have offices in other countries. They also have encountered fewer difficulties related to a lack of professional expertise in the law of the host country.

Lawyers working in a firm experience fewer difficulties related to acceptance of clients and working in conjunction than self-employed lawyers.

Difficulties related to double deontology and continuing requirements of the Bar in the home Member State are experienced equally often by self-employed lawyers and lawyers in (international) firms.

Lawyers that have been involved in court work have more often encountered difficulties than those that have carried out other activities; a larger proportion mentioned difficulties related to a lack of understanding and acceptance by clients and difficulties related to recognition of qualifications.

[1] Based on information provided by SOLVIT.

In a communication of the European Commission about free movement of workers, it was written that, in addition to legal and administrative obstacles, there are also other factors that influence cross-border mobility. These include housing issues, language, the employment of spouses and partners, return mechanisms, historical 'barriers' and the recognition of mobility experience.[1] Lawyers may also experience such difficulties that are not always directly related to their profession.

Table 4.16 Other difficulties encountered while being established abroad

	n	%
No other difficulties	98	37%
Dealing with the necessary administrative formalities	74	28%
Difficulties related to social insurance/benefits	61	23%
The cost of living abroad	45	17%
Having my pension rights transferred	44	17%
Difficulties with income taxes or similar	40	15%
Leaving family/friends	34	13%
Adapting to a different culture	23	9%
Accessing health care or other social benefits	21	8%
Difficulties related to housing	18	7%
Access to child care, school or university for your children	11	4%
Difficulties in finding a job for my partner/spouse	9	3%
Other	8	3%
Total	267	100%

Multiple responses were possible; percentages based on number of respondents

Two-thirds of the lawyers established in other Member States have indeed encountered difficulties that are not directly related to practicing the profession of lawyer. Over a quarter reports difficulties in dealing with the necessary administrative formalities. A little less than a quarter (23%) reports problems related to social insurance and benefits (see further section 4.5.4 below).

Of the established lawyers, 15% has experienced problems related to income tax or similar issues. Tax is a competence of the Member States, and Member States are free to make bilateral agreements about tax in cross-border situations. However, in practice, these agreements do not solve all possible tax-related problems for people working abroad. In the EU Citizenship report 2010, problems related to double taxation were identified amongst the main obstacles encountered by citizens in cross-border situations. The Commission has

[1] European Commission, *Communication From The Commission To The Council, The European Parliament, The European Economic And Social Committee And The Committee Of The Regions: Reaffirming the free movement of workers: rights and major developments*, Brussels 2010, COM(2010)373 final, p. 2.

identified a number of barriers related to tax issues in a communication in 2010.[1] Important barriers mentioned in this communication are:

- Complexity of foreign tax rules
- Difficulties in obtaining information about tax rules or contradictory information (e.g. due to language and lack of cooperation between tax authorities)
- Difficulties in obtaining allowances, tax reliefs and deductions
- Higher progressive tax rates applied to non-residents, higher taxation of foreign income
- Double taxation
- Tax issues related to purchasing property (e.g. no deductions for foreign real estate)
- Double pension contributions and obstacles to transferring (occupational) pension capital
- Tax barriers for companies in recruiting employees abroad

Expected difficulties

A part (15%) of the lawyers that participated in the survey indicates that they have not (yet) established themselves in other countries, but would consider doing so sometime in the future; a larger group (37%) would maybe consider it. In reality, these percentages are most probably lower, as those lawyers interested in cross-border mobility have likely been more inclined to respond to the web survey. The survey shows that lawyers generally are most interested in establishing in countries that are geographically close and/or have the same language.

Most interesting is the group of lawyers (14%) that has not established in another EU Member State, and also does not consider establishing in another Member State sometime in the future because they expect too many difficulties. This group is interesting because they can provide insight into the obstacles that preclude lawyers from establishing abroad.

Table 4.17 shows which difficulties are expected by lawyers who are considering establishing abroad sometime in the future, who are maybe considering it, and by lawyers who do not consider establishing because they expect too many difficulties.

[1] European Commission, *Communication From The Commission To The Council, The European Parliament And The European Economic And Social Committee: Removing cross-border tax obstacles for EU citizens*, Brussels, COM(2010).

Table 4.17 Expected difficulties for establishment in another country

Would consider establishing:	Yes	Maybe	No, because of expected difficulties	Total (n)
No difficulties related to practicing the profession expected	7%	6%	-	66
Lack of professional expertise in the law of another EU Member State	54%	66%	82%	895
Difficulties related to language	41%	50%	66%	693
Difficulties in getting admission to the profession by recognition of my professional qualifications	47%	40%	39%	555
Lack of understanding and acceptance by other professionals	35%	36%	41%	497
Lack of understanding and acceptance by clients of the other country	23%	29%	40%	403
Difficulties related to observance of professional rules of more than one country (double deontology)	22%	29%	41%	402
Difficulties related to professional indemnity insurance	25%	31%	30%	397
Difficulties related to the requirement to work in conjunction with a local lawyer when representing clients in legal proceedings	25%	22%	23%	308
Continuing requirements to the Bar in the home country	24%	20%	17%	272
Some professional activities are reserved for local lawyers	18%	17%	16%	230
Difficulties because the managers/owners of my firm are not all lawyers	3%	3%	3%	40
Difficulties because I am working in a grouping or firm in which some persons are not lawyers (MDP)	3%	3%	2%	38
Difficulties because I am employed by another lawyer/ in a company	2%	2%	2%	28
Other	3%	1%	2%	22
Total (n)	316	734	295	1345

Multiple responses were possible; percentages based on number of respondents

The most important expected difficulty is lack of professional expertise in the law of another EU Member State. This reason is mentioned by 82% of those lawyers that renounce establishing abroad. Also, difficulties related to language are commonly expected. Other important reasons mentioned by lawyers why they do not want to establish abroad are difficulties in getting their qualifications recognized, lack of acceptance by other professionals (such as judges and other lawyers) and by clients, and double deontology problems. These reasons are each mentioned by about two fifths of the lawyers in this group.

The Citizens Signpost Service (CSS) has published a report based on an analysis of 673 cases handled by them in 2009 concerning the recognition of professional qualifications. The report states that CSS received many enquiries from lawyers or lawyers in training who, apparently, fail to distinguish between the recognition of their qualifications, covered by Directive 2005/36, and the specific rules on the conditions of exercise of the profession in another Member State governed by the Lawyers' Services Directive and the Lawyers' Establishment Directive.[1]

Other difficulties, not directly related to the profession of lawyer, that are commonly expected by lawyers that did not (yet) establish in another country are difficulties in dealing with necessary administrative formalities (expected by 50% of these lawyers), difficulties related to social insurance and benefits (44%), difficulties transferring pension rights (33%), difficulty in finding a job for the partner/spouse (31%) and difficulties with income taxes (30%).

Some lawyers do not want to establish abroad because they expect too many difficulties. Among the most expected difficulties are dealing with the necessary administrative formalities (by 54%), leaving family and friends (35%) those related to social insurance (33%), finding a job for the partner or spouse (33%), difficulties with income tax (33%), and having pension rights transferred (32%).

4.5.2 Temporary Cross-border Services

Difficulties experienced by lawyers

Lawyers providing cross-border services on a temporary basis can be expected to experience other, and in some cases fewer, difficulties than those lawyers that have established themselves in another Member State. The results of the survey, presented in table 4.18 below, indeed show that lawyers providing cross-border services have encountered difficulties less often than those that have established in another country. Half (49%) of the lawyers that have provided temporary cross-border services did not encounter any difficulties related to the practice of their profession at all. There are, however, some geographical differences: 59% of the lawyers who provided services in southern European countries experienced difficulties while in eastern Europe this is even higher at 66%. Of those lawyers that provided their services in the UK and Germany, on the other hand, only around 40% experienced difficulties.

[1] The database of CSS does not have an entry on 'profession', so the report could not provide further specific results for lawyers (source: Citizens Signpost Service (CSS), *The mobility of professionals in practice: A report by the Citizens Signpost Service (CSS) on the recognition of professional qualifications ("RPQ")*, 2010).

Table 4.18 Difficulties experienced by lawyers in providing temporary cross-border services

	n	%
No difficulties	468	49%
Difficulties related to language	187	20%
Lack of professional expertise in the law of another EU Member State	188	20%
Difficulties related to observance of professional rules of more than one country (double deontology)	111	12%
Lack of understanding and acceptance by other professionals	96	10%
Difficulties related to the requirement to work in conjunction with a local lawyer when representing a client in legal proceedings	80	8%
Some professional activities were reserved for local lawyers	67	7%
Lack of understanding and acceptance by clients	49	5%
Difficulties related to professional indemnity insurance	43	5%
Difficulties because of employment by another lawyer / in a company	16	2%
Difficulties because in the grouping or firm some persons are not lawyers (multidisciplinary practice)	10	1%
Difficulties because the managers/owners of the firm are not all lawyers	5	1%
Other	29	3%
Total	956	100%

Multiple responses were possible; percentages based on number of respondents

The most commonly experienced difficulties are a lack of professional expertise in the law of another Member State (experienced by 20% of the lawyers that have provided cross-border services) and difficulties related to language (20%). Language problems have especially been experienced by lawyers providing services in eastern and southern European countries.

Besides expertise and language, about one out of every ten lawyers has encountered difficulties related to double deontology and a lack of understanding and acceptance by other professionals, such as judges and local lawyers. A somewhat smaller group (8%) has experienced related to the requirement to work in conjunction with a local lawyer (see also section 3.3.1). It is remarkable that of those lawyers that have provided services in eastern European countries, 18% have encountered difficulties related to double deontology, which is higher than the average.

Of the lawyers that work for international firms that have offices in other countries, 56% have experienced no difficulties at all, while this percentage is 50% for those lawyers not working for international firms. Lawyers in international firms report to have encountered fewer difficulties related to language and a lack of professional expertise.

SOLVIT has handled one case in which the Lawyers' Services Directive was violated. The case concerned a foreign lawyer who was denied access to the court because he was not registered in the host country. However, the lawyer was only providing services temporarily, meaning that there is no need to register.

Case studies on legal systems and lawyer mobility

A lack of professional expertise in the law of another country is a difficulty to relatively many lawyers. This may be even more so when a legal system of a host country is different. On the other hand, if the legal systems are similar, this may facilitate mobility.

The legal systems in Europe can be divided into common law, civil law and mixed systems. Most countries have civil law jurisdictions. The civil law jurisdictions can also be divided into three groups: the German system, the French and the Scandinavian. The Greek and the Portuguese law systems are both heavily influenced by the French and the German legal system.

Countries with the same legal system but a different language

To get some insight into the role of the legal system in lawyer mobility, a case study has been carried out focusing on the experiences of lawyers moving between Greece/Portugal and France/Germany. The focus is on identifying whether similarity between legal systems leads to more mobility, between countries with a different language.

The case study has shown that because of the fact that the Greek Civil and Criminal Code were based on the German model, while the Greek Commercial, Administrative and International Private Law have been influenced to a great extent by the French legal order, France and Germany are among the top destinations for Greek law graduates that aim to continue their studies abroad. Moreover, there are a great number of Greek migrants to Germany that boomed during the 1960's and is doing so once again due to the current economic crisis. Therefore, apart from the economic and professional incentives, there are also family reasons for which Greek lawyers choose to go to Germany and work there. Given that usually Greeks are quite good in foreign languages and they are usually taught German or French in school from an early age, the barrier of language is nearly absent after one or two years of legal practice.

None of the four interviewees has met any obstacles in providing services or establishing themselves after the implementation of the Lawyers' Directives by the Member States. Based on their own experiences and those of their Greek colleagues abroad, it was confirmed that the procedure of integration was fast and efficient and in compliance with the letter of the law. The only difficulties they have faced on the beginning of their career abroad were of a practical nature: getting used to the terminology of the legal profession, affording the high costs of rent, insurances, building their own professional reputation and clientele.

Greek lawyers working abroad tend to have more Greek clients (both natural and legal persons) in the beginning of their career. After they have integrated into the legal profession of the host Member State and are allowed to use the professional title of "Rechtsanwalt" or "Avocat", the number of their German/French clients steadily augmented, reaching up to 50% of their clientele. Greek clients prefer them, since they feel more comfortable with a Greek-speaking lawyer handling their cases in Greece and abroad. German/ French clients (quite often companies and other legal persons) turn to Greek lawyers that have integrated mostly for cases with a trans-border element that involve matters of Greek law. Of course, after some years of experience and of building a good reputation, Greek lawyers

compete on the same level with their German and French colleagues for cases that only involve German/ French law. Finally, Greek lawyers abroad seem to be providing services of consultation and legal advice but they also represent their clients before Greek and German/ French courts.

Countries with the same legal system and the same language
When two countries not only have the same legal system, but also the same language, mobility may be even easier. Therefore, in the context of a case study, interviews have been carried out with two lawyers that have moved from France to Belgium and three lawyers that have moved from Germany to Austria.

Two interviewees stated that the similarity of the legal system indeed played a role in the decision to move to Austria. Besides, there were also economic motivations. In practice, despite the basic similarity of legal systems, an interviewee attests that differences in the legal system were notable and even more striking than the similarities, in particular, differences in procedural rules in civil and criminal proceedings, which rendered the establishment difficult. A second lawyer even withdrew from establishing abroad because of the difficulties caused by the differences. One lawyer further remarked that in the particular border region in which he established it has become natural for lawyers to have knowledge in both legal systems, particularly for divorce cases. In the experience of the lawyer, German clients in Austria (whether individuals or businesses) tend to prefer a German lawyer, despite the fact that Austrian lawyers speak the same language. The second interviewee remarked that his clients in Austria were usually referred to him by friends and other lawyers, based on an established relation of trust. This may be an additional reason why German clients would be inclined to consult a German lawyer. A second lawyer comments that sensitivity and empathy for cultural differences in dealing with clients are imperative.

Two French lawyers that moved to Belgium were also interviewed. They were mainly motivated by the desire to practise EU law in Brussels. Clients of those lawyers are not confined to French nationals, but the nationality varies significantly. They are from different European countries, North-America and Asia. Because they practise EU law, differences or similarities between the legal systems of France and Belgium and the fact that French is an official language in both countries did not play an important role for those lawyers.

Future mobility
Around a fifth of the lawyers that participated in the survey but did not provide temporary cross-border services so far would consider providing cross-border services sometime in the future, while two-fifth would maybe consider it. A smaller group of lawyers (13%) is not interested because they expect too many difficulties.

Table 4.19 Expected difficulties for providing cross-border temporary services

	n	%
No difficulties related to practicing the profession	45	5%
Lack of professional expertise in the law of another EU Member State	448	51%
Difficulties related to language	444	50%
Lack of understanding and acceptance by other professionals	271	31%
Having my professional qualifications recognized	256	29%
Lack of understanding and acceptance by clients of the other country	236	27%
Difficulties because of the need to respect the professional rules from the other country (double deontology)	231	26%
Difficulties related to professional indemnity insurance	230	26%
Difficulties related to the requirement to work in conjunction with a local lawyer	197	22%
Some professional activities were reserved for local lawyers	112	13%
Difficulties because I am employed by another lawyer / in a company	22	3%
Difficulties because the managers/owners of my firm are not all lawyers	15	2%
Other	15	2%
Do not know	72	8%
Total	885	100%

Multiple responses were possible; percentages based on number of respondents

Difficulties most expected by lawyers who would consider providing cross-border services are a lack of professional expertise in the law of another EU Member State and difficulties related to language (see table 4.19). Other relatively commonly expected difficulties are a lack of understanding and acceptance by other professionals and clients, recognition of qualifications, difficulties because of double deontology, and professional indemnity insurance.

4.5.3 Professional Indemnity Insurance

The Lawyers' Establishment Directive and Professional Indemnity Insurance
Article 6.3 of the Lawyers' Establishment Directive regulates that a lawyer who establishes in another country may be required by the host Member State to take out professional indemnity insurance or to become a member of a professional guarantee fund. A lawyer is exempted from that requirement if he can prove that he is covered by insurance or guarantee taken out in his home Member State, insofar as it is equivalent in terms of conditions and extent of cover. Where the equivalence is only partial, the host Member State may require that additional insurance or an additional guarantee be contracted.

Professional indemnity insurance (PII) also called Professional liability insurance (PLI), is a form of liability insurance to protect professional advice- and service-providing individuals and companies (such as individual lawyers or lawyer companies) from bearing the full cost

of defending against a negligence claim made by a client, and damages awarded in such a civil lawsuit. The coverage focuses on alleged failure to perform on the part of, financial loss caused by, and error or omission in the service or product sold by the policyholder. Professional liability coverage sometimes also provides for the defence costs, including when legal action turns out to be groundless.

The CCBE Code of Conduct (article 9.3) states that lawyers must be insured. If that is not possible, the lawyers must inform the client. The CCBE Code of Conduct serves as a recommendation to the members of the CCBE (the Bar Associations). The CCBE is of the opinion that professional indemnity insurance is not only in the interest of the client but also in the interest of the lawyer.

A quick inventory of the requirements for the professional indemnity insurance in the different member States (based on a survey amongst local lawyer organisations performed by the CCBE[1]) in the 27 Member States shows that in most countries professional indemnity insurance is mandatory for lawyers (with the exception of Greece,- but this will probably change shortly - Latvia and Malta).

If the PII is obligatory, the minimum coverage differs strongly between countries (see table 4.20). E.g. in Estonia the minimum coverage for a single lawyer is set on € 64,000 while in England the minimum coverage is set on almost € 2,500,000. Also, the minimum annual costs for this insurance vary strongly (e.g. less than € 100 in Estonia and over € 2,000 in Denmark). It must be noted that this is only a general comparison; a detailed comparison, which is a highly technical exercise, should naturally also take into account at least the precise conditions and cover, as they differ across countries.

The differences in minimum coverage and corresponding fees can lead to obstacles for lawyers. For example, in general, in England the costs are higher than in other countries. According to the Law Society of England and Wales, this has sometimes caused lawyers to move to a different jurisdiction, as the financial burden was not proportionate to the benefits of staying. Some Spanish law firms have confirmed that the costs of insurance policies can indeed be a serious economic barrier to entry. On the other hand, it has been noted that the mandatory insurance of lawyers registered with the Paris bar has since 2008 been recognized by the Solicitors Regulation Authority as sufficient to work in England and Wales.

[1] CCBE, *Revised Comparative Table on Professional Indemnity Insurance,* 2010.

Table 4.20 Professional indemnity insurance requirements

Country	Insurance obligatory?	Minimum coverage
Austria	Yes	Single lawyer: € 400.000 Limited company: € 2.400.000
Belgium	Yes	Single lawyer € 1.250.000
Bulgaria	Yes	20.000 BGN
Cyprus	Yes	€ 170.860 per claim and € 341.270 per year
Czech Republic	Yes	1.000.000 CZK (around € 40.000)
Denmark	Yes	2.500.000 DKK (around € 135.000)
Estonia	Yes	Around € 64.000
Finland	Yes	Around € 168.000
France	Yes	Minimum € 1,5 million per year (by law); regional bars may require higher amounts
Germany	Yes	Single lawyers: € 250.000 for each case of loss Limited companies: € 2.500.000
Greece	No (will be introduced soon)	NA
Hungary	Yes	5.000.000 Ft (about 19.000 €) for each damage
Ireland	Only for solicitors in private practice	€1.5M per claim[1]
Italy	Yes	Unclear[2]
Latvia	No	NA
Lithuania	Yes	LTL 100.000 (around € 29.000)
Luxembourg	Yes	€ 1.250.000
Malta	No	NA
Netherlands	Yes	Around € 450.000 per event, at least € 900.000 per year
Poland	Yes	Lawyers[3]: 404.890 pln (around 100.000 euro)
Portugal	Yes	Single lawyers: € 150.000 (all lawyers who are member of the bar are automatically covered for this amount)
Romania	Yes	- (Romanian lawyers participate in a fund)
Slovakia	Yes	Around € 100.000
Slovenia	Yes	Single lawyers: € 250.000 for each contingency Law firms: € 1.000.000 for each contingency
Spain	Yes	No minimum amount stated (determined by the local Bar)

[1] Source: http://www.lawsociety.ie/Documents/committees/PII/2011MTC.pdf, accessed 27/9/2012.
[2] Compulsory professional indemnity insurance has only been adopted recently by law no.148 of 14 September 2011 regarding the Reform of Professional Orders/Associations. The duty for professionals to enter into the mandatory professional insurance policy must be complied with by 7 August 2013 (DLA Piper, *Insurance and Reinsurance Newsletter Italy*, September 2012).
[3] In Polish: 'Adwokat', as distinguished from legal advisors (Radca prawny).

Country	Insurance obligatory?	Minimum coverage
Sweden	Yes	SEK 3.000.000 (€ 331.000).
United Kingdom, England and Wales	Yes	Barristers: £ 500.000 (around € 620.000) Individual solicitor: £ 2.000.000 (around € 2.475.000) Limited company or LLP:£ 3.000.000 (around € 3.713.000)
Scotland	Yes	Solicitors: £ 2.000.000 per claim (around € 2.475.000) Advocates: £ 500.000[1]
Northern Ireland	Yes	Junior Counsel (barrister-at-law): £ 250.000 (around € 309.000) Senior Counsel (Queens' Counsel): £ 500.000 (around € 620.000)

Sources: Country studies; CCBE (2010), Revised Comparative Table on Professional Indemnity Insurance.

Differences between countries

Although article 6.3 gives the general rules for taking out a PII in case of establishment abroad, the existing differences between countries in practice may lead to obstacles for establishment. Based on interviews with insurers and the CCBE, a number of important areas of underlying differences have been identified which can lead to difficulties related to professional indemnity insurance.

The main reason why problems arise in the field of cross-border services is that each country has its own laws and jurisdiction regarding many relevant areas (property rights, civil law, criminal law etc.) in which a lawyer might be active in the home or host country. As long as these clear differences exist, problems related to professional indemnity insurance will also arise.

Second, there are differences in entry requirements for bar membership. In most of the countries lawyers are obligated to be registered as members of a Bar. These Bars set and control the entry requirements of their members. Since countries differ in their quality requirements, insurers might find it problematic to cover activities of lawyers from abroad since they cannot easily investigate or assess the competencies of these lawyers. Insurers stress that lawyers must have the necessary knowledge and skills (by training, education, examination, experience) before their activities can be covered by indemnity insurance in the host country. In particular, the insurers doubt whether the period of 3 years of experience in a host country (as mentioned in the Lawyers' Establishment Directive) will be sufficient to prove that a lawyer has indeed such experience, knowledge and skills regarding all areas that are to be covered within an indemnity insurance.

As already mentioned, there are also clear differences in the minimum coverage required between countries. In many of the countries with a relatively low minimum coverage, lawyers will be forced to raise this coverage by additional insurance in order to cover possible claims. The large differences as to the minimum coverage required is mainly caused by differences in local habits and areas covered. In countries as e.g. the UK the areas of contract law and property rights are very important and cause a lot of cases for which indemnity

[1] Source: http://www.oraclelaw.com/Business-Law/professional-indemnity-insurance.html, accessed 27/9/2012.

should be covered. The financial risks regarding such cases are very high compared to risks regarding e.g. criminal law. Also, the culture differs between countries. In the western European countries businesses and civilians are allegedly adopting more and more the 'US claim culture', which results in a growing number of high-amount claims.

Different policies

Partly because of these differences, PII policies differ in a number of ways.

- First, there are differences regarding 'the trigger' for the handling of claims. In most European countries insurance policies are based on a "claims made" trigger, but in some (i.e. Germany and Austria) on an "acts occurring/committed" trigger. In other words: some insurance policies cover all claims submitted in a certain period (e.g. the last 12 months, thus disregarding the possibility that the facts possibly occurred before that period), others cover all claims made on the basis of facts that occurred in a certain period (thus disregarding the possibility that the damage does not necessarily show in the period of the occurrence but perhaps some years later). Depending on the insurance policy, a claim made after a certain period of time may not be covered.
- Second, countries might differ regarding the method of calculating the fee. Insurers in countries where a possible high fee for the indemnity has to be set in relation to the risks have a practice of reduction of the fee if no claims are made and recognized during a certain period. In other countries, this is not or might not be very common. A lawyer coming from another country may not be able to negotiate a reduction of the fee when he establishes. Costs also depend on whether there is a collective system or whether rates are negotiated individually with each lawyer. In e.g. England the latter is the case and, therefore, depending on the individual situation of each lawyer the costs can be different.
- Third, conditions might differ strongly for PIIs between the insurers in the Member States. E.g. professional indemnity insurance in England for firms also covers the defence costs and also covers damages related to the performance of a lawyer, even when it can be proven that the layer concerned was not reliable and could e.g. be persecuted for fraud. Cover in England and Wales e.g. cannot be withdrawn even in circumstances of deliberate non-disclosure, misrepresentation or in the event of non-payment of premiums. As a result, insurers have a rigorous underwriting regime which investigates professional conduct and disciplinary issues, legal knowledge and experience (including claims experience) of every (foreign) lawyer wanting to take out a PII. For sole practitioners, the compensation funds of the Bars/law societies might cover the risks of unreliability, fraud and/or dishonesty since this cannot be insured by insurers in a normal insurance contract with a single lawyer. If applicable, the Bar will normally manage a special fund to cover such risks.

Consequences for lawyers in practice

In practice lawyers establishing abroad may face a number of difficulties related to professional indemnity insurance. In fact, there are difficulties relating to all elements of article 6.3 of the Establishment Directive. This is all the more serious, as cross-border cases are often complex precisely because of the cross-border nature and therefore an appropriate insurance for liability is very important.

- First, there are difficulties for lawyers who establish in a host country to practise the law of that country. Since insurers often do not cover the activities of lawyers practicing in

the law of a host country (in interviews this has for example been noted in Denmark, Sweden and Italy), lawyers will have to take out a new PII in every host country where they want to establish and/or of which they want to practise the law. Furthermore, insurers would require that the foreign lawyer complies with the requirements (qualifications) that the host country has for its own lawyers before insuring the foreign lawyer for practising the law of the host Member State. This means that the lawyer who can, according to the Lawyers' Establishment Directive, lawfully establish in a host state and practise the law of that state, will probably face the practical difficulty of taking out additional, adequate insurance.
One insurer commented that an underlying reason is that insurers/underwriters providing indemnity insurance in one country will not necessarily be familiar with the legal process and claims experience in other jurisdictions. Accordingly, they will have no requisite knowledge on how to rate specific types of legal practices or certain legal activities for premium calculation purposes. Furthermore, they will not have any existing claims handling arrangements in those jurisdictions and may be reticent and careful to incur the significant expense of establishing it.

The common practice for lawyers wanting to establish in a host country and to practise the law of the host country is, then, to apply for admission to the Bar in the host country, possibly implying that additional training, education and examination on the different areas of law will be necessary. After registration, the lawyer might then be able to take out a PII in the host country. Another possibility is to engage/employ lawyers in the host country which are admitted to the profession in the host country. Finally, a lawyer can try to take out an additional PII in the host country, but consulted experts state that insurers are very reluctant or even not able to offer additional insurance. The availability of additional coverage will be determined also by insurers with regard to robust underwriting principles in assessing, among many factors, the nature of the lawyer concerned, his or her experience and competence and the risks associated with their specific areas of legal practice.

- Second, since the circumstances differ across countries, it may be quite hard to check whether an indemnity insurance policy is sufficient to meet the rules and regulations in a host country (equivalent in terms of conditions and cover). In particular, smaller bars may not have the resources to thoroughly check whether the insurance policy of lawyers coming from other Member States is sufficient to comply with the applicable rules and regulations. When a Bar would conclude that an insurance policy from a lawyer is sufficient, and later it turns out that the insurance was not sufficient, the Bar may be held liable by the lawyer. The result is that bars can be hesitant to accept a foreign insurance, and choose for safety by requesting lawyers e.g. take out insurance in the host country or participate in the Bar guarantee fund.

- Third, if a lawyer is required to take out additional insurance, because his insurance is partially insufficient, it can be very difficult to do so. In practice, lawyers may not always be able to have full control over their insurance policies, as they are dependent on what the insurance industry offers. The insurance industry does not always offer a product that is fitting as an additional insurance. Therefore, lawyers may need to conclude a policy that covers more than necessary.

- Fourth, if lawyers have taken out sufficient insurance, they may, nonetheless, have to pay for additional insurance when they register with a Bar. In Luxembourg, for example, the Bar offers a minimum insurance. The premium is included in the membership fee of the Bar. This means that foreign lawyers are not able to 'opt-out' from the mandatory insurance. This may be the case in other countries as well.

Future solutions?
For more than 10 years the Working Group on Professional Indemnity Insurance of the CCBE has been studying possibilities of implementation of article 6.3 of the Establishment Directive for cases of establishment in a host country. Up to now, the parties involved (insurers and Bar representatives) did not come to an agreement on an approach that is acceptable for all parties, giving attention, on one hand, to the EC policy regarding the movement of services and freedom of establishment within the EU and, on the other hand, the interest of the lawyers and the interest of the insurers. Where the EC scope demands for a common solution that is applicable all member States, the lawyers focus on solutions that minimize time spent and costs related to additional requirements for establishment abroad and the insurers focus on the reduction of risks involved in covering activities of foreign lawyers who want to settle in the country of the insurer. At the moment, the problems regarding PII in host countries are still significant. There is no concrete perspective that the parties involved can agree on common solutions in the near future.

4.5.4 Social Insurance

Social security issues are not harmonized on an EU level. Social security is covered by Regulation (EC) No 883/2004 (which entered into force in 2010 and which replaced earlier rules already in place since 1972, which in turn replaced rules in place since 1959), which aims at *co-ordinating* social security obligations and benefits in a cross-border context. It regulates that a person pursuing an activity as an employed or self-employed person in a Member State shall, in principle, be subject to the legislation of the Member State where that activity is pursued (article 11.3a). This means lawyers are subject to the social security system of the place where they actually pursue their activity. Furthermore, the regulation operates on the principle of equality of treatment. Any lawyer can thus receive the same benefits as the citizens of the host state.

In some countries lawyers are always self-employed, and in some countries they can also be employed. Some lawyers may have to change in status from employee to self-employed when they move to another country. For the purposes of social security co-ordination, the national definitions of who is an employed and of who is a self-employed person apply. There are some exceptions to these rules in border regions.

A number of Member States have a specific social security scheme for lawyers (e.g. Austria, Belgium, Cyprus, France, Germany, Greece, Italy, Poland, Portugal, Romania, and Spain). Other countries do not (e.g. Czech Republic, Denmark, Finland, Hungary, Lithuania, Luxembourg, Slovakia, Slovenia, Sweden, and the Netherlands).[1]

[1] CCBE, *CCBE survey on social security schemes for European lawyers*, 2004. The CCBE has not updated this overview since 2004.

In practice, lawyers may find themselves in a situation in which they have to pay social security contributions in more than one country. This can be the case, for example, in countries where there is a specific social security scheme for lawyers, which is coupled to Bar Membership (e.g. in Italy, Spain, Portugal[1]). In these countries it may not be possible for lawyers to 'opt out' from social security contributions, thereby increasing the cost of cross-border activity. This is not only a problem for self-employed lawyers and small firms. Also major firms from e.g. Spain, France and England have stated in interviews that difficulties related to social insurance are a major obstacle to mobility of lawyers.

Case study: Portugal and Spain

Portugal and Spain are examples of countries which have a specific social security scheme for lawyers in place. A case study has been carried out to study the situation for lawyers coming to Portugal and Spain. The case study confirms that there is a lack of harmonization of social security and pension rules across Member States. The desk research and the respondents give evidence that in both cases, if a lawyer from another EU Member State wants to provide legal services in those countries on a permanent basis, while at the same time continuing to be registered with the Bar in his home Member State, he/she will have to contribute to social security/pension funds in two Member States. This will increase the costs of the transnational provision of legal services.

In Portugal, for example, the enrolment in the Portuguese social security scheme specific for lawyers and solicitors (the CPAS - *Caixa de Previdência dos Advogados e Solicitadores*) is mandatory and stems automatically from registration with the *Ordem dos Advogados* (the Portuguese Bar Association).[2] The lawyer's contributions to the CPAS are calculated by applying the rate of 17% over the conventional remuneration (contribution base) chosen by the beneficiary indexed to the national minimum wage fixed by law each year.[3] This can result in an annual contribution amounting to from € 989.40 to a maximum of € 14,841.-.

Moreover, if the foreign lawyer works as an employee in Portugal, in addition to the contributions made to his social security scheme of origin and the mandatory enrolment in the CPAS, he will also be simultaneously registered as an employee and active member and contributor to the general mandatory regime of social security. In this case he will draw the benefits of the two regimes: CPAS and general social security scheme.[4] The contribution to the general mandatory regime for the employee is 11% of the respective wage. The employer must pay 23.75%.

In Spain, there are three options for social security for lawyers. If a lawyer is self-employed, he can either register with the general mutual insurance specifically for lawyers (costs up from € 777,48 annually), or he can register with a special regime of social security for self-employed persons (up from € 2703,64 annually). If a lawyer is employed, he has to register with the general scheme of social security (up from € 589,49 for the employee).

[1] In Portugal it is possible to suspend payment to the Lawyers' Fund up to three years after first registering with the Bar.
[2] Article 5 (1) Portaria n.º 487/83, de 27 de Abril, que aprova o Regulamento da Caixa de Previdência dos Advogados e Solicitadores.
[3] Article 72 (1) Portaria n.º 487/83.
[4] See http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/guide_pratique_des_c1_1183975461.pdf.

4.6 Summary and Conclusions

This chapter has presented the findings related to the use that lawyers have made of the legal framework. This section summarizes the findings and arrives at some overarching conclusions.

Familiarity with the possibilities of the Legal Framework
The use that lawyers make may in part be dependent on how well-known the possibilities of the Directives are. Interviews have shown that the freedom to provide temporary cross-border services within the EU is by now taken for granted by European lawyers. The web survey shows that the possibility to integrate into the profession of another country after being established there for (at least) three years is less well-known than the possibility of establishing under home-country professional title and the possibility of integration after completing an aptitude test (by making use of the Professional Qualifications Directive).

Temporary cross-border services
As registering is not required when lawyers provide services temporarily in other Member States, there are no official statistics available on the number of lawyers providing services in other countries. There are, however, statistics that can give some indication of the volume of cross-border services. Eurostat reported for the year 2008 that the export of legal services to clients in other countries accounted for a turnover of 4.2 billion Euros, for 22 European countries taken together. The UK accounted for the largest turnover (2.4 billion). In another survey, carried out a few years earlier, in 2005, two thirds of enterprises in the legal sector said that their relations with clients in other countries were non permanent. This is an indication that there is a large market for temporary cross-border legal services.

The web survey that has been carried out in the context of this study shows that temporary cross-border services are commonly provided in countries that are geographically nearby. The UK forms an exception to this general rule, as lawyers from many different countries all over Europe have provided services in the UK. Practice areas in which relatively many lawyers have provided cross-border services are EU and international law, arbitration, intellectual property, corporate and company law, and tax law. Correspondingly, lawyers providing services mainly to large enterprises are generally providing cross-border services more often than lawyers who mainly provide services to small and medium-sized enterprises, to the public sector and, especially, to private individuals. Accordingly, lawyers working for large law firms (with more than 50 lawyers) and for law firms that have offices in other countries provide cross-border services more often than lawyers working for smaller firms or in a self-employed capacity.

Most lawyers in the survey (88%) have provided (part of) their last cross-border services at a distance, for example, by e-mail or by telephone, from their own home country to a client in another country. Over half (53%) of the lawyers provided the services mainly in the law of their home country, whereas over a quarter (27%) practised both the law of the home country and in that of the host country and EU/international law. A relatively small group has practised mainly the law of the host country (8%) or EU/international law (8%). Almost all lawyers provided the temporary services under their home country professional title. The most important services that lawyers have delivered are legal advice (by 83% of

the lawyers) and drafting contracts (49%). Over a fifth (22%) has carried out court work or representation.

The reason to provide temporary cross-border services was to serve existing clients for more than half of the lawyers (56%). More than a quarter (29%) has provided these services because of business opportunities.

Establishment in another Member State

According to the most recent available statistics (varying from 2008 - 2012), around 3.5 thousand lawyers have made use of the Lawyers' Establishment Directive by establishing themselves in another EU Member State. Belgium is the country in which most lawyers from other EU Member States are established under the Lawyers' Establishment Directive. This is mainly due to the presence of EU institutions in Brussels. Other countries in which relatively many lawyers are established are Germany, Luxembourg (the seat of the European Court of Justice), Italy, and France.

Besides individual lawyers, many law firms have established branch offices in multiple Member States of the European Union. Belgium (in particular Brussels) and the UK (London) are the Member States in which most international firms have established an office. Other Member States in which relatively many firms have established offices are France, Germany, the Netherlands, Spain, Poland and Italy. The UK hosts the biggest and most international law firms in Europe.

The survey provides insight into the characteristics of lawyers that have established in other Member States. Fields of law most practised by those lawyers are EU and international law (practised by 37% of the lawyers) and financial law (16%). Other fields of law practised by relatively many lawyers that have established abroad are tax (14%), corporate and company law (14%), intellectual property law (14%) and arbitration (14%). Lawyers working for big law firms (more than 20 lawyers) are about twice more likely to be established abroad than lawyers working for smaller law firms or working alone.

Registration as an established lawyer in another country does not constitute major administrative difficulties for most lawyers. In southern European countries, however, 58% of the lawyers find that much or very much time was involved in registering as a lawyer.

Around two thirds (68%) of the lawyers established abroad regularly work for small and medium sized enterprises. Less than half works generally for private individuals (47%) or large enterprises (45%). Providing legal advice and drafting contracts are the most important activities that lawyers established in another EU country engage in. Around half (51%) of the lawyers have carried out court work and/or representation.

Over a quarter (28%) of the lawyers established abroad mainly provides services to clients from their home country (the country in which he originally obtained his qualification). A similar amount of lawyers (28%) provides services to clients both from the home and the host country. Less than 1 in 10 lawyers mainly practises the law of their home country; most lawyers either practise mainly in the law of the host country (39%) or a combination of the law of the home and host country and EU/international law (40%).

Well over half (58%) of the lawyers had private, personal and/or family reasons for establishing abroad. This has been mentioned (almost) two times more than business opportunities and improvement of personal skills.

Comparison of users of the Services and Establishment Directives

When looking at the characteristics of users of the Lawyers' Establishment Directive, on the one hand, and those of the Lawyers' Services Directive, on the other hand, there are many similarities, for example, with regard to the fields of law that are practised and the types of clients being served. There are, however, also some clear differences:

- Temporary cross-border services are more often services in the law of the home country, whereas established lawyers more often (also) provide services in the law of the host country.
- The most important reason for the provision of temporary cross-border services is to serve existing clients, while establishment abroad is often done for private and family reasons.
- Established lawyers seem to be carrying out court activities in the host country more often than lawyers who provide temporary services.

Admission to the profession in another Member State

According to the Regulated Professions' Database of the European Commission a total of 3 544 lawyers have had their qualifications recognized by making use of Directive 2005/36/EC or its predecessor Directive 89/48/EEC, in the period from 1997 to April 2012.

Almost two thirds of the lawyers (2 295 lawyers, 65%) obtained the recognition after the successful completion of an aptitude test. More than two thirds of these were obtained in the United Kingdom (69%). Other countries where relatively many lawyers successfully applied for and completed an aptitude test are Italy (220 lawyers, 10%), Germany (166 lawyers, 7%) and Belgium (104 lawyers, 5%).

The qualifications of around one third of the lawyers were recognized automatically, in that there were no compensatory measures imposed (1.235 lawyers, 35%). Almost three quarters of these were lawyers moving between Ireland and the United Kingdom (881 lawyers, 71%).

There were only fourteen lawyers that had their qualifications recognized after an adaptation period. Ten of these recognitions took place in Denmark.

The web survey gives some insight into the characteristics of lawyers that have obtained admission to the profession in another EU Member State. Fields of law that are practised by a large part of these lawyers are contract law (practised by 55%) and corporate and company law (practised by 51%). Relatively many lawyers that practise EU/international law and financial law have obtained the right to use the title of another country. More than three quarters of the lawyers that have integrated in another country regularly work for small and/or medium-sized enterprises. Less than half works frequently for private individuals and less than half for large enterprises. Lawyers working in large firms have relatively more often obtained the right to use the title of another country than lawyers working in smaller law firms or alone.

The main reasons why lawyers sought admission to the profession are, based on the survey, to enhance their professional status (mentioned by 61% of the lawyers) and to obtain full rights to practise the law of the relevant country. Career opportunities (45%), the ability to deliver more comprehensive services (42%) and attracting clients from the host country (36%) have played a role for a smaller part of the lawyers.

At the moment of requesting admission to the profession, a large part of the lawyers (70%) has had to provide a list of cases and/or a description of work experience in the host country. A smaller group also had a formal interview with the Bar Association (40%) and/or had to provide translation of official documents (40%). A third (35%) of the lawyers report that they had to pay an additional fee.

The Lawyers Establishment Directive or the Professional Qualifications Directive?
The Lawyers' Establishment Directive also gives lawyers the possibility to integrate fully into the profession of another Member State after three years of regular practice without having to complete an aptitude test first. This provision of the Lawyers' Establishment Directive has, however, not been used by many and its implementation did not lead to a reduction of the number of lawyers applying for recognition of their qualifications under Directive 2005/36/EC.

The results of the survey show that important reasons for lawyers to prefer the route of the Professional Qualifications Directive over that of the Establishment Directive are that lawyers want to integrate earlier than after three years (reported by 50% of the lawyers that could choose between both routes) or did not want to establish in the host country (36%). In addition, many lawyers do not consider the aptitude test to be too complex, considering its objective (apart from some countries, e.g. Italy). We conclude that, in this sense, the Lawyers' Establishment Directive is complementary to the Professional Qualifications Directive, since both routes are used, for different reasons.

There are, likely, also other reasons why the route to admission of the Professional Qualifications Directive has often been chosen instead of the route of the Lawyers' Establishment Directive. First of all, the latter provision is not very well-known compared to other possibilities that the legal framework offers. Second, as was concluded in chapter 3, the practical implementation is surrounded by a great deal of uncertainty among the Bar Associations and lawyers that mainly seems to centre around the amount of experience with national law necessary for integration, the influence of European law thereon and what is necessary to fulfil the requirement of three years of 'effective and regular pursuit'. As this uncertainty will only be settled after at least three years of practice, this may motivate lawyers to opt for a route that offers more certainty in the short-run, and sit an aptitude test, under the Professional Qualifications Directive. This will be, all the more so, the case in countries in which the aptitude test is considered not to be that difficult. Third, an additional difficulty is that insurers in general seem to be hesitant to accept a lawyer that has gained admission to the profession of another country via the route of the Lawyers' Establishment Directive. They are more inclined to accept a lawyer who has proven his or her abilities by taking a test.

Remaining difficulties

One of the objectives of the study is to identify remaining barriers and difficulties to the free movement of lawyers. In this chapter, a number of practical difficulties for lawyers that have made use of the directives have been identified.

Lawyers that have established abroad partly experience other difficulties compared to lawyers that have provided temporary, cross-border services. Difficulties for establishment will be discussed first.

The survey shows that almost a third of the lawyers that have established in another country did not experience difficulties related to practicing the profession of lawyer while being established in another country. The other lawyers have experienced diverse difficulties, of which the most recurring will be mentioned here. One third (32%) of the lawyers has experienced difficulties related to professional indemnity insurance. One quarter difficulties because of continuing requirements of the Bar in the home state, resulting from the obligation to remain registered with the home bar. Difficulties related to double deontology were encountered by 18% of the lawyers.
Two-thirds of the lawyers established in other Member States have also encountered difficulties that are not directly related to practicing the profession of lawyer. Over a quarter reports difficulties in dealing with necessary administrative formalities. A little less than a quarter (23%) reports problems related to social insurance and benefits.

Lawyers that have provided cross-border services have encountered fewer difficulties than those that have established in another country. The survey shows that half of the lawyers that have provided temporary services did not encounter any difficulties related to the practise of their profession at all.

The most commonly experienced difficulties are a lack of professional expertise in the law of another Member State and difficulties related to language. About one out of every ten lawyers have encountered difficulties related to double deontology and a lack of understanding and acceptance by other professionals, such as judges and local lawyers.

Some lawyers have not established or provided services in another country because they expect too many difficulties. Difficulties most often foreseen are a lack of professional expertise in another country and problems related to language. Other commonly expected difficulties are those related to obtaining recognition of qualifications, lack of acceptance by other professionals (such as judges and other lawyers) and by clients, double deontology problems, and problems relating to professional indemnity insurance.

Difficulties related to Professional Indemnity Insurance
The CCBE Code of Conduct (article 9.3) stipulates that lawyers, in principle, must be insured adequately. If that is not possible, the lawyers must inform the client. In practice, there are a number of difficulties remaining for lawyers to get adequate insurance for cross-border activities.

- The minimum coverage (and corresponding contributions) differs widely across countries. This can result in economic obstacles to enter certain countries.
- Insurers are hesitant to insure lawyers that have integrated into the profession after establishing for three years, without any aptitude test.

- Different forms of insurance policies are used across countries (e.g. on the basis of claims made or acts occurred); in practice, this may result in lawyers having to take out additional insurance.
- Many insurance policies only cover work done in the law of the home country, and not in the law of another (host) state.
- Because it can be difficult for (especially small) bars to assess the equivalence of a foreign indemnity insurance policy, in these situations bars may opt for the safe route and ask the lawyer to take out additional (host country) insurance.
- Additional insurance policies are not always completely tailor-made, so that lawyers may have to take out more additional insurance than necessary.
- Some bars have a mandatory insurance policy for which premiums are included in the Bar fee. Even if lawyers are sufficiently covered, they still pay for this additional insurance.

Although the stakeholders are working together to find solutions, there is no concrete perspective on a solution of the problems in the near future.

Difficulties related to Social Insurance

According to EU regulations, lawyers are subject to the social security system of the place where they actually pursue their activities. In practice, lawyers may find themselves in a situation in which they have to pay social security contributions in more than one country. This is the case, for example, in countries where there is a specific social security scheme for lawyers, which is administered by the Bar, and the premiums are included in the annual bar fee.

5 Impact of Lawyer Mobility

Key outcomes

- The need for cross-border legal services has increased
- Commercial communications by lawyers facilitates cross-border mobility
- At the European level, there were no indications that client needs of cross-border legal services were not being met
- The provision of temporary cross-border services accounts for a turnover that is much higher than that generated by lawyers established abroad
- The most commonly perceived effects of lawyer mobility are an increase in the range of legal services offered and in competition pressure

5.1 Introduction

This chapter discusses the impact of the legal framework on the market for legal services. This serves the research objective of evaluating the extent to which the Directives have facilitated access to legal services for clients requiring assistance in cases involving more than one Member State. First, it discusses the extent to which the Directives contribute to meeting the needs of clients of legal services in cross-border cases and whether there are any areas in which cross-border needs of clients are not effectively met (section 5.2). Second, it discusses the impact of lawyers' mobility on the European economy, and on the quality of legal services offered. Particular attention is given to the role of commercial communications in facilitating lawyers' mobility (section 5.3). Both sections end with some concluding remarks. At last, some other impacts of the legal framework are discussed.

5.2 Meeting the Needs of Clients

One of the objectives of the legal framework for the free movement of lawyers is to meet the need of legal services of consumers who seek advice when carrying out cross-border transactions. As this evaluation study was primarily aimed at evaluating the functioning of the legal framework for free movement of lawyers, an extensive examination of different client needs (e.g. through a large quantitative survey) was not possible within the constraints of the study. However, the subject of whether client needs are being met has been addressed in different research activities. This section presents the results of these research activities. First, some evidence from other studies is presented. Second, the results from interviews with different organizations on the EU and the national level are discussed. Third, the findings of five case studies on the topic of client needs are presented. Fourth, the outcomes of a part of the web survey are discussed. This section ends with some concluding remarks.

5.2.1 Earlier Studies

Business Clients

In a publication of 2006, Eurostat reported on barriers that firms in various business sectors experience when purchasing different kinds of legal services abroad. The study was carried out in 2003.[170] It provides some very general insights. For almost a quarter of the firms (24%) barriers related to location are the main hindrance. Legal and regulatory barriers are considered by 13% of the business clients to be the most important.

Table 5.1 Main barriers to the demand for legal services outside the country, 2003, % of respondents in 14 service sectors in six countries*

	% of total respondents
Barriers related to location	24 %
Legal and regulatory barriers	13 %
Language barriers	9 %
Cultural and trust barriers	5 %
Economic barriers	5 %
Difficulties identifying suitable foreign service providers	3 %
No barriers perceived/service not relevant/unknown	42 %

** Sectors involved in the research: Investigation & security, Accounting & book-keeping, Legal, Bus. mangmt. & consult., Archit., engineer. & related, Insurance, Financial, Market research, Renting & oper. Leasing, Personnel related, Advertising, Transport, logistics & postal, IT, industrial cleaning. Countries involved: Denmark, Germany, Greece, Latvia, Lithuania, Slovenia, Finland and Sweden*

Source: 'The demand for services: external but local provision', Statistics in focus*, 26/2006. Eurostat, Brussels, 2006.*

Needs of citizens

With regard to the needs for cross-border legal services of citizens, there are not many studies available. Some issues have been identified in relation to cross-border purchases by consumers, and in relation to seeking redress.

A problem identified in a qualitative Eurobarometer study[171] is the lack of knowledge about consumer protection in cross-border purchases among consumers in all Member States. Based on ten interviews with consumers per Member State, the study concludes that in seeking redress, the language barrier was identified by the majority of consumers as key. A number of concerns about how cross-border redress mechanisms might operate and how to access them contributed to consumers feeling less comfortable about cross-border situations. Very few respondents had direct experience of cross-border redress so these issues are largely perceptual rather than experience-based. The perceived complexities of a cross-

[170] In 2003 the Lawyers' Establishment Directive was not yet implemented in those countries that were not yet member of the European Union.

[171] Eurobarometer, *Consumer Redress in the European Union: Consumer Experiences, Perceptions and Choices: Aggregated report,* 2009.

border purchase led them to feel even less confident than they would in a purely domestic context.

In a study on key issues faced by consumers in obtaining redress for mass claims/mass issues, where multiple consumers have claims against the same seller/provider of services because of the same type of infringement of the consumer protection rules, the Directorate-General for Health and Consumers of the European Commission found that when consumers in cross-border cases decide to join a collective action, they might also incur travel expenses and can face difficulties in obtaining adequate representation of their interests because of the geographical distance, language and cultural differences. This obstacle is reported from several Member States (these include Finland, France, Denmark, the Netherlands and the United Kingdom) and is relevant for most consumer cross-border cases.[172] Another possible barrier for consumers that has been identified is that consumers may not be able to judge the experience and expertise of a lawyer from another country. This problem also exists with regard to local lawyers, but in cross-border cases this is even more so.[173]

5.2.2 Results of Interviews at EU and national level

Interviews with the CCBE, the European Commission, and consumer and business organizations at the EU level[174] did not reveal any major obstacles for meeting the needs of consumers of legal services at the EU level. Also, the organizations did not receive complaints on this matter.

National Bar Associations are generally of the opinion that the directives function well, sometimes, among other things, basing that opinion on the fact that they have not received complaints. The explanation usually given by bars why more lawyers are not making use of the Establishment Directive is that there is no need from both the side of clients and lawyers for more. Clients are assumed to mostly prefer a local lawyer who is experienced in local law. Lawyers often maintain contact with lawyers in other countries, sometimes even in formally established networks. Clients are referred by lawyers from their home country to local lawyers in other countries. Alternatively, lawyers from the home country temporarily provide a service in the other country, if necessary, in co-operation with a lawyer from the other country.

Most lawyers that establish in other countries are presumably moving together with their clients, mostly in the fields of corporate and international law or due to family reasons. A strong economic incentive for lawyers to establish or integrate into the profession in another country does not seem to appear often.

---

[172] Source: DG SANCO, *Study regarding the problems faced by consumers in obtaining redress for infringements of consumer protection legislation, and the economic consequences of such problems: Part I: Main Report*, 2008, p. 69.

[173] Source: DG SANCO, *Study regarding the problems faced by consumers in obtaining redress for infringements of consumer protection legislation, and the economic consequences of such problems – Part II: Consumer attitudes*, 2008, p. 8.

[174] Eures, BEUC, Eurochambres.

The interviews show that there is an increasing need for foreign legal expertise, due to e.g. the process of globalization, increasing influence of European regulations, integration of markets, family migration, cross border marriages, cross border trade and mobility, and the ease of cross-border provision of services at a distance by the use of ICT. The interviews indicated that legal cross border services shifted somewhat from corporate law, competition law and financial law, leading topics at the time when the Establishment Directive was implemented, to family law and international private law, due to increasing migration and cross border marriages, among others.

5.2.3 Case Study Results

Introduction
Because consumers of legal services are very diverse (from individual consumers to large multinationals and everything in between) and the demand for services may differ geographically, in the context of this evaluation study, a case study approach has been used that focuses on specific regions and client groups, to complement the findings of the interviews.

First of all, we have assessed whether clients' needs are sufficiently met in one of the larger EU cities accommodating a high number of law firms, serving the international market. Secondly, we have explored the situation in a border region with a high percentage of cross border commuters and a rich history of cross border co-operation and in a border region with a limited number of cross border commuters and limited history of cross border co-operation. Thirdly, one case study was focused on a country with a high number of foreign lawyers and one on a country with a low number of foreign lawyers. Below, the results of these five case studies are reported. This section ends with some concluding remarks.

1. Needs in a major city: Amsterdam
A case study on the Netherlands shows that business clients' need for legal services are especially related to contracts and conditions, intellectual property rights, ownership retention (trade finance) and product liability.

Trade and exporters' associations that advise member firms on settling legal issues abroad and on legal experts state that, in general, small and medium-sized businesses strongly prefer doing business with a lawyer from their home country who speaks their language. An association of Dutch Business Lawyers Abroad is currently being established to meet this demand.

The quantity and quality of supply of lawyers able to provide cross-border services in the Netherlands are both sufficient, according to the interviewees. The case study does, however, show that finding the right lawyer in case of a legal problem abroad requires special efforts and is often difficult. This is especially so for SMEs who usually have no in-house lawyer or even legal expertise and only need legal assistance incidentally. As a result, intermediaries play an important role, offering suggestions and advice as to the right lawyer or law firm to approach. Intermediaries may be trade or exporters' associations, chambers of commerce, public services or the lawyer / law firm used for domestic affairs. The avail-

able infrastructure of law firms and intermediaries like trade and exporters' associations is assessed as sufficient.

As for the cost of law services, the big international law firms located in Amsterdam (or elsewhere in the Netherlands) are expensive, especially for SMEs mainly submitting contract and payment problems.

2. Much mobility: Maas-Rhin region (Belgium, Germany, Netherlands)
In the Maas-Rhin region there is much cross-border mobility of, for example, workers. A case study was carried out in this region to see how the needs of clients for cross-border legal services are being met.

The case study showed that there is an increasing demand for legal services in this border region. This increase is not omnipresent (for example, the increase did not concern workers because of the actual restructuring of the job market), but it is clear that there is an increase in cross-border activity in certain sectors (e.g. family law). Subsequently, the supply of legal services is also increasing. Important reasons for the demand are the differences between legal systems and the preference of clients to speak to a lawyer in their own language.

Nevertheless, the demand for cross-border legal services of consumers and small businesses remains low. In the case of consumers' contracts, it has been advanced that individuals refrain from making use of legal services to solve the conflicts with the counter party to the contract (because of costs, the paperwork involved and a perceived lack of evidence to start a case) and prefer to make use of other non-judicial means of settlement. They may also contact consumer associations or an ombudsman. It has been noted that a possible disadvantage of these organizations may be that they may not be in a similar position towards the client as a lawyer. A lawyer, because of professional duties, should, in principle, be independent and loyal to the client.
The relatively low demand is one of the reasons why development of supply of corresponding legal services has, until now, been largely neglected by the legal profession (although there are some lawyers who have specialized in e.g. small claims procedures).

It has been noted that an important difficulty for consumers is to identify a specialist lawyer who is competent for their cross-border case. Companies would often make use of intermediary organizations. These organizations would then refer the companies to lawyers that they know or to partnering organizations across the border.

A second difficulty is that cross-border cases are inherently more complex than national cases. Common difficulties are additional travel expenses and the higher costs because of the requirement of lawyers to work in conjunction with a local lawyer in cross-border legal proceedings.

3. Not much mobility: some new Member States
Accession to the European Union and the adoption of the *acquis communautaire* resulted in uncertainty and increased need for legal advice. The case study focused on cross-border activities between Poland, the Czech Republic and Germany shows that there was a particular interest in finding solutions that would enable profiting from the free movement rights,

namely accessing the labour market. Clients of legal services tend to be increasingly interested in finding solutions that would be both legal and financially attractive – i.e. cost reduction in case of companies and obtaining social benefits when it comes to individuals. Moreover, there is a demand for comprehensive permanent legal assistance, which clients need especially for administrative matters when foreign institutions are concerned. German, Polish and Czech institutions have not yet managed to elaborate clear procedures in all cases involving transnational interests; these solutions sometimes need to be reached in the process of legal disputes. In general, there is a demand for commercial, tax and civil law services. These types of services are mostly required in cross-border regions as well as big cities.

Capacity of lawyers insufficient
While there is a constant growth on the demand side, the capacity of competent lawyers is not sufficient. The main problems seem to be the language barrier and the differences between the legal systems of the relevant Member States. Education has traditionally not focused on comparative and European law, so that, especially older, lawyers are not very well equipped for cross-border work. The current status quo renders it quite difficult for clients, especially those in the cross-border regions, to obtain professional assistance since lawyers there have little experience with such cases and the foreign lawyers usually offer their services in bigger cities.

Working in conjunction
In practice, many lawyers tend to co-operate with their foreign colleagues when dealing with cross-border cases, which obviously increases costs. Furthermore, the requirement of introduction to the court by a local lawyer decreases the efficiency of procedure while further increasing the costs. This diminishes the competitiveness of European lawyers.

Interestingly, it has been remarked that Polish lawyers prefer to co-operate with lawyers established in another country rather than European lawyers registered in Poland. This mistrust might be a result of the fact that access to the Polish Bar is very restricted. The lawyers registered with the Polish Bar are often of Polish origin, have gained qualifications abroad and have resorted to the free movement framework in order to avoid the lengthy and difficult professional training in their home country.

Consumers
An obstacle on the demand side is the low level of legal awareness in the post-communist societies. Individual clients often do not know their rights and do not know who to turn to in order to obtain help with a transnational case. They are unaware of the free movement of lawyers framework or do not have access to the services of a foreign lawyer in their place of establishment. If they decide to search for legal advice in another Member State they often do not understand the difference between lawyers (advokát, adwokat and Rechtsanwalt) and other legal professionals, who offer their services without being members of the Bar, which may be cheaper, but also less secure since such professionals are usually subject to less strict supervision. As a result, they rely on the help from their home lawyers, whose experience with transnational cases and theoretical knowledge of other systems of law is limited.

4. High number of foreign lawyers: Luxembourg

Luxembourg attracts a large number of lawyers providing services in Luxembourg on the basis of the Lawyers' Services Directive because of the fact that the European Court of Justice and other European services are established in Luxembourg. There is also a substantial amount of lawyers working in Luxembourg on the basis of the Lawyers' Establishment Directive. There are even more foreign lawyers in Luxembourg than domestic ones; the percentage of foreign lawyers in Luxembourg is even higher than in Brussels. This is even more interesting considering the initial opposition of Luxembourg to the implementation of the Lawyers' Establishment Directive.

Needs for legal services

A case study focused on Luxembourg showed that cross-border services are generally addressed at business clients in the field of financial and insurance affairs. The establishment of companies in the field of finance, insurance and information techniques has created a new field in which legal advice is necessary. In Luxembourg there is an increasing number of foreign lawyers who establish themselves of which there are members of and persons working for the European institutions, such as the Court of Justice of the European Union, the Court of Auditors and the European Investment bank.

In this regard, it should be noted that in Luxembourg there is also a high immigration of workers, specifically from Portugal. It follows that there is not only a need for persons who are qualified or competent to work in the field of European Union law, but also for professionals that master family law, and more specifically the family law of the country where these workers originally come from. Furthermore, lawyers also need to be able to work with private international law (recognition and execution of judgements in civil and commercial matters, matrimonial matters and parental responsibility, cases related to the obtainment of a European title for non-contested debts and injunctions to pay). The presence of a high number of European civil servants living in Luxembourg and the presence of workers who immigrated to Luxembourg has created a need for activities in the field of family law but also in the field of immovable property law. In this regard, it should be noted that Luxembourg consumers often go to Germany to make purchases or to enjoy a service (e.g. real estate offices; dating sites; holidays). Since they are very mobile, there is a need for lawyers who can deal with problems related to cross border services.

The need for cross-border legal services is particularly present with small and medium-sized enterprises and individuals. The reasons are often related to the relative ignorance of consumers with regard to European legislation and rules, the complexity and legibility of applicable European texts and their comprehension by non-lawyers and the differences between Member States in certain fields of law (such as contract law, conformity guarantees of products, environmental law, doorstep selling).

Meeting the needs

Due to the great amount of lawyers in Luxembourg and the fact that every field of law is practised in the country, consumers do not, in principle, face difficulties in finding a lawyer. Small and medium-sized enterprises often hesitate to be involved in legal procedures to solve disputes. The main reasons are related to the magnitude of the debt, the object of the dispute and the costs of the procedure, but not in the inability to find a lawyer.

Consumers/clients who are unable to find a lawyer for their case can address their request to the bâtonnier of the Luxembourg Bar. The Bar will then appoint a lawyer interested in the case. If consumers have a problem with an individual located in another Member State, they can also contact the 'Centre Européen des consommateurs Luxembourg'. The Centre will, in the first, place search for a friendly solution; if this is not possible, it will advise the parties to resort to mediation and, as a last resort, consumers will be advised to contact a lawyer established in Luxembourg or in another Member State. A minority of the consumers that contact the Centre will eventually contact a lawyer. The Centre can be contacted by all consumers and works for free.

According to the Bar of Luxembourg, the capacity of foreign lawyers is sufficient at the moment. There have not been any complaints to the Order regarding the level of competence of lawyers.

A lawyer providing services in Luxembourg needs to be introduced to the president of the court by the bâtonnier. This is not considered to be a burden since it is only a rule of courtesy. It merely aims at avoiding problems for the lawyer who is not used working in the host state. Another lawyer will introduce the service provider. This does not bring about any additional costs.

5. Low number of foreign lawyers: Sweden

To get qualitative insight into whether and how the needs of small and medium-sized business clients of legal services are being met in a country in which there is a low number of foreign lawyers, a case study was carried out in Sweden. Very few lawyers from other countries have registered with the Swedish Bar. It could be argued that this would make it difficult for business clients to have their needs met in cross-border cases.
The case study showed that there is an increased need for cross-border legal services, due to an increased willingness of Swedish companies to open up a foreign branch office, and, therefore, seek juridical advice as different rules apply abroad.

The general impression of the interviewees[175] is that there is quite enough supply of legal services, but that the high fees that the big law firms request might hamper SMEs to ask for their services. Almost all of the SMEs will involve local law firms with questions relating to cross-border activities. Language, education, long-standing client relations and difference in legal systems may play a role. Differences in fees between countries may also play a role (legal fees in the UK are, for example, much higher than in Sweden). Besides, local law firms often being members of an international alliance of law firms will contact their colleagues abroad whenever a request for services from a local firm requires this. There are also a few big law firms that render cross-border legal advice themselves (they may have a German desk, a British desk, etc.).

The needs of small and medium-sized business may be met with different means other than lawyers or law firms. For example, the German-Swedish Chamber of Commerce provides legal advice referring to tax issues, company establishment, etc. in a similar way to law

[175] Interviews were conducted with the Swedish national board of trade, the German-Swedish Chamber of Commerce and a lawyer registered in Sweden.

firms. Besides, The Swedish Trade Council serves the Swedish Government by assisting Swedish companies (willing to be) active abroad. This organization has as its aim the facilitation of international growth of Swedish companies. They essentially provide all services required to establish a company and its products, services or ideas in new markets. The trade council has offices in 60 countries and works closely with trade associations, embassies, consulates and chambers of commerce around the world.

5.2.4 Survey Results

In practice, lawyers may often be clients of other lawyers. Therefore, the experiences of lawyers may serve as an indication of the experiences of other clients. In the web survey lawyers have been asked whether they have ever made use of the services of a lawyer from another Member State and, if so, whether they have experienced any difficulties.

More than two thirds (72%) of the lawyers that have filled in the web survey have indeed made use of the services of a lawyer from another Member State. More than half (56%) have not experienced any difficulties while doing so (see table 5.2, below). Among those lawyers that did experience difficulties, the most commonly mentioned difficulties are finding a competent lawyer and the costs. These difficulties are more often experienced than language problems. A little more than 1 in every 10 lawyers that has made use of a lawyer from another Member State has experienced difficulties related to the observance of different professional rules or other applicable legal provisions.

Difficulties finding a competent lawyer - and finding a lawyer that speaks an understandable language - are experienced less by lawyers who work for firms that have offices or are members of a network having connections in other Member States. This group of lawyers, however, has relatively more difficulties related to a different approach in dealing with clients.

Table 5.2 Have you experienced any difficulties when making use of the services of a lawyer from another Member State?

	N	%
No	925	56%
Yes:	742	45%
▪ difficulty finding a competent lawyer	394	24%
▪ the costs	371	22%
▪ difficulties related to observance of different professional rules/other applicable legal provisions	197	12%
▪ difficulties related from a differing approach in dealing with clients	162	10%
▪ difficulty finding a lawyer that speaks a language I know	151	9%
▪ difficulties related to the business structure of the foreign firm/lawyer	28	2%
Total	1667	100%

Multiple responses were possible; percentages based on number of respondents

The Role of Commercial Communications

In theory, commercial communications could increase demand for the services of lawyers from clients in other Member States. In this way, commercial communication could lead to a growth in cross-border activities employed by lawyers. To what extent commercial communications are allowed can differ somewhat across Member States.

In the web survey lawyers have been asked what kind of commercial communications they use and to what extent it has increased demand from clients from other Member States.

Table 5.3 Means of commercial communications used by lawyers and their firm

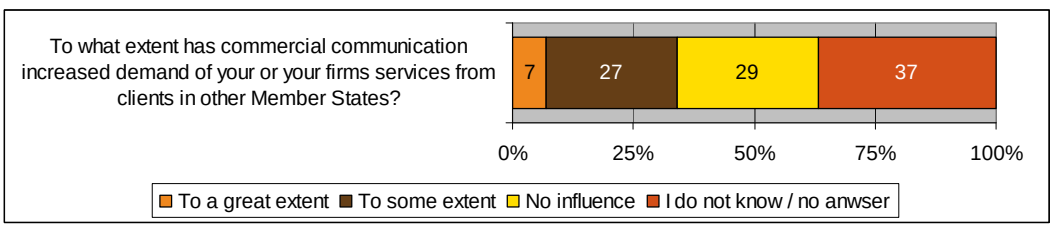
	n	%
Personal and/or firm website	1831	77%
Handing out business cards	1549	66%
Active soliciting of clients	945	40%
Making use of social media e.g. LinkedIn	679	29%
Advertising in media	628	27%
None	163	7%
Other, namely	177	8%
No answer	68	3%
Total	2.365	100%

Multiple responses were possible; percentages based on number of respondents

Table 5.3 shows that over three quarters of the lawyers (77%) makes use of a personal and/or firm website. Around two thirds (66%) hands out business cards. Active soliciting of clients is done by 40% of the lawyers, while 29% is making use of online social media. A little more than a quarter (27%) advertises in media. There is huge variation between countries, though. This is very likely connected to national regulation on advertising. In Sweden, for example, 57% of the lawyers report the use of the media for advertisement, while in Italy this is only 3%.

Other means of commercial communications mentioned by lawyers are recommendations (by clients), publication of articles, giving lectures, attending conferences and seminars, and networking.

Figure 5.1 Effect of commercial communications on cross-border demand (n=2202)



According to less than a third of the lawyers, commercial communications has increased demand from clients in other Member States to some (27%) or even to a great extent (7%, see figure 5.1). The effectiveness seems to be dependent on the kind of clients served. Of the lawyers mainly working for large enterprises, 24% says that their communication has increased cross-border demand to a large extent and 53% says it has increased demand to some extent.

Almost a third (30%) of the lawyers that uses commercial communications says that they or their firm has intentionally adapted communication strategies, such as their website, to extend the practice beyond the country in which they are established. These lawyers are more positive about the effect that their communications have had on cross-border demand. Almost half thinks it has increased demand from clients in other countries to some extent, while 19% thinks it has increased it to a large extent.

5.2.5 Concluding Remarks

From the preceding, we come to the following conclusions about how cross-border client needs are being met.

In general, the needs for cross-border legal services have increased due to e.g. globalization, integration of markets, family migration, cross border marriages, cross border trade and mobility, and the ease of cross-border provision of services at a distance by the use of ICT. Most individual citizens and small business prefer a lawyer that speaks their language.

According to less than a third of the lawyers that participated in the survey their use of commercial communications (such as their website, business cards, soliciting of clients) has increased demand from clients in other Member States. Almost a third of the lawyers that uses commercial communications indicate that they or their firm has intentionally adapted communication strategies, such as their website, to extend the practice beyond the country in which they are established.

In many cases the client (both individuals and businesses) will not contact a lawyer from another country directly, but gets in contact with a lawyer in another country through an intermediary, such as a lawyer in his home country. Many lawyers know befriended lawyers in other countries or are member of a more or less formally organized network. Apart from lawyers, important intermediaries for small businesses are, for example, trade and exporters' associations and chambers of commerce.

The web survey shows that many lawyers have indeed made use of the services of lawyers from other Member States. More than half did not experience any difficulties when doing so. Among those lawyers that did experience difficulties, the most commonly mentioned difficulties are finding a lawyer who is competent, and the costs.

Besides by lawyers, consumers and (small) businesses are also often assisted by other organizations in cross-border cases, such as consumer associations, chambers of commerce, trade associations, etc. Often, these associations can also provide some kind of legal advice. These organizations may be in a different position towards the client compared with lawyers, who are independent and must act in loyally towards the client.

There are a number of large, international law firms that provide legal services across Europe through their own branch offices or 'befriended' offices. Large enterprises are often served by these law firms. These international law firms can often not be afforded by small businesses.

On the European level, there were no indications that client needs of cross-border legal services are not being met. National Bar Associations are also not aware of such difficulties. However, some specific difficulties were identified.

- In some new Member States the capacity of lawyers competent in cross-border cases seems to be insufficient, partly due to the fact that education has traditionally not focused on comparative and European law. This is especially so in border regions, since foreign lawyers usually offer their services in bigger cities.
- A case study on Luxembourg shows that small and medium-sized enterprises often are hesitant to start legal procedures to solve disputes. The main reasons are related to the magnitude of the debt, the object of the dispute and the costs of the procedure, but not the inability to find a lawyer. It is plausible that this also applies to other countries.
- Earlier studies on consumer redress and case studies indicate that consumers might incur travel expenses and can face difficulties in obtaining adequate representation of their interests because of the geographical distance, language and cultural differences. Additionally, it may be hard to assess the experience and expertise of a lawyer from another country.

5.3 Economic Impact on the Legal Sector

5.3.1 Turnover of Established and Integrated Lawyers

A primary and elementary economic indicator of free movement of lawyers is the turnover generated by lawyers that have moved to other Member States. In the section on the use of the Lawyers' Services Directive (section 4.2) some statistics on turnover were already presented for services provided to clients in other EU countries.[176] Table 5.5 below contains estimates of the turnover generated by lawyers that have established themselves in other EU countries or have integrated into the profession in another EU country.

Turnover has been chosen as an indicator for a number of reasons. Firstly, data on turnover is relatively widely available, which also makes it possible to make comparisons. Secondly, it is rather straightforward and relatively easy to use as an indicator to express the total extent of cross border mobility.

[176] See this section also for a definition of turnover as used by Eurostat in the context of their Structural Business Statistics (SBS) database.

The turnover of lawyers established in other Member States has been calculated by multiplying the average turnover in the legal sector in the different Member States by the number of established and integrated lawyers in that Member State. It must be realized that this can only be regarded as a rough estimate, as the calculation proceeds from a number of assumptions. Some important assumptions are that (1) the average turnover generated by lawyers established in another Member State is the same as the average turnover generated by local lawyers in that Member State; (2) lawyers that have integrated into the profession of another country are indeed providing services under their 'new' title and have continued to do so; (3) the average turnover per person employed in the legal sector (which includes also support staff) is valid also for the average turnover generated by qualified lawyers; (4) there are no double-counts of lawyers that have both established abroad and integrated into the profession.

Table 5.5 Estimated turnover of lawyers established in or integrated into another Member State

Member Sate	*Turnover per person employed (in thousands Euro, 2009)**	*Number of established lawyers***	*Turnover (million Euro)*	*Number integrated lawyers (PQ Directive)****	*Turnover (million Euro)*	*Total turnover (million Euro)*
Austria	89	82	7,3	14	1,2	8,6
Belgium	194	647	125,2	105	20,3	145,5
Bulgaria	43	34	1,4		0,0	1,4
Cyprus	54	65	3,5		0,0	3,5
Czech Republic	53	111	5,9	33	1,8	7,7
Denmark	77	15	1,2	11	0,9	2,0
Estonia	40	16	0,6	1	0,0	0,7
Finland	124	4	0,5		0,0	0,5
France	77	226	17,5	49	3,8	21,3
Germany	72	350	25,2	166	12,0	37,2
Greece	77	137	10,6	1	0,1	10,7
Hungary	39	175	6,9		0,0	6,9
Ireland	114	8	0,9	586	66,8	67,7
Italy	70	264	18,5	220	15,4	33,9
Latvia	40	12	0,5		0,0	0,5
Lithuania	31	12	0,4		0,0	0,4
Luxembourg	214	346	74,1		0,0	74,1
Malta	77	3	0,2		0,0	0,2
Netherlands	123	46	5,6	13	1,6	7,2
Poland	29	51	1,5	44	1,3	2,8
Portugal	33	102	3,3	81	2,6	6,0
Romania	14		0,0	22	0,3	0,3
Slovak Republic	54	182	9,8	10	0,5	10,3
Slovenia	57	14	0,8	4	0,2	1,0
Spain	59	160	9,4	96	5,6	15,0
Sweden	147	19	2,8	30	4,4	7,2
United Kingdom	82	368	30,1	2058	168,6	198,7
Total	77	3.449	363,8	3544	273,4	637,2

** Source: Eurostat SBS Database. ** See section 4.3.1. *** See section 4.4.1.*

Total estimated turnover of established and integrated lawyers is around 640 million Euros per year. This is substantially less than the turnover generated in services delivered to clients in other Member States (see section 4.2.1).

5.3.2 Other Economic Impacts of Lawyer Mobility

Introduction

According to microeconomic theory, various effects can be expected from deepening EU integration by the removal of barriers and growth of cross-border activities. These effects may also be expected in the legal services market. Expected effects, notably, are an increase in competition pressure, changes in price setting behaviour and changes in specialization patterns. Higher competition pressure contributes to higher productivity levels and greater competitiveness via three main channels: (1) increased allocative efficiency, which results from forcing firms to set prices lower and closer to marginal costs, reducing monopoly rents and distortions in the allocation of resources while pushing total output closer to the social optimum level; (2) increased productive efficiency, due to the fact that inefficiencies are more strongly penalized in the marketplace; (3) enhanced dynamic efficiency, which results from the greater incentives to invest in the adoption and development of product and process innovations. Also, higher integration is expected to be associated with increased mergers and acquisitions activity as the process of consolidation and restructuring is triggered by the increased pressure of competition.[177]

Perceived Impact

In the survey, a number of statements about economic effects that can be expected on the basis of economic theory have been presented to lawyers themselves. Figure 5.2 below shows to what extent lawyers agree to six statements about the impact of cross-border mobility of lawyers within the European Union.

The statements are about impacts on:

- The range of legal services offered
- Competition pressure
- Accessibility of lawyers' services
- Quality of legal services
- Fees for legal services
- the national profession of lawyer

[177] There have been a number of studies of the economical effects of economic integration. The mentioned indicators have been inferred to a great extent from the overview of effects which is included in: European Commission, Directorate-General for Economic and Financial Affairs, "Steps towards a deeper economic integration: the Internal Market in the 21st century, A contribution to the Single Market Review", in: *European Economy* No. 271, January 2007.

Figure 5.2 Perceived (economic) impacts of lawyer mobility, in % (n=2.365)

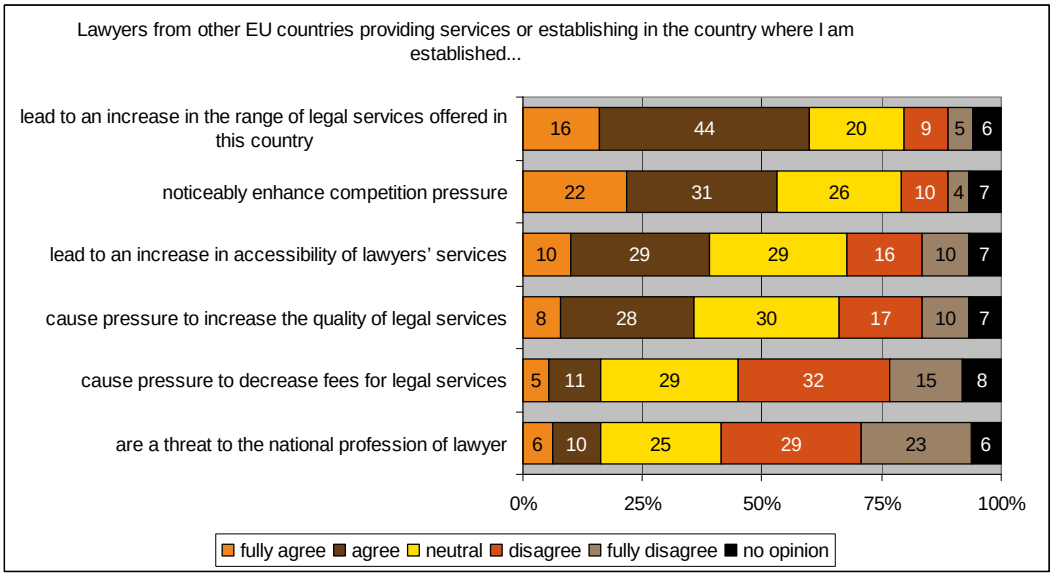


Figure 5.2 shows that the most commonly perceived effect of lawyer mobility is an increase in the range of legal services that is offered. In total, 60% of the lawyers agrees with this statement, while only 14% disagrees. The number of lawyers perceiving an impact on the range of services offered is lower in the UK (49% (fully) agrees), Sweden (40%), the Netherlands (39%) and, especially, Finland (29%).

Despite the fact that lawyers from other countries do not always compete with local lawyers, for example, when they serve clients from their home country for matters in the law of the home country, relatively many lawyers (53%) perceive an increase in competition pressure because of cross-border mobility of lawyers. It is noteworthy that Finland, Sweden, the Netherlands and the UK again deviate from the average: substantially fewer lawyers (varying from 20% in Finland to 34% in the UK) perceive an impact on competition pressure. In an interview, a major Danish law firm stated the same for the situation in Denmark. Common to these countries is a relatively low level of lawyer regulation. On the other hand, in Luxembourg, a country known for a high level of lawyer regulation, lawyer mobility is perceived to have an impact on competition pressure by 62% of the lawyers.[178] It could be argued that in those countries with a relatively high level of regulation (e.g. on access of the profession), cross-border mobility, as an alternative way of access to the market, is more likely to affect competition pressure.

Lawyers are somewhat divided about whether lawyer mobility leads to increased accessibility of lawyers' services and to an increased quality of legal services. However, in general, the group of lawyers that agrees with these statements (39% and 36%, respectively) is larger than the group that disagrees (26% and 27%).

[178] In some countries the number of replies is too low to make a good comparison (see section 1.3.3).

With regard to impact on quality, differences between countries can be observed. More lawyers than average (fully) agree with the statement that mobility impacts quality in Italy (55%), Spain (58%) and Cyprus (50%), while the number of lawyers (fully) agreeing to the statement is relatively low in the UK (27%) and in the Netherlands (18%).

The opinion on accessibility of services also differs across countries. In the Czech Republic, only 24% of the lawyers (fully) agree that mobility has led to increased accessibility of services. In Spain (54%), Italy (57%), France (60%) and Luxembourg (61%) the majority of the lawyers think that mobility has increased the accessibility of lawyers' services.

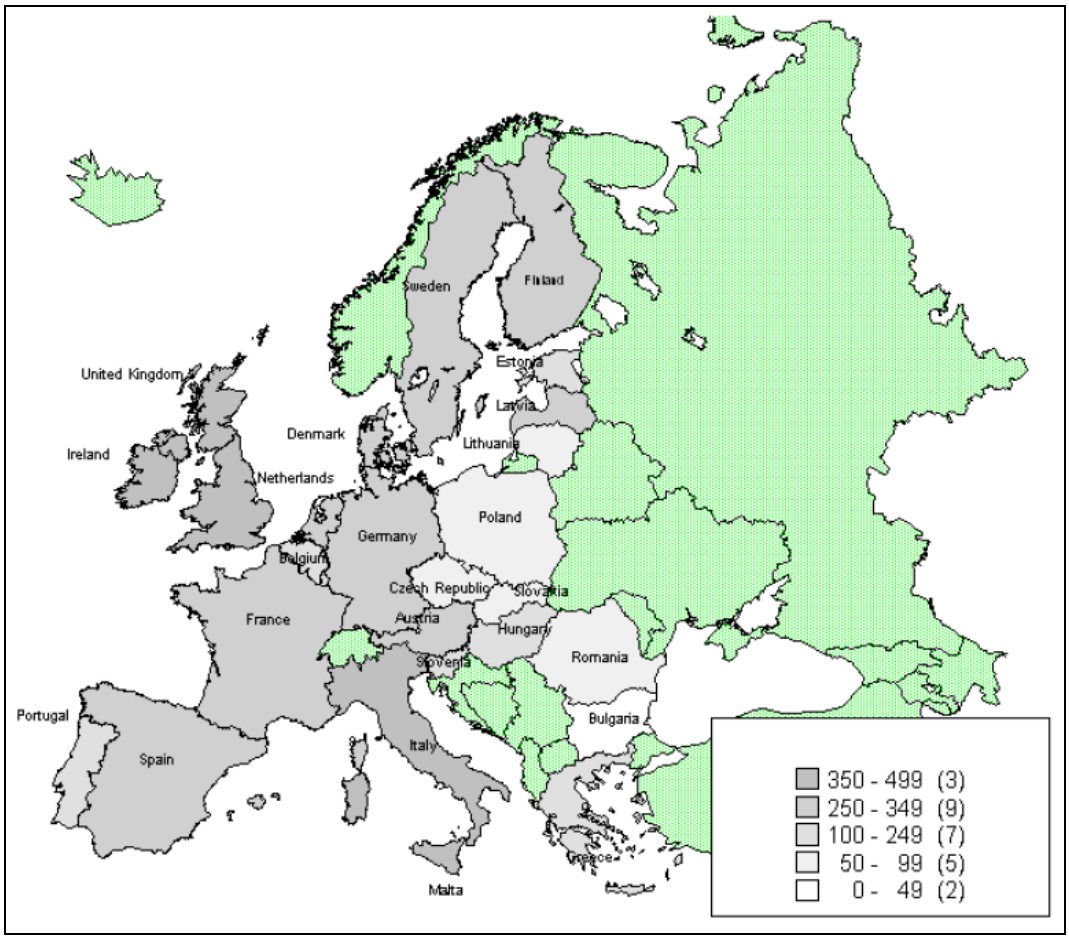
Lawyer mobility does not seem to lead to lower fees for legal services. Almost half of the lawyers (47%) disagree with this statement, while only 16% agrees. There are some differences between countries. In France and Cyprus more lawyers (26% and 28%) than average agree with the statement that mobility leads to pressure to decrease fees for legal services. In Finland, on the other hand, only 10% agrees with the statement, while 59% disagrees (see further section 5.3.3 below).

Although a minority (16%) considers lawyer mobility to be a threat to the national profession of lawyer, more than half (52%) disagrees with this statement.

5.3.3 Fees

As has been discussed above, most lawyers do not think that lawyer mobility causes pressure to decrease lawyers' fees. This may seem to be surprising, as the level of fees differs considerably across Member States. The map below shows an overview of average lawyers' fees in the Member States of the European Union, based on a study carried out in 2007. The map shows that there are differences in average lawyers' fees between the Member States, ranging from 50-99 to 350-499 Euros. Generally speaking, the fees in new Member States are relatively low. The fees are highest in the United Kingdom, Ireland and Italy.

Figure 5.4 Average lawyers' fees in the European Union, 2007.



Source: Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union, p. 106 (based on country reports).

There are, however, various possible explanations why mobility of lawyers does not seem to impact lawyers' fees in a substantial way.

First, lawyers' fees may not always be transparent and comparable from the perspective of the client and it might be difficult for clients to assess the quality of a lawyer (called information asymmetry). The problem of information asymmetry is expected to be more severe in relation to private individual clients as compared to big corporate clients who are making use of lawyers on a regular basis.[179] The relative lack of transparency has also been noted in a study on the transparency of costs of civil judicial proceedings in the European Union commission by DG Justice in 2007. According to this report, the five main common sources

[179] See for example N.J. Philipsen, "Regulation and Competition in the Legal Profession: Developments in the EU and China", in: *Journal of Competition Law and Economics*, Vol. 6, No. 2, 2010, p. 203-231. (Advance access published on April 21, 2009, doi:10.1093/joclec/nhp009.); Robert G. Lee, *Liberalisation of Legal Services in Europe: Progress and Prospects*, 2010 (brass.cf.ac.uk/uploads/Liberalisation.pdf); Copenhagen Economics, *The Legal Profession, Competition and liberalisation*, Copenhagen, 2006.

of costs of legal proceedings in the Member States are court fees, lawyer's fees, bailiffs' fees, expert fees, and translation fees. Of these five, lawyers' fees are among the less transparent costs in most Member States. Lawyers' fees are generally the subject of an agreement between the lawyer and the client at the beginning of the proceedings. They can, however, vary according to many parameters such as the complexity of the case, its duration, etc. Lawyer's fees or hourly rate are hardly ever published. The report states that this can be mainly explained because of the impossibility to forecast the duration of the proceedings and the difficulties inherent in any proceedings without knowing all the parameters that may arise during the course of a case. A further difficulty linked to the assessment an impact on prices is that lawyers may use different billing methods and, therefore, average fees are difficult to calculate or compare. Three methods commonly used are hourly billing, flat-rate billing and billing depending on the amount at stake in the dispute or its outcome. A combination of these three is also possible.[180]

Second, lawyers' fees are subject to (some) regulation in a number of Member States. The DG Justice Report states that, in the context of legal proceedings, lawyers' fees are least regulated compared with court fees, fees of bailiffs, expert fees and translation fees.[181] In most of the states lawyers' remuneration is freely negotiated. Generally, in a lot of states, basic principles exist which impose the need for the remuneration to be adequate and proportionate to the value and complexity of the case. Often, hourly rates are applied. In some Member States, there are also possibilities of lump-sum agreements, conditional fee arrangement ("no win, no fee") or agreements "paid on result".[182] In most Member States, schedules apply only when nothing has been contractually agreed. There is no schedule regarding lawyer' fees in some Member States.

The importance of the fees is also lessened somewhat if they are subject to reimbursement by the opposing party in the wake of a favourable court decision. In most Member States, the lawyers' fees the judge demands the losing party to reimburse rarely represent the whole amount actually incurred by the winning party. In some Member States, schedules have been set limiting Judges' discretion to determine the repayable amounts. In some Member States, such as France, the principle and the amount of refunded fees are almost arbitrary.[183] In cases where legal services are funded by some form of government legal aid, the state may sometimes determine the price that is paid for a particular sort of service.[184]

[180] European Commission, DG Justice, *Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union - Final Report -*, 2006.
[181] Idem.
[182] See M.G. Faure, F.J. Fernhout, and N.J. Philipsen, "No Cure No Pay and Contingency Fees", in Visscher, L. and M. Tuil (eds.), *New Trends in Financing Civil Litigation*, Edward Elgar, 2010, p. 33-56. See also European Commission for the Efficiency of Justice (CEPEJ), *European judicial systems, Edition 2012 (2010 data): Efficiency and quality of justice*, 2012, p. 318-320.
[183] European Commission, DG Justice, *Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union - Final Report -*, 2007, p. 109.
[184] See: Regulatory Policy Institute, Assessing the economic significance of the professional legal services sector in the European Union, 2012, p. 33.

Third, for certain types of legal services the price might not play the most important role, as some services can involve matters that have high importance for the client (e.g. fundamental rights, issues in which large amounts of money are at stake, etc.).[185]

Higher fees because of mobility
According to some big law firms that have been interviewed, the establishment of UK and US firms led to an increase in both prices and quality level in the upper section of the market in, at least, Brussels and Amsterdam. As a result of the establishment of US and UK firms, local firms have also raised their quality and their fees accordingly.

In a survey carried out by the International Bar Association in 2003 firms have also been asked whether international firms drive up the costs of legal services to businesses. More than two thirds of the lawyers from France (58%) and Germany (69%) agreed. In the UK, this was only 38%. This is probably due to the fact that fees are generally higher in the UK compared with the rest of Europe.

5.3.4 Competition Pressure

One of the effects of lawyer mobility perceived by lawyers themselves is an increase in competition pressure (see section 5.3.2 above). This was also confirmed in a survey carried out by the International Bar Association for which lawyers in various countries were asked whether they agreed with the statement "International firms provide strong competition which helps local markets and improves local firms."[186] Half (50%) of the lawyers from the United Kingdom agreed with this statement. For France, this was 59% and for Germany 33%.

As the amount of lawyers moving to other Member States is relatively low compared to the profession as a whole, and detailed statistics on e.g. productivity and profitability of the legal profession are scarcely available, let alone for a number of consecutive years, it will be difficult if not impossible to establish an influence of free movement on productivity and profitability levels in the European Union statistically. However, statistic information on these variables does give an insight in the context of free movement and the existing differences between the Member States, and, therefore, will be presented below. Where possible, the statistics will be linked to the outcomes of the survey.

[185] Idem, p. 33. This point can be supported by some empirical surveys carried out in Denmark and Norway, which showed that price was less important than e.g. quality and lawyer expertise for clients when choosing a lawyer (see Copenhagen Economics, *The Legal Profession; Competition and Liberalisation*, 2006, p. 22). Although the empirical data shows that price is not the most important factor, it does not warrant the conclusion that price considerations do not play a role at all.

[186] In each country one hundred lawyers participated in a telephone interview. Source: LexisNexis & International Bar Association, *LexisNexis-IBA Global Study*, 2003.

Table 5.8 Profitability of legal activities in Europe, 2009.

Member State	*Number of enterprises*	*Number of persons employed*	*Turnover or gross premiums written*	*Gross operating surplus (profits)*	*Gross operating surplus/turnover (gross operating rate) (%)*
Austria	4.846	23.030	2.054,1	917,1	44,6
Belgium	5.650	19.656	3.802,8	1.281,9	33,7
Bulgaria	1.167	2.492	106,2	48,2	45,4
Cyprus	552	2.935	159,2	48,9	30,7
Czech Republic	10.095	20.470	1.089,4	503,9	46,3
Denmark	:	:	:	:	:
Estonia	558	1.525	61,6	15,9	25,8
Finland	1.605	4.870	604,7	161,5	26,7
France	48.975	:	17.192,5	5.738,3	33,4
Germany	48.326	245.317	17.674,1	8.532,9	48,3
Greece	:	:	:	:	:
Hungary	7.628	12.846	505,9	126,2	24,9
Ireland	4.242	19.230	2.192,4	1.057,6	48,2
Italy	147.713	217.169	15.198,5	8.529,1	56,1
Latvia	2.148	3.224	127,7	39,9	31,2
Lithuania	2.785	5.886	179,5	75,5	42,1
Luxembourg	1.377	3.229	691,6	403,3	58,3
Netherlands	8.548	50.728	6.216,0	1.331,5	21,4
Poland	20.988	48.969	1.441,0	579,6	40,2
Portugal	26.176	33.389	1.091,2	486,1	44,5
Romania	331	459	6,4	2,7	42,6
Slovakia	241	664	35,7	11,5	32,2
Slovenia	1.502	3.282	187,3	60,2	32,1
Spain	94.749	178.132	10.456,3	4.594,9	43,9
Sweden	5.284	12.545	1.841,3	444,0	24,1
United Kingdom	28.940	345.264	28.266,8	10.424,5	36,9
European Union	492.341	1.293.040	112.835,12	46.074,47	40,83

Source: Eurostat SBS database.

The legal sectors of the United Kingdom, Germany, France and Italy accumulate the highest profits in absolute terms. Looking at gross operating ratio (profits relative to total turnover) the ratios are lowest in Estonia, Finland, Hungary, the Netherlands, and Sweden. Ratios are highest in Italy and Luxembourg.

In countries in which the web survey showed that few lawyers perceived an increase in competition pressure (Finland, Sweden, the Netherlands, UK) the profitability rate is quite low. In Luxembourg, on the other hand, a country in which many lawyers have perceived an impact of mobility on competition pressure, the profitability rate is highest of all European countries.

It seems, therefore, that the potential impact of lawyer mobility on competition pressure is higher in countries with high profitability rates. Naturally, this can be due to other, underlying, factors as well, such as the applicable regulation.

Productivity

The table below shows indicators of productivity for the legal sector in Europe.

Table 5.9 Productivity, legal activities, European Union, 2009.

Member State	*Apparent labour productivity (Gross value added per person employed)*	*Average personnel costs (personnel costs per employee) (thousand euro)*	*Wage adjusted labour productivity (Apparent labour productivity by average personnel costs) (%)*
Belgium	97,9	42,5	230,3
Bulgaria	25,4	9,9	256,9
Czech Republic	32,1	14,7	218,1
Denmark	:	:	:
Germany	53,1	26,0	204,7
Estonia	24,4	16,1	151,9
Ireland	88,8	46,1	192,7
Greece	:	:	:
Spain	40,9	32,4	126,1
France	:	64,9	:
Italy	45,7	26,6	172,0
Cyprus	42,7	34,1	125,3
Latvia	15,6	5,2	296,8
Lithuania	18,9	10,6	178,0
Luxembourg	167,8	71,7	234,1
Hungary	18,9	15,7	119,9
Netherlands	72,8	53,5	136,1
Austria	61,2	29,9	205,1
Poland	16,1	7,7	208,3
Portugal	19,5	5,8	336,4
Romania	7,3	1,9	396,2
Slovenia	32,0	22,5	142,7
Slovakia	27,9	12,7	220,2
Finland	79,9	56,8	140,7
Sweden	90,4	64,5	140,0
United Kingdom	58,8	33,7	174,6
European Union	56	34,7	161,22

Source: Eurostat SBS Database.

The level of apparent labour productivity[187] and the average personnel costs differs highly between the Member States. Both tend to be higher in the fifteen 'old' EU Member States. Apparent labour productivity and average personnel costs are highest in Luxembourg, followed by Belgium. This is probably explained by the presence of the European Court of Justice and the European Commission, respectively.

When labour productivity is adjusted by the average personnel costs (as in the last column in the table), the highest productivities are reported in Romania, Portugal, and Latvia. These are the countries with the lowest personnel costs.

On the basis of the data on productivity, no clear connection can be seen between productivity and the impacts of mobility perceived by lawyers themselves.

Business Dynamism

As with productivity, it is difficult to establish statistically a reliable connection between movement of lawyers and the number of new enterprises. Also, access to the legal sector is highly regulated in some Member States, possibly influencing the number of start-ups in the legal sector. The table below shows the most recent available data (2008) for the number of start-ups and endings of firms in the legal sector.

[187] Apparent labour productivity is defined as value added at factor costs divided by the number of persons employed. This ratio is generally presented in thousands of euros per person employed. Value added at factor cost is the gross income from operating activities after adjusting for operating subsidies and indirect taxes. (source: Eurostat Glossary).

Table 5.10 Births and deaths of enterprises, legal activities, 2008

Member State	*Population of active enterprises in t*	*births*	*Number of deaths of enterprises in t*	*Birth rate: number of enterprise births in the reference period (t) divided by the number of enterprises active in t*	*Death rate: number of enterprise deaths in the reference period (t) divided by the number of enterprises active in t*
Belgium	6.520	366	192	5,61	2,94
Bulgaria	890	213	75	23,93	8,43
Czech Republic	9.155	183	311	2	3,4
Germany	63.822	4.858	:	7,61	:
Estonia	773	88	77	11,38	9,96
Ireland	4.160	175	116	4,21	2,79
Spain	112.012	2.120	4.527	1,89	4,04
France	58.107	3.987	1.956	6,86	3,37
Italy	146.272	9.093	6.684	6,22	4,57
Cyprus	1.053	33	27	3,13	2,56
Latvia	1.932	303	239	15,68	12,37
Lithuania	2.836	269	278	9,49	9,8
Luxembourg	276	8	5	2,9	1,81
Hungary	7.729	366	312	4,74	4,04
Netherlands	10.018	1.271	615	12,69	6,14
Austria	4.999	240	161	4,8	3,22
Poland	24.043	2.267	786	9,43	3,27
Portugal	25.862	1.568	2.653	6,06	10,26
Romania	523	13	91	2,49	17,4
Slovenia	1.441	113	48	7,84	3,33
Slovakia	3.271	384	249	11,74	7,61
Finland	2.051	133	89	6,48	4,34
Sweden	5.476	261	251	4,77	4,58
United Kingdom	31.235	2.185	1.555	7	4,98

Source: Eurostat SBS Database.

The 'birth rate' expresses the proportion of new enterprises to the total number of enterprises. In 2008, this number was highest in new Member States, especially in Bulgaria, Latvia, Estonia and Slovakia, but also in the Netherlands. Whereas in the newest Member states the birth rate is higher than the death rate, remarkably in Romania the death rate is much higher.

No clear connection can be seen between business dynamism (for the year 2008) and the economic impacts perceived by lawyers in the survey.

5.3.5 Concluding Remarks

This section approached the free movement of lawyers from an economic perspective.

Lawyers established in another Member State and lawyers that have been admitted to the profession in another country together are roughly estimated to account for a turnover of around 640 million Euros annually.

For temporary, cross-border legal services no statistics covering all Member States of European Union are available. Based on a survey carried out in 2008, twenty-two countries together accounted for a turnover of 4.2 billion Euros for services to clients residing in another EU Member State. This clearly shows that the provision of temporary cross-border services accounts for a turnover that is much higher than that of lawyers established abroad.

The survey shows that the most commonly perceived effect of lawyer mobility is an increase in the range of legal services that is offered. In addition, relatively many lawyers perceive an increase in competition pressure because of cross-border mobility of lawyers. This seems to be especially so in countries in which the average profitability rate is relatively high (e.g. Luxembourg). Lawyers are somewhat divided about whether lawyer mobility leads to increased accessibility of lawyers' services and to an increased quality of legal services.

Of course, what 'quality' exactly is can be debated. It can be argued that the range of services offered is an aspect of quality and/or is a form of innovation. After all, when the range of services offered is broader, this also means that a broader expertise is available. Mobility obviously also has as the effect of increasing variety of available language expertise. So, it can be argued that since the range of services offered has allegedly increased, this means that the level of quality has also increased, so that lawyer mobility has contributed to raising the quality of legal services offered.

Lawyer mobility does not seem to lead to lower fees for legal services. There is a number of possible explanations why this is so. First, lawyers' fees may not always be transparent and comparable. Second, lawyers' fees are subject to (some) regulation in a number of Member States. For example, there are differences between countries relating to whether success fees are permitted. Third, for certain types of legal services the price may not play the most important role, as some services can involve matters that have high importance for the client. The establishment of major international law firms has led to higher fees in some Member States.

5.4 Other Impacts

Besides meeting the needs of clients and economic impacts of lawyer mobility, the Legal Framework for lawyers and lawyer mobility also impacts other matters. Two issues are discussed here: the effect of the legal framework on education requirements, and the impact on other professionals than lawyers.

Indirect effect of the Lawyers' Directives on education requirements

The Lawyers' Directives and the Professional Qualifications Directive can put pressure on entry requirements in countries in Europe as prospective lawyers are able to circumvent the requirements of one country by going to another country, getting a lawyer qualification there, and then establishing or applying for recognition in their home country.[188]

The clearest illustration of this is that many Italians that have gone to Spain because the entry requirements in Italy were notably higher than in Spain. In Spain the Italian law graduates ask for recognition of their Italian law degree at a Spanish university and after that they complete a number of exams to get a Spanish law degree that makes it possible to apply for membership with a Spanish Bar. From that moment, they officially are Spanish lawyers. After that, they return to Italy and establish there or sit an aptitude test. Alternatively, they can automatically integrate into the Italian profession after three years of establishment, without ever having to complete the official Italian Bar examinations or apprenticeships. Spain has now raised entry requirements for the profession. Thus, the practice has probably come to an end.[189]

Other Legal Professionals

The Member States decide themselves who is entitled to carry the titles mentioned in the Lawyers' Directives and, moreover, the legal monopoly attached to those titles varies from Member State to Member State. What can be observed is that there are Member States who have a lesser degree of regulation and a smaller (or even an absent) legal monopoly.[190] It can also be observed that in such countries other professions are active in those areas that might be covered by the legal professions mentioned in the Directives in other Member States. These legal professionals who are not members of the professions mentioned in the Directive cannot benefit from the Directives. They are reverted to the less extensive and more demanding regime of the Professional Qualifications Directive if they seek to provide services or establish themselves in Member States where their professional activity is covered by a legal monopoly for a profession mentioned in the Lawyer's Directives. Their only choice is then to become a member of that profession in the receiving Member State, in practice, by means of an aptitude test.

That this situation is a real problem becomes clear from one of the case studies investigating the problems legal professionals from Finland encounter when they seek to establish themselves abroad. From this case study, it can indeed be deduced that legal professionals from Finland, who are not fully qualified members of the profession of lawyer there, cannot benefit from the provisions of the Directives. Legal professionals that seek to establish themselves in another Member State will either have to qualify as a lawyer in Finland (where the Finnish system is not at all tailored for every legal professional also being a full

[188] Cf. Julien Lonbay, "Assessing the European Market for Legal Services: Developments in the Free Movement of Lawyers in the European Union", in: *Fordham International Law Journal*, Volume 33, Issue 6, 2011, p. 1637.

[189] Julien Lonbay notes that Austrians have also used the route via Spain to evade the strict requirements in Austria (Julien Lonbay, "The Education, Licensing, and Training of Lawyers in the European Union, Part II: The Emerging Common Qualifications Regime and Its Implications for Admissions in Europe', in: *The Bar Examiner*, November 2010, p. 32).

[190] See section 2.1.2; S. Claessens, *Free Movement of Lawyers in the European Union*, 2008, p 123.

member of the profession) or seek to qualify for the profession of lawyer in the envisaged home Member State.

The relatively disadvantaged position of those legal professionals who coexist with lawyers in those jurisdictions that have a low or no regulation of the second level becomes even more clear when it is realized that discrepancies between legal activity between jurisdictions are essentially erased in the situation of fully qualified lawyers, since both the Lawyers' Services Directive and the Lawyers' Establishment Directive state that (albeit with small exceptions) lawyers providing services or established in other Member States may exercise the same professional activity as domestic lawyers.

The proposed amendment to the Professional Qualifications Directive seeks to introduce partial access to the profession. If this was to materialize, however, that would lead to an unprecedented fragmentation of legal activities into different professions and parts of professions. This would place an enormous burden on the competent authorities of the home Member State. Therefore it can be expected that bars will press for an exception for the legal profession (which can already be observed in the CCBE reaction to the draft).

6 Recent Developments

Key outcomes

- Harmonization efforts such as the European order for payment procedure and the European small claims procedure can, potentially, help the free movement of lawyers by removing one of the most important difficulties, namely, the differences in legal systems
- At the national level, there have been a number of reforms amongst which developments in relation to business structures seem especially relevant to cross-border mobility of lawyers and law firms. New business structures have been permitted and in some countries regulation is no longer (only) aimed at individual lawyers but also at law firms.
- Technological developments can facilitate the provision of cross-border services and can lead to new ways of doing working. Notable developments are electronic filing of court documents, outsourcing and virtual law firms.

6.1 Introduction

In the period since the implementation of the Directives, there have been a number of developments both at the European and the Memver State level that potentially impact the functioning of the Lawyers' Directives. A number of these contextual developments are discussed in this chapter. The research objective central to this chapter consists in examining the interrelation between the Lawyers' Directives and initiatives in the area of judicial cooperation in civil and commercial matters, in particular the European small claims procedure and the European order for payment procedure. Additionally, it examines the impact of reforms undertaken in the Member States which are not directly related to the implementation of the Lawyers' Directives but may, nonetheless, be relevant for their functioning. Specifically, developments with regard to non-lawyer management and ownership of law firms, and multidisciplinary practices are discussed. Besides, an overview will be given of other regulatory developments on the national level. The chapter concludes with a discussion of some technological developments in the legal sector and their potential impact on mobility of lawyers within the EU.

6.2 Developments on the European Level

At the European Level, there have been a number of developments that may impact the system of free movement of lawyers, as discussed above. The efforts made by the European Union in establishing a European Order of Payment Procedure a European Small Claims Procedure and a directive on legal aid in cross border disputes are mentioned specifically. These developments will be reviewed with regard to the question how they interact with the system of free movement of lawyers.

6.2.1 European instruments with a potential impact on mobility

To what extent the Order for Payment Procedure, The Small Claims Procedure and the Council Directive on legal aid in cross border disputes have an impact on the system of free movement of lawyers has been investigated. None of the respondents in the country study and in the case studies have reported that the instruments mentioned have a severe impact on the cross-border activity of lawyers. From a systemic point of view, the instruments mentioned will have little impact on the system of free movement of lawyers as such, although, they may have an impact on the quantitative amount of services provided by lawyers. No such data could, however, be identified on the basis of the country studies and case studies. Since the system of free movement of lawyers laid down in the Lawyers' Services Directive and the Lawyers' Establishment Directive mainly deals with procedural issues laying down conditions under which the lawyers concerned may exercise their professional activities in another Member State, one could say that the system is content neutral. An observation to the extent that the measures concerned in this paragraph actually deal with the content of the law could also be made. In that sense, the two different systems operate on different plains and will, therefore, have no direct impact on the system of the free movement of lawyers.

With regard to the extent of the burdens that the system imposes on lawyers who exercise their right to free movement, it may be assumed that the instruments concerned will have an impact of the perceived difficulties in making use of the system. Above, it was indicated that, since the system of free movement of lawyers is neutral with respect to the content of the knowledge of the lawyer, the decision whether a lawyer has enough knowledge to take up a certain case while exercising his free movement right is a decision that he must make himself. This is, essentially, no different than in a setting within a single Member State (would a lawyer specialized in corporate law take on a criminal defence case is essentially the same question as can a lawyer specialized in German contract law take on a case on Portuguese contract law). Misjudging such a decision can lead to professional liability and may even lead to disciplinary proceedings and/or sanctions. The effect of the measures mentioned in this paragraph (but this is essentially true for all secondary EU legislation) is that substantive differences between the legal systems of the Member States are reduced (in case of directives) or taken away (in the case of regulations). For example, the order of payment regulation makes sure that the procedure for cross border orders of payment is the same between, for example, France and Spain and between Latvia and Finland. That means that a Latvian lawyer specialized in assisting clients in this procedure can actually take on cases throughout Europe since the procedure is harmonized.

In the French country study other EU initiatives were mentioned that could have similar effect:

- It was reported that the Rome I and II Regulations (Regulations 593/2008 and 864/2007) should simplify the context for certain types of cross-border litigation.
- It was reported that the Rome III Regulation (Regulation 1259/2010) was likely to increase certain types of cross-border litigation.
- By way of incidental comment, it was noted that the Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest (COM/2011/326 final) was likely to increase the workload of lawyers.

- It was also pointed out that an EU regime for collective redress (see Commission Consultation, "Towards a Coherent European Approach to Collective Redress", SEC(2001)173) could also have a significant impact on the provision of cross-border legal services in the EU

In our view, the fact that the measures highlighted in this report (the order of payment procedure; the small claims procedure and the directive for legal aid in cross border dispute) and the measures indicated in the French country study have to do with cross border litigation does not distinguish them from harmonization measures. Each and every harmonization measure will have the same effect, namely, that the different legal systems of the Member States move towards each other with regard to content. This effect considerably helps the free movement of lawyers since it reduces (and, eventually, could remove) the inherent barriers identified above, i.e. the fact that the legal systems of the Member States differ considerably from the perspective of content.

6.3 Regulatory Reforms in Member States

6.3.1 Non-lawyer Ownership and Management

Firms and the Lawyers' Directives

Both Lawyers' Directives primarily regulate individual lawyers, as can be seen from the lists of titles included in the beginning of both directives and in the reference in the Lawyers' Establishment Directive to 'nationals'. However, since the adoption of the Lawyers' Establishment Directive in 1998 and, all the more, since the Lawyers' Services Directive in 1977 the number of lawyers working in a firm has increased substantially. Many countries today host large law firms, of which many are offices of international firms which are the result of a merger or a branch-out.

The Lawyers' Establishment Directive contains an article on joint practice (article 11). It permits lawyers to practise in a branch or agency of their grouping in a host Member State, insofar as the fundamental rules governing that grouping are not incompatible with the applicable fundamental rules in the host State. If they are, the host Member State rules shall prevail insofar as compliance therewith is justified by the public interest in protecting clients and third parties.

The article gives the host Member States the possibility of prohibiting a lawyer from practising in his capacity of member of a grouping, where such grouping is partly made up of members who are not lawyers, in its territory. The grouping is deemed to include persons who are not members of the profession if the capital of the grouping is held entirely or partly, or the name under which it practises is used, or the decision-making power in that grouping is exercised, de facto or de jure, by persons who are not a lawyer in one of the Member States of the European Union.[191]

[191] Article 11 of the Lawyers' Establishment Directive

The rather difficult drafting of the article 11 (on joint practice) of the Lawyers' Establishment Directive has led to considerable problems in the Member States with regard to its implementation. Member States either have not implemented the requirement of Article 11(1) to objectively justify application of the host Member State's professional rules with regard to branch offices and agencies or they explicitly state that their own professional rules shall apply.[192] A possible explanation for this could lie in the fact that the text of the Article (and most notably the relationship between paragraph 1 and paragraph 5 of that article) is extremely complicated. In addition, it is also unclear why the system under paragraph 1 deviates from the systems in Articles 6 and 8, where the Directive provides that the rules of the host Member State shall apply to the lawyer who is established under his home country professional title.

Furthermore, it is unclear whether the right of the host state to forbid a lawyer to act in the name of the Grouping (or to forbid the opening of the establishment altogether), as stated in art. 11(5) of the Lawyers' Establishment Directive, is *per se* a right or whether the exercise of such right must meet the so-called Gebhard-test, meaning that there should be a reason of compelling public interest, no discrimination, necessity, suitability and, in particular, proportionality, i.e. the prohibition is not justified if a less restrictive measure is available.

Member State regulation

Just like the Directives, most national regulations also primarily address not the firm as such but rather the individual lawyers who are members of the firm. The rules governing practicing in association and permissible firm structures for lawyers differ considerably across countries. This section focuses on difficulties that lawyers and law firms may face because of differences in regulation of business structures across the Member States of the European Union.

Because many Member States apply their own professional rules to incoming lawyers' establishments and offices, it is interesting to see which differences exist between Member States. Table 6.1 below provides an overview of MS regulation on business structures. As regulation on business structures can be highly complicated, it has been necessary to simplify somewhat to be able to provide an overview of the main differences without going into too much in detail. The table shows whether different forms of joint practice and business structures are permitted, namely partnerships, companies, multidisciplinary partnerships and non-lawyer/external ownership.

[192] See S. Claessens, *Free Movement of Lawyers in the European Union*, 2008, p. 238.

Table 6.1 Rules on ABS/MDP per country

	Partnership	Company	MDPs	Non-lawyer / external ownership of law firms
Austria	Yes	Yes (Limited liability company)	No	No
Belgium	Yes	Yes (Limited liability company)	Only with certain specific professions	No
Bulgaria	Yes	No	No	No
Cyprus	Yes	Yes (Limited liability company)	No	No
Czech Republic	Yes	Yes	No (except for unlimited liability companies that may include the practice of an insolvency administrator)	No
Denmark	Yes	Yes	No	Non lawyer partners active in the firm are permitted to own up to 10%[193]
Estonia	Yes	No	No	No
Finland	Yes	After requesting permission of the Bar	No	No
France	Yes	Yes (but members keep liability)	Yes, with certain professions	No (except for MDPs)
Germany	Yes	Yes	With notaries, auditors and tax advisors	No
Greece	Yes	Yes[194]	No	No
Hungary	Yes	Yes	No	No
Ireland, solicitors[195]	Yes	Yes	No	No
Italy	Yes	Yes	No	Up to 33%
Latvia	Yes	No (employment is not permitted[196])	No	No
Lithuania	Yes	No (no limited liability companies)	No	No
Luxembourg	Yes (practice jointly)	No (but employment is permitted)	No	No
Malta	Yes	Yes	No	No
Netherlands	Yes	Yes	With some other legal professions	No non-lawyer ownership (minority non-lawyer management possible)

[193] Non-lawyer owners must pass a test before being admitted as owners.

[194] http://greeklawdigest.gr/topics/legal-profession-in-greece/item/125-the-legal-profession-in-greece, accessed 26/9/2012 (where the president of the Athens Bar Association writes that lawyers can practice as a salaried associate).

[195] Barristers are only permitted to be self-employed (http://www.lawlibrary.ie/viewdoc.asp?fn=/documents/aboutus/FrequentlyAskedQuestions.htm&m=2#Difference_between_a_barrister_and_solicitor, accessed 26/9/2012).

[196] Dr. Edward Lestrade, "The Regulation of Lawyers in Latvia OIAC", in: *European Newsletter*, 2007.

	Partnership	Company	MDPs	Non-lawyer / external ownership of law firms
Poland	Yes	For legal advisors, but not for advocates	With tax advisors and patent attorneys	No
Portugal	Yes	Yes	No	No
Romania	Yes	Yes	No[197]	No
Slovakia	Yes	Yes	No	No
Slovenia	Yes	Yes	No	No
Spain	Yes	Yes	Yes (with a common objective)	Up to 25% (ownership and management)
Sweden	Yes	Yes	No	No
UK - England and Wales	Yes	Yes	Solicitors: Yes. Barristers: No.	Solicitors: up to 100%; Barristers: up to 25% non-lawyer management, no external ownership
UK – Scotland, solicitors[198]	Yes	Yes	Yes	Up to 49% (ownership)
UK – Northern Ireland	Yes	Yes	No	No

Sources: national regulation (country studies); Bar Association websites; S. Claessens, Free Movement of Lawyers in the European Union, 2008; Nascimbene, The Legal Profession in the European Union, 2009; Lex Mundi, In-House Counsel and the Attorney Client Privilege: A Global Practice Guide prepared by the Lex Mundi Litigation, Arbitration and Dispute Resolution Practice Group, 2009.

All Member States permit lawyers to work in an ordinary partnership. Most countries also permit lawyers to organize themselves in the form of a company. However, in some countries, such as Latvia, Lithuania and Luxembourg lawyers are not allowed to use this form. In the UK and Ireland this form is prohibited for barristers/advocates.

Almost all countries have implemented rules on joint practice with non-lawyers, such as the prohibition to work in firms together with non-lawyer professionals in the form of a multidisciplinary partnership (MDP). Some countries (France, Germany, the Netherlands, Poland, Spain, and the UK) have permitted multidisciplinary partnership, usually with a limited number of other professions.

Almost all countries have prohibited lawyers from working in firms in which some or the majority of owners and/or managers are non-lawyers. In interviews, Bar Associations have also generally expressed the opinion that the directives should not be changed with regard to this issue.

Some countries, however, have allowed some forms of non-lawyer ownership and/or external ownership, and MDPs. External ownership (by people who are not active in the firm) has been made possible in England and Wales (up to 100% for solicitor firms), Scotland (up to 49%), Italy (33%), and Spain (49%). Denmark allows non-lawyers who are active in a firm to own up to 10%. In the Netherlands, ownership by non-lawyers is not possible, but minority non-lawyer management is permitted.

[197] Source: Law for the organization and practice of the lawyer's profession
[198] Scottish advocates are in principle self-employed.

Not included in the table is the issue of whether it is possible to limit the liability of lawyers. In several countries, it is not (always) possible to limit the liability, namely Estonia, Hungary, Italy, Latvia, Poland (Polish Bar Council and National Council of Legal Advisers), and Slovakia. In many countries, such as Belgium, Czech Republic, Denmark, Finland, Germany, Greece, Ireland, Liechtenstein, Luxembourg, Norway, Portugal, Sweden, The Netherlands and the United Kingdom, limiting the liability is possible.[199] A typical reason for not permitting the limitation of liability is that full liability would serve as a protection for consumers of lawyers' services, by ensuring the personal liability of the professionals, their solvency, independence and qualifications and/or the quality of the service provided.[200]

Case study: England and Wales

As can be seen from what has been described above, currently, England and Wales have gone furthest in allowing MDPs and 'alternative' business structures involving non-lawyers and external (outside the firm) ownership. As England, in particular London, takes up a very important position in the European market for international legal services, a case study was carried out focusing on England and Wales. Both have adopted firm-based regulation. As a consequence, each partnership and each firm needs to be recognized and authorized by the Solicitors' Regulation Authority (SRA). The regulatory framework applies both to the firm and to the individuals working in it. The SRA requires firms to give details about the managers of the firm and all solicitors and foreign lawyers working in the firm. The Legal Services Act has introduced alternative business structures (ABS) and, with them, the possibility of outside ownership and non-lawyer involvement. Reasons for this are that non-lawyers may run the law firm more efficiently because they might have better access to capital, may be more competent for managing or ownership tasks, may be better at reducing costs or at developing new business ideas.[201]

In France non-lawyer ownership and management are not permitted. At the General Meeting of the National Council of the Bars of France, held on 15-16 June 2012, a motion on English alternative business structures was adopted unanimously. The motion considers that alternative business structures, with involvement of non-lawyers, are likely to compromise the guarantees provided by the ethical rules of the profession of lawyer and the effective monitoring of compliance. ABSs are not recognized as law firms, especially when the majority of the capital is held by non-lawyers. Because they are not law firms, the French Bar denies ABSs the possibility of establishing and registering with the bars of France. The Bar opposes ABSs, taking into account the principles of the legal profession that guarantee the independence and the competence of lawyers.

[199] Source: Summary of answers to the CCBE Professional Indemnity Insurance questionnaire 2009

[200] European Commission, Commission Staff Working Paper, On the process of mutual evaluation of the Services Directive, accompanying document to the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Towards a better functioning Single Market for services – building on the results of the mutual evaluation process of the Services Directive, SEC(2011) 102 final.

[201] See also Copenhagen Economics, *The Legal Profession: Competition and Liberalisation*, Copenhagen, January 2006.

Non-lawyer ownership is also not allowed in Germany. The German Federal Bar has recommended to the regional bars to forbid UK ABS firms from establishing themselves in Germany, or from providing services temporarily. German lawyers are also not permitted to work in an ABS inside or outside of Germany. The Bar believes non-lawyer ownership to be a serious threat to the independent professional judgement of the lawyer employed by such a firm.

Reasons for regulation of business structures

The CCBE has taken position against non-lawyer owned firms as they are considered a threat to core values of the profession such as independence, avoidance of conflicts of interest and confidentiality, especially when there are no safeguards in place.[202] The CCBE reasons that non-lawyers are not per se bound by the same duties as lawyers, which could result in conflicts of interest and pressures from non-lawyers to act contrarily to the core principles, especially when the non-lawyer has a relevant degree of control over the lawyer and/or the organization. For example, outside owners (not active in the firm themselves) may have a specific economic interest in certain cases and could try to influence lawyers handling these cases, while the lawyers should act in the interest in the client.[203]

The CCBE further reasons that safeguards, such as those imposed in England and Wales, may not be enough to prevent the problems described above from happening and questions whether any other measures other than a ban of non-lawyer ownership would be enough.

Lastly, in interviews it has been mentioned additionally that allowing firms that potentially involve non-lawyers, for example English ABSs, in another Member State would constitute a considerable burden for bars in such state, especially in those countries which have a decentralised bar structure. Each bar would have to be able to check for the safeguards for ABSs that have been implemented in England and Wales. Many small bars, it has been said, are not up to this task, as in many continental countries there has been a tradition of lean regulation and a small bar organisation, and of lawyers acting in relative freedom (regulation by principles as opposed to the more rules – oriented approach in common law countries). These comments are, however, not convincing. It is only for the SRA in England as country of origin to supervise whether the structural requirements are met which are imposed upon the ABS under English law as home country law. The bars in other Member States where the ABS is active temporarily or in established form, are faced with the supervision of such activities only from the point of view of host country regulation, and such supervision is not different from the supervision of host country law firms. As far as the special aspect of registration of the local establishment office with the host country bar is concerned, the difficulties for the local bars are no greater than in those cases where the foreign law firm has the form of a normal partnership or LLP.

The CCBE position (and the opinion of German and French bars about ABSs) focuses primarily on the involvement of non-lawyers. Article 11(5) of the Lawyers' Establishment Directive provides the possibility of not allowing a lawyer to practise in the name of a group-

[202] The CCBE has recently expressed this view in its letter of 24 January 2012 to the Italian Minister of Justice about Italian proposals to introduce non-lawyer ownership.
[203] CCBE, *CCBE Position on Non-Lawyer Owned Firms*, 2005.

ing that involves non-lawyers. However, it must be noted that the Lawyers' Services Directive does not contain such a provision. Therefore, it can be questioned whether it is lawful to refuse lawyers from groupings involving non-lawyers to provide services temporarily.

Furthermore, it must be noted that an outright prohibition of the establishment of a specific legal form, such as the ABS structure, goes further than what is provided for in article 11(5). The article only permits Member States to refuse a lawyer from a grouping insofar as it prohibits its own lawyers to act in such a grouping.

Generally speaking, a distinction needs to be made between the abstract fact that the law firm in question has the form of an ABS, and, on the other hand, the issue whether the ABS in question has made use of these possibilities under English regulation in a way that is consistent or inconsistent with the regulation in the host country. For instance, Germany permits the association of German lawyers with EU lawyers, with auditors/accountants and with tax advisors (MDPs). If an English solicitor, an English auditor/accountant and an English tax advisor want to establish a joint practice they can do so under English law only in the form of an ABS. Such ABS then consists, as far as the joint exercise of the profession, the management and the equity holding is concerned, only of professionals that qualify for an association under German regulation, and, therefore, there should be no problem for such ABS to engage in temporary or established form in activities in Germany. It appears evident that an ABS law firm, the composition of which is in line with German regulation, cannot, on the basis of the Lawyers' Establishment Directive, be prevented from entering the German market only on the basis of its ABS status. The aforesaid remarks are applicable with respect to all other countries that permit the association of local lawyers with at least certain other professionals.

If a given ABS has as professionals, managers or equity holders individuals or entities that the host country bar thinks are not consistent with its regulation, such bar can use the possibilities provided under article 11(5) of the Establishment Directive. The determination of whether the actual composition of the foreign law firm, as far as joint exercise of the profession, management and equity holding are concerned, is in line with host country regulation does not depend on the legal nature of the foreign law firm. It is the same - regardless of whether it is an ABS, as a normal partnership or an LLP under English law; a foreign law firm from France, Belgium etc. in whichever legal form; or a host country law firm in whichever legal form.

Obstacles for the Mobility of Lawyers

The differences in regulation on business structures may constitute a number of obstacles for the mobility of lawyers. Below four obstacles are discussed.

Some legal forms are not permitted in other Member States

The most obvious difficulty would be that ABS firms cannot establish in countries where they are not allowed.[204] One of the interviewees of an English international law firm re-

[204] One (theoretical) exception is that in those countries which do not have a legal monopoly (e.g. Sweden) ABS law firms from e.g. England could establish an office and offer their services without making use of their title (and so without needing to register with the local bar and to conform to their deontological rules).

marked that this has been one of the main reasons why an ABS form was not considered by the firm.

The prohibitions of certain business structures may also result in firms that have non-lawyer members refraining from establishing a branch office in the prohibiting host State, which, nevertheless, remains economically attractive. In such a scenario the firms could raise a system of complex and non-transparent parallel or parent/subsidiary structures in other Member States, to comply with local law. This has already happened with MDP firms and LLP firms that have established in countries in which these forms are not permitted. Interviews with such firms show that having these different structures may have tax implications for law firms, e.g. because different tax regimes may apply to the offices in the home and the host state. It can also be less attractive for international clients; it has been said that some clients prefer to work with one firm with a clear structure and not with unclearly related subsidiaries.

Some interviewees acknowledged, though, that rules on law firm structures are not the only relevant rules when considering which business structure to choose. One LLP law firm, for example, established offices in other countries in another form than the LLP, although the LLP form was permitted in some of these countries. The choice was rather based on tax reasons.

Unclear whether law firms can make use of the Lawyers' Directives
A second (legal) difficulty is that in some Member States new regulation addresses not only the individual lawyer, but, partly, the firm as such. This can cause friction with the individual-lawyer-approach of regulation prevailing elsewhere and of the Lawyers' Directives.

In England and Wales, for example, the LLP is, as such, recognized as a lawyer with a local title. There is a similar situation in Germany, where a limited liability company (Rechtsanwaltsgesellschaft GmbH) is registered with the Bar as a recognized lawyer. The question arises whether these kinds of 'lawyers' are covered by the Lawyers' Directives and can benefit from those directives, e.g. to establish an office in another country. The Establishment Directive states that a lawyer is "any person who is a national of a Member State and who is authorised to pursue his professional activities under one of the following professional titles", and then mentions all titles used in the Union. Probably, the directive would not apply to firms registered as lawyers, as they cannot be regarded as nationals. Yet, under the Treaty, a company can invoke the treaty freedom of establishment like an individual. There is not yet an answer to the question whether companies can also make use of the freedoms granted to individuals by directives that are meant to further implement the treaty. If the companies are not able to make use of the treaty that means that host Member States can forbid the establishment of English LLP's or German Rechtsanwalts GmbH's (on the basis of Article 11 of the Lawyers' Establishment Directive), when these business structures are not allowed in the host Member State. This is a serious issue, as the LLP is used regularly by law firms as it is attractive from a regulatory and tax perspective: it offers limited liability, but, at the same time, it is transparent for tax purpose. The LLP cannot be used, for example, in Italy when a firm is conducting litigation. In that situation, the Italian regulator requires unlimited liability.

Most countries do not have firm-based regulation. An important reason is that, traditionally, lawyers used to work alone or in small partnerships. Nowadays, however, many and large law firms exist. A reason to continue not to use firm-based regulation is that it could undermine the idea of the lawyer as an independent professional. On the other hand, a reason to introduce firm-based regulation is that regulation aimed only at the individual would leave management out of range, whereas, in practice, an individual lawyer may commit a violation when following firm or management decisions.[205]

Administrative burden
Article 11(4) of the Lawyers' Establishment Directive regulates that a lawyer must furnish 'any relevant information' on his grouping to the competent authority (the Bar) in the host Member State. Around one third (30%) of the lawyers that have established in another EU Member State and participated in the web survey report that they were required to provide detailed information about the law firm they were going to work for in the country in which they were establishing. For another third (35%) this was not required and a third (36%) did not have to report because they were self-employed.

Establishment of a law firm (as opposed to the establishment of an individual lawyer) can be quite burdensome. For example, law firms from continental countries such as Germany have reported difficulties when establishing an office in London or after merging with an English law firm. In Germany, in general, the regulation of lawyers is traditionally rather lean; common law countries have a more rule-oriented culture of regulation.[206] One interviewee reports how a German law firm had to register all its lawyers (also those only working in Germany) with the Law Society following a merger with an English firm.

6.3.2 Multidisciplinary Practice

Introduction
This section addresses regulation of multi-disciplinary partnerships (MDPs)[207] involving lawyers and other professionals, such as accountants, notaries and tax advisers. In some countries lawyers are not allowed to form MDPs with members of these professions, while in others the formation of MDPs is (to some extent) allowed.[208] These differences in regulation between EU Member States may create barriers to free movement, as was also suggested by some of our interviewees representing law firms or academia. For example, a law firm from the Netherlands that also employs notaries and tax advisors has encountered serious administrative problems when opening a branch office in Luxembourg. Lawyer-only firms may enjoy a competitive advantage over MDPs in this respect.

[205] See H.J. Hellwig, "Possible implications of the Clementi report for other Jurisdictions", paper submitted to the Bar Issues Commision of the International Bar Association, 2005, p. 10.
[206] In England and Wales the SRA has recently been moving away from this approach.
[207] According to Mullerat, MDPs are characterised by the following: they provide more than one professional service; they include lawyers as partners, directors or share owners; and there is profit sharing between members of more than one profession (R. Mullerat, R, "The Multidisciplinary Practice of Law in Europe", in: *Journal of Legal Education*, 50 (4), 2000, p. 481).
[208] See with respect to Europe, e.g. I. Paterson, M. Fink, A. Ogus, et al, *Economic Impact of Regulation in the Field of Liberal Professions in Different Member States: Regulation of Professional Services*, study for the European Commission, Vienna: Institute for Advanced Studies, 2003, p. 49 and p. 56.

A ban on MDPs may follow either from public regulation or from self-regulation formulated by the Bar aimed at the protection of lawyers' independence and respect for ethical values.[209] As we reported earlier, Article 11 (5) of the Lawyers' Establishment Directive explicitly provides Member States with this discretion to prohibit MDPs (and alternative business structures).[210] Competition authorities, however, have generally been sceptical of a ban on MDPs, because it would restrict competition.[211] The European Court of Justice (ECJ) also showed some scepticism in its judgement in the *Wouters* case of 2002, which dealt with a prohibition of MDPs between members of the Bar and accountants in the Netherlands. The ECJ held that "*a prohibition of multi-disciplinary partnerships of members of the Bar and accountants* [is] *liable to limit production and technical development*", but it eventually decided that the regulation concerned did not infringe European competition rules "*since the ban on MDPs could have reasonably been considered necessary for the proper practice of the legal profession as organised in the Netherlands*".[212]

It is, therefore, particularly interesting to look at some of the arguments in favour and against MDPs, as presented in the literature, which will be done below. Particular attention in that respect will be paid to the law and economics literature, which in the recent past also provided input for the OECD and for the European Commission's Competition DG. After that, the arguments provided by profession members themselves will be presented, focusing on non-lawyers, i.e. accountants, notaries and tax advisers.[213] For this case study some interviews were held with representatives from Dutch organisations of these professions because the Netherlands is a country where the degree of regulation of the legal profession is low, hence, potential barriers may arise if profession members want to establish in more regulated countries. The Dutch Bar Association NOvA allows lawyers to practise in association with tax advisers, notaries and patent lawyers. [214] Structural co-operation with accountants, the issue which was central to the Wouters case, discussed above, is however still not allowed.[215] The discussion ends with some concluding remarks.

---

[209] European Commission, *Invitation to Comment. Regulation in Liberal Professions and its Effects: Summary of Responses*, Brussels: Competition DG, 2003, p. 12-13.

[210] Art 11(5) provides inter alia that "[…] *a host Member State, insofar as it prohibits lawyers practising under its own relevant professional title from practising the profession of lawyer within a grouping in which some persons are not members of the profession, may refuse to allow a lawyer registered under his home-country professional title to practice in its territory in his capacity as a member of his grouping*".

[211] Examples are the OFT in the UK, the Canadian Competition Bureau and the Irish Competition Authority. See OFT, *Competition in Professions, report by the Director General of Fair Trading, Office of Fair Trading*, March 2001; Competition Authority, *Competition in Professional Services: Solicitors & Barristers*, Dublin, Ireland, 2006; and Competition Bureau, *Self-Regulated Professions: Balancing Competition and Regulation*, Gatineau QC, 2007 Canada. See also NMa, *Inventarisatie Vrije Beroepen: Advocatuur*, Den Haag: Nederlandse Mededingingsautoriteit, Oktober 2006; Copenhagen Economics, *The Legal Profession: Competition and Liberalisation*, Copenhagen, January 2006.

[212] Case C-309/99, *J.C.J. Wouters, J.W. Savelbergh and Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten*, 19 February 2002, paras 86-90 and 110.

[213] Results of interviews with lawyers and Bar Associations have been included elsewhere in this report.

[214] There are also other countries in which MDPs are permitted. For example, in Germany MDPs involving lawyers are allowed with auditors, tax advisors and notaries.

[215] Samenwerkingsverordening 1993, notably Article 6.

An overview of the literature on MDP restrictions[216]

In a paper prepared for the OECD, Roger van den Bergh presented the arguments in favour of and against a ban on MDPs. They can be summarized as follows:[217]

Arguments for bans on MDPs:

- guarding professional secrecy
- preventing conflicts of interest
- prevention of mergers, which would result in (further) market concentration
- in relation to legal disciplinary partnerships (LDPs): barristers are more likely to give independent advice if they remain separate from solicitors

Arguments against bans on MDPs:

- consumers cannot profit from 'one-stop shopping'
- some economies of scope are not realized
- no internal risk spreading
- perhaps less innovation: more difficult access to capital which may be needed to invest in equipment and infrastructure to improve consumer services
- in relation to LDPs: consumers will face a double mark-up on the services they receive, if barristers and solicitors are prevented from working together

The arguments supporting a *restriction* on MDPs mainly come from the legal professions themselves. Firstly, it is argued that partnerships with other professionals threaten the lawyer-client relationship, if these professionals are not bound by a duty of professional secrecy (the "attorney-client privilege").[218] Secondly, co-operation between lawyers and (particularly) accountants may cause conflicts of interest that are detrimental for consumers. Mullerat (2000) notes that "*both the accountant and the lawyer must be independent. But the accountant must also be impartial* […] *while the lawyer in essence is partial (a defender of one party). The two of them working in association, becoming a single-adviser entity, could not carry out such conflicting functions*."[219]

In addition, it has been argued that MDPs may result in mergers, with the effect that the market becomes more concentrated.[220] Arguments related to independence and fear of

[216] A more elaborate overview is provided in a study on MDPs and ABSs for the International Bar Association by Philipsen and Olaerts, from which large parts of this section are drawn (N.J. Philipsen and M. Olaerts, *Restrictions on MDPs and Business Organization in the Legal Professions: A Literature Survey, A Report for the MDP committee of the International Bar Association*, ICGI/METRO, Maastricht University, December 2010).

[217] R. Van den Bergh, "Towards Better Regulation of the Legal Professions", in OECD, *Competitive Restrictions in Legal Professions*, DAF/COMP(2007)39, OECD: Directorate for Financial and Enterprise Affairs, Competition Committee, Paris, pp. 49-50. See also Philipsen and Olaerts, 2010 (see previous footnote).

[218] See also R. Mullerat, R, "The Multidisciplinary Practice of Law in Europe", in: *Journal of Legal Education*, 50 (4), 2000, p. 482.

[219] Idem, pp. 482-483. The author (p. 492) furthermore argues that MDPs represent "a new step in the deprofessionalization" and commercialization of the legal profession. See furthermore: European Commission, *Invitation to Comment. Regulation in Liberal Professions and its Effects: Summary of Responses*, Brussels: Competition DG, 2003, pp. 12-13.

[220] For an extensive analysis of LDPs, see: D. Clementi, *Review of the Regulatory Framework for Legal Services in England and Wales, final report,* 2004, pp. 108-128.

market concentration have been applied in particular to MDPs consisting of lawyers and accountants.[221]

Lawrence J. Fox, a United States lawyer and critic of MDPs, wrote an article attacking the big accounting firms before the Enron/Arthur Andersen case even started, referring to all of the arguments mentioned above. He argued that the Big 5 accounting firms (currently Big 4) by hiring thousands of lawyers, "*have mounted a frontal assault on the legal profession that threatens to destroy the foundation of professional independence, loyalty and confidentiality*".[222] Fox stated that these firms had violated the legal profession's rules on governing conflicts of interest and confidentiality, and rules prohibiting a limitation of lawyer liability and direct solicitation of clients. The shift in activities from (mainly) auditing to other services, such as consulting, data processing, and legal services, thus not only threatens the independence of the accounting firms in conducting the auditing function, but also the independence of legal professionals. Furthermore, referring to empirical evidence of noncompliance with auditor independence rules by employees of these firms who were investing in audit clients, Fox did not believe in the "*firewalls* […] *which separate those who work on an audit from those who want to invest in companies being audited*".[223] The latter remark of course refers to the concept more commonly known as 'Chinese walls'.
In addition to the arguments put forward by the legal professions, the economic literature also provides a justification for restrictions on MDPs and alternative business structures (ABSs), based on 'agency costs'. It follows from Carr and Mathewson (1990) and Matthews (1991) that sole practitioners and professional partnerships are the most likely (i.e. least costly, in terms of providing the right incentives) form of organisation, because effort in production and quality cannot be judged properly by non-professionals.[224]

The arguments against restrictions on MDPs follow predominantly from economic theory. The first argument presented by Van den Bergh is that MDPs would be able to offer 'full service' to consumers by bringing together the know-how of different professions.[225] The second argument is related to economies of scope. A ban on MDPs would prohibit the exchange of information between different professionals on specific problems in a multidisciplinary case. This is inefficient: allowing MDPs would save on transaction costs, because it would reduce the number of individual contacts between consumers and professionals.[226] Stephen and Love (2000) refer to 'economies of specialization'. They note that "[*i*]*n a multi-lawyer firm it is, perhaps, more likely that there will be a specialist within the firm who is the least-cost provider of the service function. The probability of this being so may increase the more lawyers there are in the firm. […] the fewer the number of partners and the more specialized the service function required the more likely that the firm will not be*

[221] In the *Wouters* case, the ECJ pointed out that the accountancy market is much more concentrated than the legal services market. See on this issue also Mullerat (2000); Philipsen (2009).
[222] L.J. Fox, "Accountants, the Hawks of the Professional World: They Foul Our Nest and Theirs Too, Plus Other Ruminations on the Issue of MDPs", in: *Minnesota Law Review*, 84, 2000, p. 1097.
[223] Idem, p. 1100-1101.
[224] N. Garoupa, "Providing a Framework for Reforming the Legal Profession: Insights from the European Experience", in: *European Business Organization Law Review*, Vol. 9, 2008, p. 483.
[225] Also Sir David Clementi argued that, despite recent accounting scandals at the time, there still appeared to be some consumer interest in the convenience and accessibility of 'one stop shopping' provided by MDPs (D. Clementi, *Review of the Regulatory Framework for Legal Services in England and Wales, final report,* 2004, p. 133-134)
[226] Van den Bergh (2007), p. 49.

the least-cost supplier. This may even be the more so if the firm is an MDP."[227] A similar point is made by Garoupa (2008), who states that "*by banning other organisational forms* [i.e. corporations, MDPs]*, the specialisation of professionals beyond particular aspects of their service (thus lowering the cost of providing services) and economies of scope (by providing a 'one-stop shop' service including lawyers, accountants, surveyors and tax advisers) are lost*."[228] The third argument provided by Van den Bergh holds that different professions may face different business cycles and fluctuations in income. Not allowing MDPs would then take away the possibility to spread related risks among the partners.[229] All of these benefits of MDPs can, according to Van den Bergh, lead to lower prices for consumers. In addition, innovation may be promoted: if MDPs are allowed, this may facilitate access to capital needed to invest in equipment and infrastructure to improve consumer services.[230]

Looking at the list of economic arguments against a total ban on MDPs, the question is whether less restrictive means of regulation would be able to achieve the aims of guarding professional secrecy and preventing conflicts of interest. Van den Bergh himself has three suggestions.[231] The least restrictive measure could consist in *information remedies:* informing the client that the duty of confidentiality of one MDP member conflicts with the duty of disclosure of another MDP member. Alternatively, measures could be introduced that prevent certain information flows between different professions. One option would then be to introduce the so-called '*Chinese walls*', which prevent information flows from professionals in the partnership who are bound by professional secrecy to other members in the partnership who are not. However, critics have pointed out that such Chinese walls "are often a deceptive concept used to avoid an insurmountable obstacle" (i.e. the legal privilege).[232] Another option according to Van den Bergh would be to *impose professional secrecy obligations on all partners* in an MDP.[233]
Grout (2005), in a study for the UK Department of Constitutional Affairs, argues that regulation of ABSs and MDPs should be focused on the underlying incentives rather than on the business structure, by taking into account the size of the MDP (large or small) and the concentration of ownership.[234] This implies, for example, that it may be appropriate for large MDPs to impose restrictions on management incentive schemes (irrespective of whether the

[227] Stephen and Love (2000), p. 1005.
[228] Garoupa (2008), p. 483. Fox (2000, pp. 1105-1106) is not optimistic about the concept of one-stop shopping, claiming that it (and laywers working for nonlawyers) reduces the legal profession to yet "another profit center at a department store for consulting services".
[229] *Ibid.* This argument may be related e.g. to MDPs involving lawyers and notaries, as it was suggested (see section 3 below) by the Dutch association of notaries that the legal profession is anti-cyclical, while the notary profession is cyclical.
[230] Van den Bergh (2007), p. 49.
[231] Van den Bergh (2007), pp. 49-50.
[232] Mullerat (2000). See also A. Scott and S. Konsta, "Chinese Walls", *Accountancy*, Vol. 123, February 1999, 92-93.
[233] See also: E. Deards, "Closed Shop versus One Stop Shop: The Battle Goes On", in: European Law Review, 27, 2002, p. 618-627. This case study will not go into detail on any of these suggestions. More on this in Philipsen and Olaerts (2010).
[234] P.A. Grout, "The Clementi Report: Potential Risks of External Ownership and Regulatory Responses: A Report to the Department of Constitutional Affairs", in: *CPMO Working Paper Series* No. 05/135, University of Bristol, July 2005, p. 2-3. In the paper some empirical evidence is presented to back the distinction between small and large firms. This evidence according to the author shows that "misconduct and poor quality is heavily focused on small businesses" (see pp. 31-32).

management consists mainly of lawyers or non-lawyers), in order to prevent too risky strategies and to minimize the chances of misconduct.

In an empirical study, Frank Stephen (2002) found that in European jurisdictions where MDPs are permitted, commercial law is increasingly dominated by the legal branch of the major international accounting firms. The author provides an explanation of this in terms of the internal efficiency of law firms in various jurisdictions. As a result of EU legislation that has as its aim a Single European Market in legal services[235], "*differences in efficiency of law firms arising from differences in competitive pressure across jurisdictions are likely to lead to cross-border mergers involving law firms from 'efficient' and 'inefficient'*[i.e. those where competition is restricted, leading to higher fee levels] *jurisdictions. Such mergers are likely to lead to pressure building up in the more regulated jurisdictions for further liberalisation of legal service markets.*"[236] Therefore, so Stephen argues, EU legislation may indirectly increase efficiency, even though it does not directly reduce the power of national bars or Bar Associations.[237]

Views of professions

In this section the views on MDPs as held by profession members are presented. Before presenting the results of interviews, some results from an earlier research on professional regulation commissioned by DG Competition will be recapitulated.

Responses to 2003 questionnaire (DG Competition)

Around the time of the *Wouters* and *Arduino* judgements[238], the European Commission (DG Competition) started an extensive investigation into competition and regulation in professional services markets, focusing, inter alia, on legal and accountancy services.[239] In the framework of this project, the Commission, in 2003, invited interested parties - such as professional associations and consumer representatives - to respond to a questionnaire and an earlier study[240] conducted by the Austrian *Institut für Höhere Studien* for DG Competition. One of the topics under discussion was precisely the question to what extent MDPs between lawyers and accountants need to be regulated. The Commission noted that: *"[t]here are rules governing co-operation between members of the legal profession and other groups in the majority of Member States. Legal practitioners are generally free to hire non-lawyers as employees in their companies. However, there are often severe restrictions on*

[235] The author mentions the Establishment Directive (98/5/EC) and (to a lesser extent) the Mutual Recognition Directive (89/48/EEC). Citizens of a Member State refused entry to the legal profession could qualify in another Member State and thereafter practice in the restrictive state, as long as the costs of this procedure are compensated by the gains from practicing in the restrictive state. Any practice rules designed to restrict competition between lawyers in one jurisdiction, thereby raising fee levels, will attract lawyers from other jurisdictions where fees are lower, according to Stephen (F.H. Stephen, "The European Single Market and the Regulation of the Legal Profession: An Economic Analysis", in: *Managerial and Decision Economics*, 23, 2002, p. 118.

[236] Stephen (2002), p. 115.

[237] Stephen (2002), p. 124.

[238] Cases C-35/99 (*Arduino*) and C-309/99 (*Wouters)*, both decided on 19 February 2002 and dealing with competition issues in the legal services market.

[239] For details, see: L.S. Terry, "The European Commission Project Regarding Competition in Professional Services", Penn State University – Dickinson School of Law Legal Studies Research Paper, No. 10-2009, http://ssrn.com/abstract=1374855; N.J. Philipsen, "Regulation of Liberal Professions and Competition Policy: Developments in the EU and China", in: *Journal of Competition Law and Economics*, 6(2), 2010, p. 203-231.

[240] Paterson, Fink, Ogus et al (2003).

the scope for lawyers who work in companies other than law firms to provide legal advice to third parties or other legal services."[241] It then pointed at the many differences in regulation between EU Member States and wondered whether a full prohibition of MDPs is really necessary. At the time, in some countries (e.g. Austria, Denmark, Estonia[242], Ireland, Italy and Greece) legal practitioners were forbidden from forming any type of MDP that brings together lawyers and other professionals in a joint firm. In others (e.g. France and Germany), lawyers were permitted to participate in MDPs under certain circumstances. In Germany, for example, lawyers were able to form co-operations with the members of comparable professions including chartered accountants and tax advisors. However, the rules governing formation of private limited companies had the effect of making inter-professional co-operation very difficult.[243]

The vast majority of respondents to the questionnaire sent out by the EC consisted of professionals and associations of professionals. From the perspective of accountants, some respondents suggested that there is a need for some regulation of MDPs involving accountants. The *Fédération des Experts Comptables Européens* argued that some regulation may be needed in order to organise relationships between professionals who are not bound by the same ethical rules on confidentiality, independence, or conflicts of interest. However, a full prohibition of inter-professional co-operation would reduce competition unnecessarily.[244]

Many professional bodies for legal practitioners at the time suggested that rules restricting co-operation between lawyers and other professions are necessary to protect lawyers' independence and respect for ethical values such as professional secrecy and avoidance of conflicts of interest. Also, the *Council of Bars and Law Societies of Europe* (CCBE) argued in favour of regulation limiting MDPs, suggesting that such rules protect the core values of the profession by ensuring that practitioners are subject to a single consistent code of conduct enforced by the local Bar. Others argued that it is increasingly important for lawyers and other professionals to be able to provide a range of services within a single company, to the extent that it does not endanger lawyers' ethical values. The law firm *Clifford Chance* for example noted that different rules on inter-professional co-operation in the EU cause significant obstacles for international legal services companies.[245]

Interview results

For this case study, a number of short interviews were held with representatives from (predominantly) Dutch organisations of notaries, tax advisers and accountants. The Netherlands was chosen because in that country, contrary to, for example, Belgium and Luxembourg, there is no prohibition on MDPs consisting of lawyers and notaries or tax advisers. MDPs

[241] European Commission, *Stocktaking Exercise on Regulation of Professional Services: Overview of Regulation in the EU Member States*, Brussels: Competition DG, p. 9.
[242] European Commission, *Stocktaking Exercise on Regulation of Professional Services: Overview of Regulation in the New EU Member States*, Brussels: Competition DG, 2004.
[243] *Ibid*.
[244] European Commission, *Invitation to Comment. Regulation in Liberal Professions and its Effects: Summary of Responses*, Brussels: Competition DG, 2003.
[245] European Commission, *Invitation to Comment. Regulation in Liberal Professions and its Effects: Summary of Responses*, Brussels: Competition DG, 2003.

between notaries and accountants, however, are not allowed. The results of these interviews are reported in the following subsections.[246]

Interviews with representatives from the Dutch associations of notaries and tax advisers, respectively, confirmed our expectation that Dutch professionals working in the big law firms sometimes encounter practical problems abroad. In other interviews it has become clear that German MDPs face similar problems. For example, Dutch MDPs consisting of notaries and lawyers are not allowed in (*inter alia*) Belgium and Luxembourg, while MDPs consisting of tax advisers and lawyers are not allowed in France and Slovakia. In these cases, 'in-house' provision of services is not possible and external relationships with profession members in the Member States concerned need to be established. As a result, there are less opportunities to come up with creative solutions for clients (*cf.* the argument pro MDPs from the economic literature, on innovation of consumer services) and, of course, also prevents a one-stop shop from being created in those countries. Moreover, it prevents risk spreading between professions from taking place. This is a lost opportunity in times of crisis given that, as it was suggested by one of the interviewees, the legal profession to a large extent is 'anti-cyclical' and the notary profession 'cyclical'.

Nevertheless, interviewees do not see a direct need for the scope of the lawyer Directives to be extended to tax advisers or notaries. With respect to tax advisers, it was stressed that the degree of regulation differs widely across different EU countries, which makes harmonisation unlikely and unnecessary. For the same reason, it also seems wise to leave the discretion on whether or not to allow co-operation with other professions to the Member States. With regard to notaries, interviewees pointed out the importance of an objective knowledge test before allowing someone to work as a notary in another EU Member State. However, it was also argued that a prohibition on MDPs with lawyers is neither necessary nor beneficial for clients.

The situation regarding integrated services provided by accountants and lawyers is different, as these MDPs are also not allowed in the Netherlands. From our interview with the Netherlands Association of Accountants, as well as from the earlier response by the Fédération des Experts Comptables Européens to a DG Competition survey, it followed that the arguments generally put forward by lawyers (independence, conflicts of interest, legal privilege) are shared by a number of accountants.

6.3.3 Other Reforms

In the country studies we have attempted to identify the most recent developments in the last five years on a national level in the legal framework governing the access and exercise of the legal profession. An overview of all countries can be found in annex 3. In this section, we mention the most important developments. As rules on business structures have been discussed in previous sections, we will not discuss them here in detail.

[246] Attempts were made also to contact professional organisations in Luxembourg, but these attempts were unsuccessful.

First of all, it must be noted that, under pressure of the economic crisis, in a number of countries reforms have been proposed but have not been finished (completely) at the time of writing of this report. This is, for example, the case in Portugal, Greece, and Italy. In this section we only report those changes that have been carried through.

In chapter two a distinction was made between three levels of regulation, namely regulation of access to the profession, of reserved activities, and of conduct. Furthermore, an overview was given of the organization of the profession. We will use this distinction to group the reforms below.

With regard to access to the profession some convergence can be noted, as Spain has introduced traineeship requirements (it had none before), whereas Sweden has shortened the required apprenticeship period from five to three years.

In the area of reserved activities not many reforms have taken place. Greece did abolish geographic restrictions for lawyers that stipulated that lawyers could only practise within the region of the local Bar. Lawyers from different regions can now also form a law firm together.

Most reforms concern matters of conduct:

- In Greece, some advertising has been permitted, provided it is in line with the prestige and dignity of the legal profession. In the near future, professional indemnity insurance will become obligatory. Minimum fees for legal services have been abolished. As a side note, it must also be said that tax/VAT has been imposed on legal services.
- In France, lawyers established in other Member States may associate with and act on behalf of law firms established in France. Furthermore, some forms of multidisciplinary holdings have been permitted.
- Hungary introduced the requirement for lawyers providing temporary services to send a notice to the Hungarian Bar Association.
- Italy introduced continuous education for qualified lawyers. Furthermore, recent reforms centre on the abolition of the minimum fixed professional tariffs. This means that lawyers must agree a fee for services with clients at the outset and must explain all possible eventualities, which may have a bearing upon the price of the lawyer's service.

A last category of reforms is related to the organization of the profession.

- In Ireland, the Government approved the publication on 4 October 2011 of a new Legal Services Regulation Bill. The Bill calls for the establishment of an Independent Regulator, mainly consisting of non-lawyers. The new authority will have all powers of regulation including conduct, discipline and complaints handling.
- Finland enabled centralized supervision over all those willing to represent clients in courts. Furthermore, an amendment is planned that regulates the legal assistance provided by domestic non-lawyers.

6.4 Technological Developments in the Legal Sector

Some Technological Developments

New information and communication technologies enable lawyers to work for clients regardless of their physical location. This means that it also enables lawyers to provide cross-border services more easily and more quickly, and that it may facilitate free movement of lawyers and legal services. This section provides a short overview of some important technological developments affecting the market for legal services, and its (potential) impact on mobility. Specifically, three subjects affecting the work of lawyers are discussed: client communication, the internet, and cloud computing.

Communication: e-mail, video-conferencing, smart phones
As in other businesses, e-mail has become a very important means of communication for lawyers. A result of the introduction of e-mail and other ways of communicating with clients such as videoconferencing is that it is easier to communicate with clients who are far away. According to one interviewee, this has made international work easier and has also reduced the need for travelling. In some instances, new ways of communicating may also make lawyer mobility more difficult. According to another interviewee, the increased pace of the work has made the law firm less inclined to hire a lawyer who is not very proficient in the local language. There is no time to get used to a language or for reviewing and translating a reply to a client.

There are some risks involved for lawyers in electronic communications, mainly related to confidentiality and data protection, and, therefore, the protection of the client. Since the introduction of e-mail, there has been some discussion about whether confidentiality of lawyer-client communication by e-mail should be protected by digital certificates, and whether it is appropriate for lawyers to use ordinary e-mail.[247] According to an interviewee, many lawyers still use ordinary mail for formal and confidential letters. However, this also depends on the field of law. In the field of competition law for example, all communication is by e-mail, also formal and confidential communication. The contact with the European Commission in competition cases is also via e-mail. Besides, documents can be transferred via a secured intranet.

Increasingly, lawyers can also transmit files electronically to authorities (such as courts). In these cases, lawyers can be asked to electronically prove their identity as a lawyer (e.g. through a card and a card-reader). In cross-border cases this can lead to obstacles when Member States have different systems by which the identity of a lawyer is ascertained. If a lawyer in a certain Member State is required to use a specific sort of electronic identification, lawyers from other countries may not be able to do that.[248] To find a solution to these kinds of problems, the European Commission, together with 15 justice ministries, the CCBE and the professional organization for European notaries (CNUE) are involved in a project called e-CODEX, which has as its goal to "improve the cross-border access of citizens and businesses to legal means in Europe as well as to improve the interoperability between legal authorities within the EU."

[247] Speech by Georges-Albert Dal, President of the CCBE, 29/4/2011. (http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Budapest_speech_GAD_1_1304331823.pdf, accessed 27/9/2012)
[248] See also the speech by Georges-Albert Dal, President of the CCBE, 29/4/2011. (available at http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Budapest_speech_GAD_1_1304331823.pdf)

Internet

The internet is obviously used widely by lawyers. This has a potential impact on lawyer mobility as well. Many lawyers and law firms use websites, blogs,[249] and social media.[250] Clients are increasingly seeking legal help and a lawyer via the internet and lawyers increasingly acquire new business via their websites.[251] As the internet can be accessed from everywhere in the world, this may make it easier for lawyers to extend their practice abroad. Over three quarters of the lawyers that participated in the survey make use of a personal and/or firm website. Almost a third (30%) of the lawyers that uses commercial communications says that they or their firm has intentionally adapted communication strategies, such as their website, to extend the practice beyond the country in which they are established. Almost half thinks their communication has increased demand from clients in other countries to some extent, while 19% thinks it has increased it to a large extent (see further section 5.2.4).

Cloud Computing

Cloud computing is attractive to law firms because it offers greater flexibility than more traditional methods, while costs are reduced. It can also make it easier to work across borders, as data in the cloud can be accessed from everywhere. The Working Party set up under Article 29 of the Data Protection Directive (95/46/EC) describes cloud computing as a set of technologies and service models that focus on the Internet-based use and delivery of IT applications, processing capability, storage and memory space.[252] The CCBE, in its response to the European Commission in the context of a public consultation on cloud computing, stated that law firms, in line with other businesses, are using or planning to use cloud computing for many reasons, such as a reduction of costs, simplification of computing systems and flexibility.

The CCBE acknowledges that cloud computing entails risks for lawyers, mostly related to the security of client information. Information may, for example, be stored on providers' servers outside the European Union, where authorities have a right to request data, or data may be accessed by a provider's employees. This is a risk especially for lawyers as they have an ethical duty to protect client data. In practice this means that lawyers will have to check whether they are allowed to use certain cloud computing services (with regard to applicable regulation and deontology), and, secondly, make sure that the security of these services is appropriate for use by the lawyer.

Impact on the legal services market

[249] L. Terry, "The Legal World is Flat: Globalization and Its Effects on Lawyers Practicing in Non-Global Law Firms", in: *Northwestern Journal of International Law & Business* 28:527, 2008, p. 534-535.

[250] According to a study released by LexisNexis Martindale-Hubbell, which looked at how 110 global law firms used LinkedIn, Twitter, YouTube and other social media from April to mid-May of 2011; 77 per cent of firms surveyed had profiles on LinkedIn; 31 per cent used Twitter; and 29 per cent used Facebook. (source: LexisNexis Martindale-Hubbell, *Global Social media Check Up, A global audit of law firm engagement in social media methods*, December 2011. Available at www.martindale-hubbell.co.uk/socialmedia)

[251] A qualitative UK survey carried out in 2004 and repeated in 2011 showed that most firms reported knowing that a larger proportion of their business than previously had come through their website (Caroline Strevens, Christine Welch & Roger Welch, "On-line legal services and the changing legal market: preparing law undergraduates for the future", in: The Law Teacher, 45:3, 2011, p. 339)

[252] Article 29 data protection working party (2012). *Opinion 05/2012 on Cloud Computing*, p. 4.

Technological developments not only have an impact on how lawyers do their work, there is also an impact on the market for legal services. In this section we highlight two important developments that can impact lawyer mobility, namely outsourcing and virtual law firms.

Outsourcing

More and more law firms are outsourcing work to external service providers. The CCBE defines legal outsourcing as "a practice in which a regulated legal professional ("outsourcing lawyer") outsources legal work which is usually done by lawyers, trainee lawyers, paralegals e.g. research, due diligence, litigation discovery, etc. to a service provider in another country who is not a regulated legal service provider."[253]

In interviews, it has been confirmed that the number of firms that uses outsourcing is growing. Outsource providers increasingly operate via cloud computing. One interviewee remarked that outsourcing was mainly used for secretarial support work (for example done overnight), but also for legal work that can be standardized to a certain extent, such as contract work. The main reason for outsourcing is saving costs, but it can also save time.

Outsourcing may impact the mobility of lawyers in various ways. The most obvious is that there is mobility of services when work is outsourced to another location, often outside the EU.[254] Secondly, when a firm uses outsourcing, especially when combined with cloud computing, it impacts the staffing and recruitment and also the physical requirements of law offices, as there is less need for local support staff. An interviewee remarked that a result might be that it becomes easier to open a new office abroad.

Various concerns have been raised in relation to outsourcing. Common concerns are related to confidentially and conflicts of interest. A lawyer who makes use of outsourcing remains responsible for compliance with ethical obligations including the compliance with those obligations by the party to which the work is outsourced.[255]

'Virtual' law firms

Another market development is the ascent of the so-called 'virtual law firm' in the US and in Europe. In general, in Europe there is a different understanding of what a virtual law firm is than in the US. In Europe it is understood to be a group of associated lawyers who do not have a common office, or have only a small representative office. For sake of clarity, this will be called a 'dispersed' law firm in this section.

In the US a virtual law firm is a firm that offers its services mainly via online channels to clients. Key characteristics of such a virtual law firm are: an online client portal, the interaction of lawyer and client online and exchange of information between lawyer and client including 'documents' via the Internet.[256] A virtual law firm may be completely web-based,

[253] CCBE, *CCBE Guidelines on legal outsourcing*, 2010, p. 2.
[254] See for example Regulatory Policy Institute, *Assessing the economic significance of the professional legal services sector in the European Union*, 2012, p. 75, where it is mentioned that it is believed that India is a major destination for outsourcing activities. It is suggested that UK firms have also outsourced work to Australia, Canada, New Zealand and South Africa.
[255] CCBE Guidelines on legal outsourcing (2010), p. 2.
[256] Steve Mark, Tahlia Gordon and Rita Shackel, *Regulation of Legal Services in the E-World: A Need to Short Circuit Hot Spots in Ethics and Novel Practices?*, 2011, p. 32

or be an integrated part of a more traditional law firm. Virtual law firms that are fully web-based generally offer 'commodity-like' services that can easily be delimitated, such as business set-up, patent filing and drafting and reviewing contracts.[257]

Virtual law firms that offer their services primarily via online channels exist primarily in the US and the UK.[258] These firms are mainly offering services to individuals and small business in family law, employment law, etc. This kind of firm has not developed as much in other European countries. An explanation is that whether virtual law firms emerge in a country depends on the extent of reserved legal activities. When giving legal advice, for example, is not reserved to lawyers, legal services can be offered online not only by lawyers or a law firm, but also by other individuals or organizations, making it easier to establish a web-based law firm. In some countries, offering legal advice online may be illegal when that activity is reserved to lawyers.

'Virtual' and 'dispersed' law firms in the UK

This box describes some examples of 'virtual' and 'dispersed' law firms from the UK. It is not known exactly how many of these firms exist in Europe. The Law Gazette has estimated that there were not many more than 20 in the UK in 2009.[259] A number of these firms are quite large and work for international clients. Generally, these firms report high growth numbers.

To establish a 'virtual' law or 'dispersed' firm investment in IT, and, therefore, start-up capital are required. It has been argued that the possibility to attract external capital, introduced in England and Wales by the Legal Services Act, could facilitate the development of virtual law firms. When a virtual law firm is established, it usually has less overhead costs than a traditional law firm.

Everyman Legal

Everyman Legal is a UK-based firm that, among other things, provides legal services online. The firm is basically a network of self-employed home-worker solicitors throughout the United Kingdom. The website offers the possibility to download legal documents without a client needing to engage a solicitor. The documents can function as a template that can easily be amended. The firm practises in the areas corporate law, property law, employment law, dispute resolution, energy, construction and regulatory law. The website of the firm contains an online shop for legal document templates, which can be purchased online.[260]

Keystone Law

Keystone launched in 2002 and currently employs an average of 100 lawyers who work on a 'dispersed' model. The firm's clients include ING Real Estate, Lloyds Pharmacy, LoveFilm and Neal's Yard. As of July 2012, Keystone Law is aiming to more than double its turnover

[257] Interview with Stephanie Kimbro, author of the book *Virtual Law Practice,* December 2010 (Source: http://www.abanow.org/2011/01/e-lawyering-expert-stay-competitive-with-a-virtual-law-practice/)

[258] Steve Mark, Tahlia Gordon and Rita Shackel, *Regulation of Legal Services in the E-World: A Need to Short Circuit Hot Spots in Ethics and Novel Practices?*, 2011, p. 36

[259] Source: http://www.lawgazette.co.uk/in-business/virtual-firms-thrive-the-downturn, accessed 27/8/2012.

[260] Source: http://www.everymanlegal.co.uk/, accessed 4/6/2012. According to LegalFutures the firm is seeking admission to a stock exchange (http://www.legalfutures.co.uk/latest-news/everyman-legal-to-pioneer-business-hub-franchises-for-solicitors, accessed 4/6/2012).

within three years to £25m by attracting 50 new lawyers to its ranks. The recruitment drive comes as the firm posted turnover of £11.2m at the 2011-12 year-end, a rise of 14.3 per cent on last year's £9.8m. Managing partner James Knight said the firm wanted to take on an additional 50 lawyers within the next six months to underpin growth.[261]

Axiom Law
Axiom is a 900-person firm with 11 offices (one in London) and 4 delivery centres globally (one in Belfast). The Economist reported that revenue grew from $55m in 2008 to $80m in 2010. Axiom offers in-sourcing services (through secondment), outsourcing services and project-based work for more complex matters. On its website, the firm claims that using smart technology and tools in projects increases quality and accuracy and lowers risk. It also claims to dramatically reduce costs, often by 50% or more, through a combination of lower factor costs, higher productivity, and the reduction of management overhead and re-work.

A virtual law firm could very easily work across borders. If a lawyer is able to work from home, it is just as easily possible to work from any place in the world. One interviewee, however, remarked that it would be difficult for virtual law firms to attract clients from other countries. It would probably require a presence with an office in another country to be able to really compete with local law firms.

Possible implications for lawyer regulation
If a virtual law firm would nonetheless serve clients in other countries, this could pose some special questions with regard to lawyer regulation. Regulation has traditionally been bound by geography, whereas lawyers today are often not bound by geography anymore.[262] Lawyers can now very easily operate outside the territory of the regulator or provide services in places where they are not physically present. Technology could also enable a lawyer to be *de facto* established in two or more countries at the same time.

These possibilities could lead to questions relevant to the Lawyers' Directives, e.g. about what constitutes establishment in a certain country and about applicable rules of conduct. For example, article 3 of the Lawyers' Establishment Directive states that lawyers wishing to establish must register with the local bar. Article 6 regulates that lawyers shall be subject to the same rules of professional conduct as the lawyers of the host country. Do these articles also apply to a lawyer with a substantial virtual practice in that country?

These kinds of questions have received some attention in the US. The Ethics 20/20 Commission of the American Bar Association notes in a memo that technology enables lawyers to be physically present in one jurisdiction, yet have a substantial virtual practice in another. It is not always clear when this virtual practice in a jurisdiction is sufficiently "systematic and continuous" to require a license in that jurisdiction.[263]

---

[261] Source: http://www.thelawyer.com/keystone-law-vows-to-take-on-50-lawyers-as-part-of-25m-turnover-plan/1013387.article, accessed 4/6/2012.
[262] Laurel S. Terry, Steve Mark & Tahlia Gordon, *Trends And Challenges In Lawyer Regulation: The Impact Of Globalization And Technology*, 2012, p. 2681.
[263] ABA Commission on Ethics 20/20, *For Comment: Issues Paper Concerning Model Rule of Professional Conduct 5.5 and the Limits on Virtual Presence in a Jurisdiction*, 2012.

In Europe, there has also been some attention for online legal services at the national level. The Law Society of England and Wales has established a working group on online legal services to review the impact of technological developments. The aim of the group is to produce guidance for solicitors.[264] Some years ago there has also been a discussion in the Brussels Bar about whether a lawyer who had a virtual 'office' in Brussels (consisting of a mailbox, a website, and an e-mail address) but who was actually staying in Germany would qualify as an established lawyer registered with the Brussels Bar.

[264] Source: http://www.legalfutures.co.uk/latest-news/pioneering-web-based-probate-service-goes-live-as-two-investigations-into-online-legal-advice-begin, accessed 28/8/2012.

6.5 Summary and Conclusions

This chapter provided an overview of some important, recent developments on the European and national level. Additionally, the chapter discussed technological developments impacting the legal sector.

European level
At the European level there have been a number of developments that may impact the system of free movement of lawyers, as discussed above. Specific mention in this case is made of the efforts made by the European Union in establishing a European order for payment procedure and a European small claims procedure and a directive on legal aid in cross border disputes. These can all be characterized as harmonization measures. Harmonization can potentially, considerably help the free movement of lawyers since it reduces and, eventually, would remove one of the inherent barriers identified before, namely the fact that the legal systems of the Member States differ considerably from the perspective of content. The study did not reveal any barriers or difficulties in relation to the services of lawyers in these procedures.

National level
At the national level there have been a number of reforms amongst which developments in relation to business structures seem to be especially relevant for cross-border mobility of lawyers and law firms.

The Lawyers' Services Directive of '77 is aimed at individual lawyers and does not address firm structure. The Lawyers' Establishment Directive, on the other hand, contains an article on joint practice (article 11). This article permits Member States to forbid lawyers from practising when they are members of a grouping in which some members are not lawyers.

In most Member States, non-lawyer management and ownership of law firms are not allowed. The Legal Services Act 2007 of England and Wales introduced the possibility, under some conditions, of non-lawyer management, ownership and multidisciplinary practices (alternative business structures or ABS). Non-lawyer ownership has also been permitted to some extent in Scotland, Italy, Spain and Denmark.

The bars of France and Germany have both expressed their intention not to permit ABS firms the right to establish an office in their territory. The German Federal Bar also wants to prohibit lawyers working in ABS firms from providing services temporarily. External ownership is considered to be a risk to core values of the profession, such as independence, absence of conflicts of interest and confidentiality. The CCBE has also taken stance against non-lawyer ownership and management. It questions whether conditions and safeguards, such as those employed in England and Wales, are enough to take away the risks. Therefore, we conclude that, considering that ABSs are not permitted in the majority of Member States, the safeguards in article 11 of the Establishment Directive are, generally speaking, still appropriate.

English LLP's and the German Rechtsanwaltgesellschaft GmbH are both registered as a lawyers with their bars. At the moment, it is unclear whether they, although carrying the title of lawyer, can make use of the right of establishment under the Establishment Directive. If not, they can be denied the right to establish on the basis of article 11 of the Establishment Directive.

In practice, MDP and LLP firms refrain from establishing in countries where that legal form is not permitted. Rather, they raise complex and often non-transparent parallel or parent/subsidiary structures in those Member States, to comply with host state regulation.

The safeguards provided for in Article 11 (5) of the Lawyers' Establishment Directive also still have to be taken seriously where accountants and (to a slightly lesser extent) tax advisers are concerned. Developments in the Member States will show whether regulation of MDPs will still be needed in the future. Perhaps the different markets will, slowly but steadily, move in similar directions, guided by an increased demand for integrated services by consumers, perhaps not. In any case, there seems to be no demand by profession members for the EU to intervene at this moment.

Technological Developments

There are some technological developments that (potentially) impact lawyer mobility. Lawyers are increasingly making use of different kinds of technology, such as e-mail, internet, websites, blogs, social media, video-conferencing and smart-phones. Technology makes it easier to provide services at a distance, which can result in less need for travelling. Common concerns of the use of various kinds of technology are data protection and confidentiality, and consumer protection.

Technological developments have impacted the market of cross-border legal services in a number of ways.

- Law firms are increasingly outsourcing work to external service providers, mainly work that can be standardized to a certain extent and for secretarial support. Outsource providers often operate via cloud computing. Outsourcing may make it easier to establish an office, as outsourcing impacts the physical and staffing requirements of offices. Common concerns about outsourcing are related to confidentiality and conflicts of interest.
- A relatively recent phenomenon is the 'virtual' law firm. There are two kinds of virtual firms, namely firms that offer services exclusively or mainly via online channels, and firms that consist of a group of people working from various locations without a common office. There are some 'virtual' law firms in the UK (of which some seem to work for internationally active clients), but in the rest of Europe they do not seem to exist. If a 'virtual' law firm were to be operating across borders this may lead to questions about what constitutes establishment and about applicable deontology. A Commission of the American Bar Association is investigating this kind of questions because of 'virtual' law firms operating across states in the US.

7 Main Conclusions of the Study

This chapter contains the general conclusions of the evaluation study. Taking into account the results presented in the previous chapters, it assesses the success of the directives. In chapter one of this report six objectives of the Lawyers' Directives were identified with corresponding success criteria. Below the conclusions about the success of the directives in meeting these objectives are presented. The chapter concludes with a discussion of the continuing relevance of the Lawyers' Directives, in the context of recent developments in the European Union, specifically, the question whether a separate legal framework for lawyers is still necessary, and a note on the scope of the Lawyers' Directives.

7.1 Assessment of the Success of the Directives

Objective 1: The removal of any restrictions on the provision of services based on nationality or on conditions of residence for lawyers

In the course of the study no evidence has been found of any conditions or restrictions based on nationality or conditions of residence for the provision of services by lawyers coming from other EU Member States. Furthermore, the freedom of providing cross-border services within Europe is generally taken for granted by lawyers. In this respect, the legal framework can be regarded as highly successful.

Objective 2: Enabling qualified lawyers to offer services in Member States other than that in which they obtained their qualification

The Lawyers' Services Directive has formally created the possibility for qualified lawyers to provide services in any EU Member State. It has successfully taken away (national) legislative barriers for the provision of services. The absence of legislative barriers is confirmed by the notably low amount of case law on the Lawyers' Services Directive. The study has shown that cross-border provision of services has become a common, largely unproblematic practice in the legal sector in the EU.

Although there are no legislative barriers for fully qualified lawyers, the system of the Directives (based on titles) is of no help for those persons that provide legal services but are not qualified as a lawyer. This concerns, for example, persons who are not yet qualified as lawyers (e.g. prospective lawyers doing their apprenticeship) and other legal professions (e.g. legal advisors). The proposed revision of the Professional Qualifications Directive, when carried through, may facilitate the free movement of these persons.

In many cases, cross-border provision of services is unproblematic, not only from a regulatory perspective, but also in practice. Reportedly, the most commonly experienced practical differences are inherent in cross-border provision of services, namely a lack of expertise in the law and/or language of another country. Besides, a lack of acceptance by people in other Member States has been noted by lawyers.

Although the Directive has been very successful, there are some areas in which the free provision of services can meet with difficulties. The parallel application of the deontology of

the home and the host state when providing services can, in some circumstances, result in local lawyers and lawyers coming from another state not being able to act on equal footing, as the visiting lawyer must sometimes comply with regulations that are stricter than those applicable to the local lawyer. In the case of rules on conflicts of interest, this could have as a result that visiting lawyers cannot accept certain clients because of deontological obligations of the home state of the lawyer where a local lawyer would instead be able to accept that client. Some countries apply the CCBE Code of Conduct to visiting lawyers; this Code is in some cases stricter than the regulations which apply to local lawyers. The complexity of complying with two different and sometimes conflicting sets of deontological rules at the same time can also preclude lawyers from providing temporary services.

The researchers think that the problems in the area of deontology identified in the study are reason to revise the current system of double deontology. In principle, different approaches could be taken to reduce difficulties related to double deontology. Dismissing double deontology in favour of single deontology (home country rules for temporary services; host country rules for established lawyers) will likely be the most effective in removing the difficulties in the area of deontology. The researchers also consider it necessary to bring the relevant articles on deontology in different language versions of the Lawyers' Establishment Directive in conformity with each other, as they are a source of legal uncertainty.[1]

The Lawyers' Services Directive does not address the topic of professional indemnity insurance, whereas the Lawyers' Establishment Directive does. Article 4 of the Lawyers' Services Directive, with a few exceptions, declares both home country and host country regulation to be applicable in parallel (double deontology). If that pertains also to insurance coverage it would mean that lawyers must comply with the regulations on professional indemnity insurance of both the home and the host state. At least as a matter of fact no host country insurance coverage is required because the host country is often not aware of the temporary cross-border activity. The requirement to have also host country insurance would be a hindrance for lawyers for the provision of temporary cross-border services, because of the differences between indemnity insurance policies across countries. Harmonization of these differences is not expected. When only home country insurance would be required, on the other hand, there would be problems with regard to consumer protection, as some insurance policies do not include cross-border activity. Therefore, the researchers suggest changing the Directive so that it states that when a lawyer renders temporary cross-border services these must be covered by his home country insurance.

Objective 3: Enabling establishment of lawyers in a Member State other than that in which they obtained their professional qualifications

The Lawyers' Establishment Directive has provided European nationals who are qualified EU lawyers the opportunity of establishing in and registering with the respective Bar in all EU Member States. The Directive has been implemented in all Member States (although an infringement procedure against Bulgaria is still pending), making it legally possible for lawyers to establish in all EU Member States. As of 2012, around 3.5 thousand lawyers are established in another country under their home country professional title.

[1] See Annex 4.

The fact that establishment is legally possible does not automatically mean it is also always easy and devoid of practical difficulties. First of all, the administrative requirements of competent authorities for establishment differ across countries (and sometimes even within countries). Registration under home country professional title is governed by a system that is essentially focused on the host Member State. For registration, information has to be provided, commonly including a certificate of membership of the home Bar, proof of EU citizenship, proof of professional indemnity insurance, information on firm and joint practice structures and often costly certified translations. Sometimes, other documents have to be provided as well. In some cases, lawyers are requested to provide information in a form unknown to the competent authorities of the home Member State. Besides, bars are not always able (and sometimes seem unwilling) to co-operate and inform lawyers properly with adequate information.
To facilitate the establishment of lawyers, the researchers suggest that the process of registration should be simplified and more uniform across Member States. In principle, this can be done in a number of ways. A straightforward solution is to include the requirements for registration in the Directive, e.g. by including a standard form and a list of documents and translations that may be asked. It should state that Member States must accept translations made by certified translators of the home Member State of the lawyer. Another solution could be to use the European Professional Card (EPC) when it is introduced in the Professional Qualifications Directive (or the already existing CCBE identity card, which is recognized all over Europe for e.g. court work) for the purpose of registration. Use of the EPC/CCBE card in the context of lawyers could relieve the lawyer concerned of the aforementioned burden if a lawyer would be allowed to register upon production of the EPC/CCBE card. It must be noted, however, that, currently, the CCBE card does not contain all the information necessary for registration of a lawyer, so that additional documents would still be needed.
The researchers think the (re-)introduction of IMI for the legal professions could also be helpful in a number of ways. Competent authorities could then be in direct contact with each other and exchange information, possibly relieving the burden of the candidate that wishes to register as an established lawyer. Intensified contact between bars could also be helpful when bars need to assess the professional indemnity insurance policies of lawyers from other Member States, which could help take away some of the obstacles encountered, in particular for those cases in which competent authorities in the host state require lawyers to take out professional indemnity insurance in the host state because of their difficulty in establishing the equivalence of an insurance policy taken out in another Member State.

Second, around a third of the lawyers that established abroad have experienced difficulties related to professional indemnity insurance. Because of various differences between countries (e.g. in the amount covered, which occurrences are insured, whether there is a mandatory fund, limitations posed by insurance policies of working in one jurisdiction, the impossibility of taking out tailor-made additional insurance and the trouble that bars have in assessing foreign insurance policies) lawyers often need to take out multiple insurances. Although the stakeholders are working together to find solutions, there is no concrete perspective on a solution of the problems in the near future. The Commission has, in a com-

munication on the horizontal Services Directive[1], announced measures to encourage the development of mechanisms by the insurance sector which can ensure an adequate insurance cover for service providers who work across borders in other Member States. The researchers suggest the Commission to consider taking into account professional indemnity insurance for lawyers as well when taking these measures.

Lawyers also have encountered practical difficulties that are related to social insurance and pension. These difficulties are often not limited to lawyers. In addition, the difficulties in the area of deontology and the exclusion of legal professionals not qualified as lawyers not only apply to the provision of services but also to establishment.

A specific obstacle for in-house lawyers is that it is not clear whether article 8 of the Establishment Directive applies to situations in which a lawyer from a Member State that prohibits in-house counsel can establish as an in-house lawyer in a country in which that is permitted. The article only refers to regulations of the host-country, not to those of the home country. Therefore, article 8 does not, at least *expressis verbis*, offer home Member States the possibility to preclude lawyers from working as in-house counsel in a host country that permits this practice. A liberal interpretation would be that article 8 permits lawyers to work as in-house counsel in host countries where that is permitted, irrespective of the rules in the home Member State. However, in practice there are difficulties for those lawyers, when in-house practice is in conflict with the professional deontological rules of the home Member State. From the point of view of facilitating the free movement of lawyers, the researchers think it would be better to explicitly regulate within the Directive that lawyers have the freedom to work as in-house counsel in host countries in which that is permitted for lawyers, irrespective of the regulations applicable in the home state of the lawyer.

Objective 4: Enabling fully qualified lawyers to achieve integration into the profession after three years of professional practice in the host Member State under their home-country professional titles

The Lawyers' Establishment Directive provides the opportunity to achieve integration into the profession in another country after three years of professional practice, without the need to take an aptitude test. Although this possibility is a revolutionary aspect of the directive and provides a seemingly easy and attractive way to gain admission to the profession in another Member State, only a limited number of lawyers (a few hundred) has made use of this provision since the implementation of the Directive. In the same period, thousands of lawyers have achieved integration into the profession by making use of the Professional Qualifications Directive. The limited use of the route of the Establishment Directive is likely due to a number of difficulties.

First of all, the provision is not very well-known compared to other possibilities that the legal framework offers. Second, the practical implementation is surrounded by a great deal of uncertainty among the Bar Associations and lawyers that mainly seems to centre around the amount of experience with national law necessary for integration, the influence of

[1] European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Implementation of the Services Directive: A Partnership for New Growth in Services 2012-2015*, Brussels 8.6.2012, COM(2012) 261 final.

European law thereon and what is necessary to fulfil the requirement of three years of 'effective and regular pursuit'. As this uncertainty will only be settled after at least three years of practice, this may motivate lawyers to opt for a route that offers more certainty in the short-run by sitting an aptitude test in accordance with the Professional Qualifications Directive. This will be all the more so in countries in which the aptitude test is considered not to be that difficult. The route of the Professional Qualifications Directive is especially appealing to those lawyers that do not want to wait for three years and those that do not want to establish permanently and/or with interruptions. Third, insurers in general seem to be hesitant to accept a lawyer that has gained admission to the profession of another country via the route of the Lawyers' Establishment Directive. They are more inclined to accept a lawyer who has proven his or her abilities by taking a test.

Possible measures to reduce the abovementioned difficulties are manifold but the researchers think they should at least be aimed at taking away uncertainties by clarifying the criteria to become eligible for admission to the profession after three years of establishment: the amount of experience with national law of the home state that is deemed necessary (and possibly in which fields, knowledge of procedural law, and deontology), the assessment of European law, and a clarification of the meaning of 'effective and regular pursuit'. The clarifications could be made by the bars themselves, in the context of the CCBE, and/or it could include changing the Directive to the extent that a new article 10 would include clear, substantive criteria on the basis of which a lawyer established under his home country professional title can be integrated into the host Member State profession.

Objective 5: Meeting the needs of consumers of legal services who seek advice when carrying out cross-border transactions

The legal framework for the free movement of lawyers not only provides opportunities for free movement of lawyers. As lawyers have an important role in the administration of justice, their mobility may also facilitate the free movement of other services, citizens, and businesses.

At EU level, the study has provided no indications that the needs of clients of cross-border legal services are not being met as a result of flaws in the legal framework or a lack of mobility of lawyers. National Bar Associations are also not aware of any difficulties in this respect. The web survey indicates that, as a result of lawyers' mobility, the range of services offered by lawyers has grown. Besides, statistics show that the mobility of lawyers and legal services has increased. We, therefore, conclude that, in general, the legal framework has provided the conditions under which cross-border needs of clients can be met. Although there are reasons that preclude clients from hiring a lawyer in cross-border cases, such as the additional costs and the complexity of cross-border cases, a lack of lawyers competent in cross-border cases generally is not one of them.

The study has provided one indication of an area in which client needs may not be met. In some new Member States the capacity of lawyers competent in cross-border cases seems to be insufficient, partly due to the fact that education has traditionally not focused on comparative and European law. This is especially so in border regions, since foreign lawyers usually offer their services in bigger cities.

Objective 6: A close collaboration between the competent authorities, in particular in connection with any disciplinary proceedings

A condition for a well-functioning system of free movement of lawyers is a close collaboration between the competent authorities, in particular in connection with disciplinary proceedings. However, the procedures for disciplinary proceedings of the directives have hardly, if ever, been used, making a good assessment of their functioning impossible. It seems plausible that intensified co-operation between bars could further facilitate free movement in the future.

Overview of objectives, success criteria and main conclusions

To summarize, the table below provides an overview of the objectives, success criteria and the main conclusions about the success of the Directives in meeting their objectives.

Table 7.1 Overview of objectives, success criteria and main conclusions

Objective	*Success criteria*	*Main conclusions*
The removal of any restrictions on the provision of services based on nationality or on conditions of residence for lawyers	There are no restrictions or barriers for the provision of services based on nationality or on conditions of residence	The Directives have successfully taken away the restrictions or barriers concerned
Enabling qualified lawyers to offer services in Member States other than that in which they obtained their qualification	The Directive has taken away and/reduced formal and practical difficulties that prevent lawyers from offering their services in another Member State (notwithstanding some exceptions that may be justified)	The Directive has successfully taken away formal obstacles to the provision of services; it has reduced practical difficulties, although some remain, notably in the area of deontology
Enabling establishment of lawyers in a Member State other than that in which they obtained their professional qualifications	The Directive has taken away and/or reduced formal and practical difficulties that prevent qualified lawyers from establishing in another Member State (notwithstanding some exceptions that may be justified)	The Directive has successfully taken away formal difficulties; it has reduced practical difficulties, although some remain, in particular administrative difficulties for registration, difficulties related to professional indemnity insurance, and in the area of deontology
Enabling fully qualified lawyers to achieve integration into the profession after three years of professional practice in the host Member State under their home-country professional titles	The Directives have taken away and/or reduced formal and practical difficulties that prevent qualified lawyers to fully integrate into the profession of the host state after three years of professional practice (notwithstanding some exceptions that may be justified)	The Directive provides the opportunity to achieve integration into the profession of another Member State; however, because of a number of practical difficulties relatively few lawyers have made use of the provision.
Meeting the needs of consumers of legal services who seek advice when carrying out cross-border transac-	The legal framework has facilitated access to legal services by consumers of legal services who	The legal framework has provided the conditions under which cross-border needs of clients can

tions	seek advice when carrying out cross-border activities; there are no areas in which the needs are not met structurally as a result of flaws in the legal framework for lawyers.	be met, and has facilitated access to legal services for clients requiring assistance in cases involving more than one Member State.
A close collaboration between the competent authorities, in particular in connection with any disciplinary proceedings	The competent authorities/bars collaborate sufficiently; there are no problems in connection to disciplinary proceedings arising primarily out of lack of collaboration between bars.	The procedures for disciplinary proceedings of the Directives have hardly, if ever, been used, making a good assessment impossible; however it seems plausible that closer co-operation between bars could further facilitate free movement.

7.2 Continuing Relevance of the Lawyers' Directives

Is a separate legal framework still necessary?

Besides evaluating the Lawyers' Directives against the success criteria, it should also be assessed whether the Directives are still relevant. Specifically, following the implementation of the Professional Qualifications Directive the question can be asked whether a separate legal framework for lawyers is still necessary. We think this is certainly so. Abolishing the separate legal framework for lawyers (the Lawyers' Directives) would either lead to a less liberal regime for lawyers, or, if the system is to retain its liberal character, it would make the adoption of many lawyer-specific articles in the Professional Qualifications Directive necessary, with the result not of simplification but rather of complication. These changes would be necessary because the profession of lawyer is different from most other professions, in the sense that the content of the knowledge of the lawyer is very much limited to the legal system in which the lawyer concerned was trained. Besides, none of the respondents have indicated that they seek major reform of the Directives or even the abolishment of the Directives in lieu of the Professional Qualifications Directive.

A note on the scope of the Lawyers' Directives

Both Lawyers' Directives are primarily aimed at individual lawyers. But, although many lawyers have traditionally been working as sole practitioners, since the adoption of the Lawyers' Establishment Directive in 1998 and all the more since the Lawyers' Services Directive in 1977 the number of lawyers working in a firm has increased substantially. As a result, in a number of Member States regulation is no longer (only) aimed at individual lawyers but (also) at law firms. In some countries law firms are able to register with the bar, so that cases can be conducted in the name of the law firm. These lawyer-firms cannot currently make use of the provisions of the Directives. However, the freedom of establishment in the treaty is not limited to individuals but extends also to companies. As the Lawyers' Directives seek to implement the treaty, the question could be asked whether they should also take into account law firms. This is all the more so, since bars in various Member States have decided to totally refuse certain business structures (e.g. ABSs from England and Wales) from establishing in their territory.

The researchers conclude that it would be good to broaden the scope of the Directives so that law firms (at least those without non-lawyer managers/owners) are recognized by them so that they can make use of the freedoms provided by them. When the Directives would include firms, it can be made clear under what conditions who/what can be refused and who/what should be allowed.

Since the adoption of the Lawyers' Establishment Directive, a number of Member States have liberalized their rules on non-lawyer involvement in law firms. However, most Member States have not changed their position and do not allow non-lawyer management, non-lawyer ownership and especially external ownership (by people who are not active in the firm). The most common reason for these prohibitions is that non-lawyer influence is expected to jeopardize core values of the profession such as independence, avoidance of conflicts of interest and confidentiality. Therefore the researchers conclude that there is no compelling reason to change the general approach of article 11(5) of the Lawyers' Establishment Directive. However, it should be clear that this article concerns non-lawyer participation in law firms and not the legal form as such.

Nonetheless, the researchers suggest that it should be clarified whether the right of the host state to forbid a lawyer to act in the name of the grouping (or to forbid the opening of the establishment altogether), as stated in art. 11(5) of the Lawyers' Establishment Directive, is *per se* a right or whether the exercise of such right must meet the so-called Gebhard-test, meaning that there should be a reason of compelling public interest, no discrimination, necessity, suitability and in particular proportionality, i.e. the prohibition is not justified if a less restrictive measure is available. The latter option would be in accord with article 15 of the horizontal Services Directive.[1]

[1] See also Regulatory Policy Institute, *Assessing the economic significance of the professional legal services sector in the European Union*, 2012, p 81, where it is argued that "a careful consideration of the proportionality of any restrictions on ownership and business structures may be merited".

Annex 1 Data Collection Formats

Checklist EU Level Stakeholders

A. Policy background

1 What were the main objectives of the Directives (e.g. removal of restrictions, mobility of lawyers, meeting the needs of consumers)? What should the results of the Directives be to be successful (success criteria)?

2 What were the causal and other assumption behind the implementation of each of the Directives and are these still relevant? Consider:
   1 Internal market regulation
   2 Needs of consumers
   3 Needs of corporate clients (services across border)
   4 Needs of lawyers (mobility and career development)

3 What developments in the needs of clients (both individual consumers and corporate) for cross border services and lawyers do you observe?
   1 In what regions is there a need? For what type of clients?
   2 What kind of services are typically needed?
   3 Is the capacity of competent lawyers sufficient? Where is it not? What is needed to improve the capacity?
   4 How does the need of clients for lawyers who are specialists in national law compare to the need for lawyers competent for providing cross border services (e.g. because of language barriers)?
   5 Needs of lawyers

4 What developments are influencing the developments:
   1 Regulatory reforms
   2 Economic developments
   3 Technological developments
   4 Other, namely

B. Implementation of legal framework

5 Are the directives adequately implemented in the different Member States? What are the main differences between (groups of) Member States? What are the most important barriers in the area of practical implementation? Consider e.g.
   1 the extent to which legal activities (legal advice, representation) are regulated and reserved for professionals
   2 the amount of experience in *national* law that is considered necessary to integrate fully in the profession of the host state under Directive 98/5/EC
   3 access to information about free movement of lawyers in the Member States (e.g. online)
   4 adequate support from authorities (bars and/or ministries)
   5 clarity and simplicity of procedure of registration in the Member States (e.g. online registration)
   6 length and frequency of procedures
   7 documents and translations to be provided at registration
   8 fees for registration (amount and frequency)
   9 any other barriers related to implementation (e.g. age requirements)

C. Interaction of the lawyer directives with other legislation and developments

6 What is the influence of the following Directives on the free movement of lawyers? Do these directives in any way conflict with the Lawyers' Directives?
   1 Directive 2005/36/EC on the recognition of professional qualifications; Is a separate legal framework for lawyers still necessary?
   2 Directive 2006/123/EC on services in the internal market; The interpretation of the directive in practice: are all legal services excepted, or only those covered by the Laywers' Services Directive (77)?
   3 Directive 2000/31/EC on electronic commerce; Does the provision of services via electronic means conflict with codes of conduct or regulations in Member States? Does the possibility of electronic commerce facilitate the mobility of lawyers?
   4 Is there any other EU legislation that influences the free movement of lawyers and the functioning of the lawyers' Directives?

7 How do the legal framework for the mobility of lawyers and council regulations on juridical cooperation in civil and commercial matters (e.g. jurisdiction and the recognition and enforcement of judgments in matrimonial matters and parental responsibility,[1] small claims procedure[2], order for payment procedure[3]) interact in practice?
   1 Are enough lawyers competent to represent clients in cross-border cases made possible by the council regulations?
   2 What is the influence of the requirement of introduction to the court by a local lawyer on (1) the efficiency of procedures, (2) costs to the client and (3) availability of competent lawyers in these cases? Is this a barrier for lawyers or clients for working cross border in these cases?
   3 Are there any other barriers in the kind of procedures mentioned above arising out of the provisions of the Lawyers' Directives?
   4 Do you have any suggestions for improvement of the Directives or their implementation with regard to the Council regulations?

8 Are there any barriers for free movement related to national regulation in Member States? Are there any regulatory reforms in Member States undertaken in the last five years that affect free movement and access to the legal profession in Member States? What are the opportunities, challenges and barriers arising from these reforms?

9 What are other important barriers for lawyers who (want to) work cross border (for both individual and corporate clients)? How can these barriers be addressed?
   1 Liability insurance when providing services temporary or via internet
   2 Conflicts between deontological rules of home and host state (and CCBE rules of conduct)
   3 double insurance / insurances that don't cover services provided in another Member State
   4 double compulsory social security and pension premiums
   5 Barriers at the demand side (e.g. clients unable to find an EU lawyer)

10 Can you identify any specific cases of discussed barriers for further research?

[1] COUNCIL REGULATION (EC) No 2201/2003
[2] Regulation 861/2007 of the European Parliament and of the Council of 11 July 2007
[3] Regulation 1896/2006 of the European Parliament and of the Council of 12 December 2006

D. Effectiveness of the directives

11 Who are the typical users of the provisions of the directives? What have been the developments in number and type of users in the last 10-15 years?
   1 What is their status? Providing services to the host country? Settlement in host country? Full integration into the profession of the host state?
   2 What are typical reasons for mobility of lawyers (e.g. relational/family reasons, commercial reasons, other)?
   3 What are other typical characteristics of users of the different routes (gender, nationality, education, experience, etc.)?
   4 What are typical reasons to integrate fully into the profession? What is the regular route lawyers walk for entering the profession in the host country? Are there any changes in mobility patterns since the introduction of the 98/5/EC Directive (e.g. less applications for aptitude tests)? What kind of lawyers still make use of the route of the Diploma Directive? Is the possibility for an aptitude test with limited scope used in practice? Are there any known limits on the integration of lawyers in another Member State (e.g. that certain tasks can only be done by national lawyers)?
   5 What kind of services do the lawyers typically provide (legal advice, representation) and to whom (corporate clients or individual consumers, specific sectors, etc.)?
   6 In which countries are the services mainly provided? Why?

E. Impact of the directives

12 To what extent does the legal framework have an impact on:
   1 The economy, e.g. increased competition, higher productivity, lower profit margins, business dynamism, EU legal firms competing in the global market, creating an attractive location for foreign investors, opportunities for lawyers to work for foreign firms established in their country.
   2 Citizens and consumers benefits, including a wider choice of high quality services, lower prices thanks to the opening of markets and increasing competition and consumer rights.
   3 Businesses benefits reducing red tape and entering new markets.
   4 Quality in legal services (technical and service quality of legal advice)

F. Conclusion

13 What is your conclusion on the success of the Directives in facilitating the free movement of lawyers (providing services, establishment and full integration) and meeting the need of clients?

14 What are the most important barriers remaining?

15 How can these be addressed and in what order of priority?

16 In what way are specific articles within the Lawyers' Directives still relevant in the light of ongoing contextual developments and needs of society?
   1 Should the scope of Article 2.1 of each of the two Directives be extended to broader categories of legal professionals (e.g. legal advisors from countries where this activity is not a profession, not yet fully qualified lawyers)?
   2 Are the safeguards concerning joint practice provided for in Article 11(5) of Directive 98/5/EC still appropriate, in the light of increasing interest in alternative business structures and multi-disciplinary practice within the legal profession (distinguish be-

tween non-lawyer ownership, non-lawyer management and multi-disciplinary activities where appropriate)?

3 Are the provisions of Article 5 of Directive 77/249/EEC allowing Member States to require European lawyers to be introduced to a judge or president of the local Bar still justified?

Checklist Stakeholders on the National Level

A. Policy background

17 Please could you describe the market for cross border services and relevant developments during the last 15 years (trends in supply and demands) in your country?

18 What developments in the needs of clients (both individual consumers and corporate) for cross border services and lawyers do you observe?

1 In what regions is there a need? For what type of clients?
2 What kind of services are typically needed?
3 Is the capacity of competent lawyers sufficient? Where is it not? What is needed to improve the capacity?
4 How does the need of clients for lawyers who are specialists in national law compare to the need for lawyers competent for providing cross border services (e.g. because of language barriers)?

19 What developments are influencing these developments?

1 Regulatory reforms
2 Economic developments
3 Technological developments
4 Other, namely

B. Implementation of legal framework

20 To what extent is the market for lawyers regulated nationally in your country?

1 For what activities/legal professions is membership of the local Bar compulsory (legal advice, representation)? What are the costs involved?
2 What are the most important regulations and restriction on establishment of a lawyer/law firm (e.g. joint practice)?
3 When and for who is introduction to the court by a local lawyer necessary? What is involved in the procedure? How does it work in practice?
4 Are there any barriers for free movement related to national regulation in Member States?

21 Are there any regulatory reforms undertaken in you country in the last five years that affect free movement and access to the legal profession in Member States? What are the opportunities, challenges and barriers arising from these reforms?

1 How do the safeguards concerning joint practice provided for in Article 11(5) of Directive 98/5/EC interact with developments in your country? Are the safeguards still appropriate?

22 How are the Directives transposed and implemented in your country?
   1 What organizations/actors are involved in the implementation of the Directives?
   2 Is the cooperation between these actors working as expected?
   3 How is cooperation between competent authorities and host / home bars?
   4 In what ways is information provided about free movement of lawyers in the Member States (e.g. online)?
   5 What kind of support is there from authorities (bars and/or ministries) for European lawyers in your country?
   6 Are lawyers required to be introduced to a judge or president of the local bar (following article 5 of Directive 77/249/EEC)? For what reasons? Are these reasons still valid?

23 What are the administrative proceedings involved for European lawyers wanting to establish in your country?
   1 How long is the duration of the registration procedure?
   2 To what extent are services offered online?
   3 What documents and translations have to be provided at registration?
   4 What is the fee for registration?
   5 Do lawyers have to register annually?

24 What is the amount of experience in *national* law considered necessary to integrate fully in the profession of the host state after a period of at least three years (under Directive 98/5/EC)? How is this assessed? What does the procedure for integration into the profession consist of?

25 How has the qualifications Directive (2005/36/EC) been implemented?
   1 Must lawyers wanting to integrate by getting their qualifications recognized do an aptitude test or do they need an adaptation period?
   2 Are there any other prerequisites for recognition?
   3 How many lawyers have applied for an aptitude test in the last 15 years?
   4 What is the success rate?
   5 What is the content of the aptitude test (national law, language abilities, etc.)?
   6 Have there been any developments in the number and kind of applicants for an aptitude test since the introduction of the Lawyers' Establishment Directive (98/5/EC)?

C. Interaction of the lawyer directives with other legislation and developments

26 What is the influence of the following Directives on the free movement of lawyers? Do these directives in any way conflict with the Lawyers' Directives?
   1 Directive 2005/36/EC on the recognition of professional qualifications; Is a separate legal framework for lawyers still necessary?
   2 Directive 2006/123/EC on services in the internal market; The interpretation of the directive in practice: are all legal services excepted, or only those covered by the Laywers' Services Directive (77)?
   3 Directive 2000/31/EC on electronic commerce; Does the provision of services via electronic means conflict with codes of conduct or regulations in Member States? Does the possibility of electronic commerce facilitate the mobility of lawyers?
   4 Is there any other EU legislation that influences the free movement of lawyers and the functioning of the lawyers' Directives?

27 How do the legal framework for the mobility of lawyers and council regulations on juridical cooperation in civil and commercial matters (especially jurisdiction and the recognition and enforcement of judgments in matrimonial matters and parental responsibility,[1] small claims procedure[2], order for payment procedure[3]) interact in practice?

1 Are enough lawyers available competent to represent clients in cross-border cases made possible by the council regulations?
2 What is the influence of the requirement of introduction to the court by a local lawyer on (1) the efficiency of procedures, (2) costs to the client and (3) availability of competent lawyers in these cases? Is the compulsory introduction a barrier for lawyers or clients for working cross border in these cases?
3 Are there any other barriers in the kind of procedures mentioned above arising out of the provisions of the Lawyers' Directives?
4 Do you have any suggestions for improvement of the Directives or their implementation with regard to the Council regulations?

28 What are other barriers for lawyers who (want to) work cross border (for both individual and corporate clients)? How can these barriers be addressed?

1 Liability insurance when providing services temporary or via internet
2 Conflicts between deontological rules of home and host state (and CCBE rules of conduct)
3 double insurance / insurances that don't cover services provided in another Member State
4 double compulsory social security and pension premiums
5 Barriers at the demand side (e.g. clients unable to find an EU lawyer)

D. Effectiveness of the directives

29 How many lawyers *in* your country provide services or are established while they obtained their qualification in another country? What have been the developments in number and type of users in the last 10-15 years? (please discuss the meaning of the numbers presented on the CCBE website)

1 What is the status of these lawyers? Are they providing services in the host country? Are the established in the host country? Have they integrated into the profession of the host state?
2 What kind of services do these lawyers typically provide (legal advice, representation, specific sectors) and to whom (corporate clients, individual consumers, specific sectors, etc.)?
3 What are typical reasons for mobility of lawyers (e.g. relational/family reasons, commercial reasons, career development, other)?
4 What are other typical characteristics of users of the different routes (gender, nationality, education, experience, etc.)?
5 What are typical reasons to integrate fully into the profession? What is the regular route lawyers walk for entering the profession in the host country? Are there any changes in mobility patterns since the introduction of the 98/5/EC Directive (e.g. less applications for aptitude tests)? What kind of lawyers still make use of the route of the Diploma Directive? Is the possibility for an aptitude test with limited scope used in practice? Are there any known limits on the integration of lawyers in another Member State (e.g. that certain tasks can only be done by national lawyers)?

[1] COUNCIL REGULATION (EC) No 2201/2003
[2] Regulation 861/2007 of the European Parliament and of the Council of 11 July 2007
[3] Regulation 1896/2006 of the European Parliament and of the Council of 12 December 2006

30 Who are the typical users of the provisions of the directives *from* your country (providing services/established in another MS)?
   1 What is the status of these lawyers? Are they providing services in the host country? Are the established in the host country? Have they integrated into the profession of the host state?
   2 To which countries do lawyers from your country mainly go/provide services? Why?
   3 What kind of services do these lawyers typically provide (legal advice, representation, specific sectors) and to whom (corporate clients, individual consumers, specific sectors, etc.)?
   4 What are typical reasons for mobility of lawyers (e.g. relational/family reasons, commercial reasons, career development, other)?
   5 What are other typical characteristics of these lawyers (gender, nationality, education, experience, etc.)

E. Impact of the directives

31 To what extent does the legal framework have an impact on:
   1 The economy, e.g. increased competition, higher productivity, lower profit margins, business dynamism, EU legal firms competing in the global market, creating an attractive location for foreign investors, opportunities for lawyers to work for foreign firms established in their country.
   2 Citizens and consumers benefits, including a wider choice of high quality services, lower prices thanks to the opening of markets and increasing competition and consumer rights.
   3 Businesses benefits reducing red tape and entering new markets.
   4 Quality in legal services (technical and service quality of legal advice)

F. Conclusion

32 What is your conclusion on the success of the Directives in facilitating the free movement of lawyers (providing services, establishment and full integration) and meeting the need of clients?

33 What are the most important barriers remaining?

34 How can these be addressed and in what order of priority?

35 In what way are specific articles within the Lawyers' Directives still relevant in the light of ongoing contextual developments and needs of society?
   1 Should the scope of Article 2.1 of each of the two Directives be extended to broader categories of legal professionals (e.g. legal advisors from countries where this activity is not a profession, not yet fully qualified lawyers)?
   2 Are the safeguards concerning joint practice provided for in Article 11(5) of Directive 98/5/EC still appropriate, in the light of increasing interest in alternative business structures and multi-disciplinary practice within the legal profession (distinguish between non-lawyer ownership, non-lawyer management and multi-disciplinary activities where appropriate)?
   3 Are the provisions of Article 5 of Directive 77/249/EEC allowing Member States to require European lawyers to be introduced to a judge or president of the local bar still justified?

Checklist Major European Law Firms

A. Policy background

1 Please could you describe the market for cross border services and relevant developments at the supply and demand side during the last 15 years (trends)

2 What developments in the needs of clients (both individual consumers and corporate) for cross border services and lawyers do you observe?
   1 In what regions is there a need? For what type of clients?
   2 What kind of services are typically needed?
   3 Is the capacity of competent lawyers sufficient? Where is it not? What is needed to improve the capacity?
   4 How does the need of clients for lawyers who are specialists in national law compare to the need for lawyers competent for providing cross border services (e.g. because of language barriers)?

3 What developments are influencing in- /decreasing demand or supply:
   1 Regulatory reforms on EU and national level
   2 Economic developments
   3 Technological developments
   4 Other, namely

B. Implementation of legal framework

4 Are the directives adequately implemented in the different Member States? What are the main differences in implementation between (groups of) Member States in which your firm is active? What are the most important barriers in the area of implementation? Consider e.g.:
   1 the extent to which legal activities (legal advice, representation) are regulated and reserved for professionals
   2 the amount of experience in *national* law that is considered necessary to integrate fully in the profession of the host state (under Directive 98/5/EC)
   3 access to information about free movement of lawyers in the Member States (e.g. online)
   4 adequate support from authorities (bars and/or ministries)
   5 clarity and simplicity of procedure of registration in the Member States (e.g. online registration)
   6 duration and frequency of procedures
   7 documents and translations to be provided at registration
   8 fees for registration (amount and frequency)
   9 Any other barriers related to implementation in Member States (e.g. age requirements)

C. Interaction of the lawyer directives with other legislation and developments

5 What is the influence of the following Directives on the free movement of lawyers? Do these directives in any way conflict with the Lawyers' Directives?
   1 Directive 2005/36/EC on the recognition of professional qualifications; Is a separate legal framework for lawyers still necessary?
   2 Directive 2006/123/EC on services in the internal market; Does your firm make use of any of the provisions of the Services Directive?

3 Directive 2000/31/EC on electronic commerce; Does the provision of services via electronic means conflict with codes of conduct or regulations in Member States? Does the possibility of electronic commerce facilitate the mobility of lawyers?
4 Is there any other EU legislation that influences the free movement of lawyers and the functioning of the lawyers' Directives?

6 Are there any barriers for free movement related to national regulation in Member States? Are there any regulatory reforms in Member States undertaken in the last five years that affect free movement and access to the legal profession in Member States? What are the opportunities, challenges and barriers arising from these reforms?

7 What are other important barriers for lawyers who (want to) work cross border (for both individual and corporate clients)? How can these barriers be addressed?
1 Liability insurance when providing services temporary or via internet
2 Conflicts between deontological rules of home and host state (and CCBE rules of conduct)
3 double insurance / insurances that don't cover services provided in another Member State
4 double compulsory social security and pension premiums
5 Barriers at the demand side (e.g. clients unable to find an EU lawyer)

8 Can you identify any specific cases of discussed barriers for further research?

D. Effectiveness of the directives

9 How many lawyers in your company provide services or are established in another country than they obtained their qualification? What have been the developments in number and type of users in the last 10-15 years?
1 What is the status of these lawyers? Are they providing services in the host country? Are the established in the host country? Have they integrated into the profession of the host state?
2 What kind of services do these lawyers typically provide (legal advice, representation) and to whom (corporate clients, individual consumers, specific sectors, etc.)?
3 In which countries are the services mainly provided? Why?
4 What are typical reasons for mobility of lawyers (e.g. relational/family reasons, commercial reasons, career development, other)?
5 What are other typical characteristics of users of the different routes (gender, nationality, education, experience, etc.)?
6 What are typical reasons to integrate fully into the profession? What is the regular route lawyers walk for entering the profession in the host country? Are there any changes in mobility patterns since the introduction of the 98/5/EC Directive (e.g. less applications for aptitude tests)? What kind of lawyers still make use of the route of the Diploma Directive? Is the possibility for an aptitude test with limited scope used in practice? Are there any known limits on the integration of lawyers in another Member State (e.g. that certain tasks can only be done by national lawyers)?
7 To what extent are lawyers aware that the 77 Directive makes possible their provision of cross border services?

E. Impact of the directives

10 To what extent does the legal framework have an impact on:
   1 The business of your firm. To what extent does your firm rely on the Lawyers' Directives (77 and 98) to be able to conduct your business activities? What couldn't you do if the Directives would not have existed?
   2 The economy, e.g. increased competition, higher productivity, lower profit margins, business dynamism, EU legal firms competing in the global market, creating an attractive location for foreign investors, opportunities for lawyers to work for foreign firms established in their country.
   3 Citizens and consumers benefits, including a wider choice of high quality services, lower prices thanks to the opening of markets and increasing competition and consumer rights.
   4 Businesses benefits reducing red tape and entering new markets.
   5 Quality in legal services (technical and service quality of legal advice)

F. Conclusion

11 What is your conclusion on the success of the Directives in facilitating the free movement of lawyers (providing services, establishment and full integration) and meeting the need of clients?

12 What are the most important barriers remaining?

13 How can these be addressed and in what order of priority?

14 In what way are specific articles within the Lawyers' Directives still relevant in the light of ongoing contextual developments and needs of society?
   1 Should the scope of Article 2.1 of each of the two Directives be extended to broader categories of legal professionals (e.g. legal advisors from countries where this activity is not a profession, not yet fully qualified lawyers)?
   2 Are the safeguards concerning joint practice provided for in Article 11(5) of Directive 98/5/EC still appropriate, in the light of increasing interest in alternative business structures and multi-disciplinary practice within the legal profession (distinguish between non-lawyer ownership, non-lawyer management and multi-disciplinary activities where appropriate)?
   3 Are the provisions of Article 5 of Directive 77/249/EEC allowing Member States to require European lawyers to be introduced to a judge or president of the local bar still justified? (consider also the context of the small claims procedure and European order for payment procedure and its effects on efficiency of the procedures and cost to the client)

Survey Questionnaire

Welcome to the web survey on the free movement of lawyers in the EU

Panteia (a Dutch research institute) is conducting a study on the legal framework for the free movement of lawyers in the European Union, commissioned by the European Commission, DG Internal Market and Services (official letter).

The purpose of this study is to assess the legal framework for the mobility of lawyers, in particular by reviewing the functioning of the Lawyers' Services Directive (Directive 77/249/EC) and the Lawyers' Establishment Directive (Directive 98/5/EC), as well as other relevant EU legislative instruments. The study aims at evaluating the Directives' relevance and effectiveness in facilitating lawyers' establishments and provision of services in a Member State other than the one in which they have received their qualification. It will also examine the extent to which this system allows for meeting the interest of consumers of legal services.

In order to get a clear idea about what is happening on the ground and gather knowledge on the experience of lawyers using (or not) the legal framework, a broad consultation is organised by means of this web survey. To complete the survey, thorough knowledge of the EU Directives is not required.

You are kindly invited to participate in this survey. Completing the survey should take up to 15 minutes.

Thanks in advance,

The research team of Panteia.

Privacy statement (in English)

V001
Are you a fully qualified lawyer in at least one Member State of the European Union?

Items	Code	
1	Yes	
2	No	> End of survey

_____

V002
In which country were you first awarded a university degree in law?

Items	Code
1	Austria
2	Belgium
3	Bulgaria
4	Cyprus
5	Czech Republic
6	Denmark
7	Estonia
8	Finland
9	France
10	Germany
11	Greece
12	Hungary

13	Ireland
14	Italy
15	Latvia
16	Lithuania
17	Luxembourg
18	Malta
19	The Netherlands
20	Norway
21	Poland
30	Portugal
22	Romania
23	Slovak Republic
24	Slovenia
25	Spain
26	Sweden
27	UK - England or Wales
28	UK - Scotland
29	UK - Northern Ireland

Other, namely:

_____

V003

Have you studied abroad in another country during your university studies (for a short or long time)?

Multiple answers possible

Items	Code
1	Yes, inside the European Union
2	Yes, outside the European Union
3	No

_____

V004

In which country or countries did you do your traineeship/apprenticeship or suchlike (to fulfill the requirements for registration with the Bar as a fully qualified lawyer)?

Multiple answers possible

_____

Items	Code
1	Austria
2	Belgium
3	Bulgaria
4	Cyprus
5	Czech Republic
6	Denmark
7	Estonia
8	Finland
9	France
10	Germany
11	Greece
12	Hungary
13	Ireland
14	Italy
15	Latvia
16	Lithuania
17	Luxembourg

18	Malta
19	The Netherlands
20	Norway
21	Poland
30	Portugal
22	Romania
23	Slovak Republic
24	Slovenia
25	Spain
26	Sweden
27	UK - England or Wales
28	UK - Scotland
29	UK - Northern Ireland

Other, namely:

_____

V005

In which EU country did you first register with the Bar (or the relevant competent authority in that country) as a lawyer?
(This country is referred to in the next questions as 'home country')

_____

Items	Code
1	Austria
2	Belgium
3	Bulgaria
4	Cyprus
5	Czech Republic
6	Denmark
7	Estonia
8	Finland
9	France
10	Germany
11	Greece
12	Hungary
13	Ireland
14	Italy
15	Latvia
16	Lithuania
17	Luxembourg
18	Malta
19	The Netherlands
20	Norway
21	Poland
30	Portugal
22	Romania
23	Slovak Republic
24	Slovenia
25	Spain
26	Sweden
27	UK - England or Wales
28	UK - Scotland
29	UK - Northern Ireland

_____

V005a
If (V005 = 13) or ((V005 = 27) or ((V005 = 28) or (V005 = 29)))
Did you register as a solicitor or as a barrister/advocate?

_____

Items	Code
1	as a solicitor
2	as a barrister / advocate

Routing V006

_____

V006
In which field(s) of law do you mainly practice?
Please tick the most appropriate box, and more boxes if applicable.

_____

Items	Code
1	EU and international law
2	financial law
3	constitutional and administrative law
4	tax
5	corporate and company law
6	criminal law
7	contract law
8	property/real estate
9	intellectual property
10	family law
11	employment / social security
12	arbitration
13	tort

other, namely:
no answer

_____

V007
For which type of clients do you mainly work?
Multiple answers possible

_____

Items	Code
1	private individuals
2	small and medium sized enterprises
3	large enterprises
4	public sector

other, namely:
no answer

_____

V008
Do you practice individually or in a grouping?

_____

Items	Code	
1	Individual practice	-> V012a
2	In a grouping (partnership, company, LLP)	
3	Both	

_____

V009
How many lawyers are working in the firm you work for?

Items	Code
1	1 lawyer (self-employed)
2	2 - 5 lawyers
3	6 - 10 lawyers
4	11 - 20 lawyers
5	21 - 50 lawyers
6	51 - 100 lawyers
7	101 lawyers or more
Do not know	

V010
Are the professionals in your firm only lawyers or are there also other professionals in your firm providing services to third parties?
'Lawyers' covers solicitor, advocate, barrister, etc, but not notaries, tax advisors, accountants, etc.

Items	Code
1	Only lawyers
2	Also other professions (such as notaries, tax-advisors, accountants, etc.)
Do not know	

V011
Does this firm have offices in other countries (inside and/or outside the EU)?
Multiple answers possible

Items	Code
1	Yes, inside the EU
2	Yes, outside the EU
3	No
Do not know	

V012
Is your law firm a member of a network of independent law firms?
Multiple answers possible

Items	Code
1	No
2	Yes, a national network
3	Yes, a network inside the EU
4	Yes, a global network
Do not know	

V012a
Have you ever made use of the services of a lawyer from another Member State in a professional context (i.e. as co-counsel, client, etc.)?

_____

Items	Code
1	Yes
2	No

No answer

_____

V012b
Have you experienced any difficulties when making use of these services?
Multiple answers possible

_____

Items	Code
1	No
2	Yes, the costs
3	Yes, difficulty finding a competent lawyer
4	Yes, difficulty finding a lawyer that speaks a language I know
5	Yes, difficulties related to observance of different professional rules/other applicable legal provisions
6	Yes, difficulties related to the business structure of the foreign firm/lawyer
7	Yes, difficulties related from a differing approach in dealing with clients

Other, namely :

_____

V016
Have you been established as a lawyer in another EU country than the EU country in which you first obtained your lawyer-qualification since 2000?
Establishment means to practice the profession on a permanent basis in a country, e.g. in an office.

_____

Items	Code
1	Yes, I am currently established in another EU country
2	Yes, I have been established in another EU country, but currently not anymore
3	No -> V030

_____

V017
In which other EU country(ies) have you been established?
Multiple answers possible

_____

Items	Code
1	Austria
2	Belgium
3	Bulgaria
4	Cyprus
5	Czech Republic
6	Denmark
7	Estonia
8	Finland
9	France
10	Germany
11	Greece

12	Hungary
13	Ireland
14	Italy
15	Latvia
16	Lithuania
17	Luxembourg
18	Malta
19	the Netherlands
20	Norway
21	Poland
30	Portugal
22	Romania
23	Slovak Republic
24	Slovenia
25	Spain
26	Sweden
27	UK - England or Wales
28	UK - Scotland
29	UK - Northern Ireland

V018

What was the other EU country in which you have been established most recently?
The following questions will be about this country.

V019

What type(s) of professional activities have you engaged in while being established in <%~country1%>?
Multiple answers possible

Items	Code
1	drafting contracts
2	court work / representing clients in court / before administrative agencies
3	providing legal advice
4	conveyancing
5	wills, trusts
6	drafting legislation/regulations etc.

other, namely:
no answer

V020

Where were your clients from while being established in <%~country1%>?

Items	Code
1	Mainly clients that come originally from the country in which I initially obtained my qualification
2	Mainly clients that are from the country in which I established
3	About as many clients from my home country as from the country of establishment
4	Other

No answer

V021
What kind of law did you practice while being established in <%~country1%>?

Items	Code
1	Mainly the law of my initial country of qualification
2	Mainly the law of the country where I have been established
3	Mainly EU/international law
4	A mixture of these
Other, namely:	
No answer	

V022
Why did you choose to establish in <%~country1%>?
Multiple answers possible

Items	Code
1	business opportunities in the other country
2	to serve existing clients
3	employment opportunity
4	improvement of professional skills
5	better working conditions
6	better quality of life
7	private/personal/family reasons
other reasons: namely:	
no answer	

V023
Were you working under the professional title of <%~country1%> (the country of establishment), or were you working under the professional title of another country (e.g. the country you came from)?

Items	Code
1	I was working under the professional title of the country of establishment
2	I was working under the professional title of another country
3	Both; I have been working under the professional title of another country first, and later have obtained the professional title of the country of establishment.

V024
When you established in <%~country1%>:

Items	Code
1	To what extent did you have to spend time on the administrative procedure (registration at the bar) involved in establishing as a lawyer?
2	To what extent did you have to spend financial costs to comply with the administrative requirements involved in establishing (registering) as a lawyer?
3	To what extent was information about registering as an established lawyer in another EU Member State available in your home country?
4	To what extent was information about registering as an established lawyer in another EU Member State available in the country you wanted to establish in?
5	To what extent was support available from the authorities in your home country?

6 To what extent was support available from the authorities in the country in which you wanted to establish?

Labels	Code
1	not
2	somewhat
3	much
4	very much
do not know	

V025
What difficulties related to practicing the profession of lawyer have you encountered while being established in <%~country1%>?
Multiple answers possible

Items	Code
1	No difficulties related to practicing the profession
2	Difficulties related to language
3	Lack of understanding and acceptance by clients of the other country
4	Lack of understanding and acceptance by other professionals (laywers, judges, etc)
5	Difficulties related to the requirement to work in conjunction in a local lawyer when representing a client in legal proceedings
6	Difficulties in getting admission to the profession by recognition of my professional qualifications
7	Difficulties related to observance of professional rules of more than one country (double deontology)
8	Difficulties related to professional indemnity insurance (e.g. double premiums, coverage)
9	Difficulties because I was employed by another lawyer / in a company
10	Difficulties because I was working in a grouping or fim in which some persons are not lawyers (multidisciplinary practice)
11	Difficulties because the managers/owners of my firm were not all lawyers
12	Some professional activities were reserved for local lawyers
13	Lack of professional expertise in the law of another EU Member State
14	Continuing requirements of the bar in the home country (e.g. annual registration, permanent education)

Other, namely:

V029
What other difficulties have you encountered while being established in <%~country1%>?
Multiple answers possible

Items	Code
1	Dificulties related to social insurance/benefits
2	Difficulties in finding a job for my partner/spouse
3	Dealing with the necessary administrative formalities
4	Having my pension rights transferred
5	Dificulties with income taxes or similar
6	Difficulties related to housing
7	Accessing health care or other social benefits
8	Access to child care, school or university for your children

9	Adapting to a different culture
10	Leaving family/friends
11	The cost of living abroad
12	Other, namely:
13	No other difficulties

V026

Were you required to provide detailed information to the competent authority in <%~country1%> about the law firm you were going to work for when establishing in that country?

Items	Code
1	Yes
2	No, because I am self-employed
3	No, this was not required

V030

If V016 = 3

Would you consider establishing in another EU Member State some time in the future?

Items	Code	
1	Yes	
2	Maybe	
3	No, because I am not interested.	-> V034
4	No, because I expect too many difficulties.	

V031

If (V030 = 1) or (V030 = 2)

In which EU country/countries would you be interested to establish?

Multiple answers possible

Items	Code
1	Austria
2	Belgium
3	Bulgaria
4	Cyprus
5	Czech Republic
6	Denmark
7	Estonia
8	Finland
9	France
10	Germany
11	Greece
12	Hungary
13	Ireland
14	Italy
15	Latvia
16	Lithuania
17	Luxembourg
18	Malta
19	The Netherlands
20	Norway

21	Poland
30	Portugal
22	Romania
23	Slovak Republic
24	Slovenia
25	Spain
26	Sweden
27	UK - England or Wales
28	UK - Scotland
29	UK - Northern Ireland

Do not know

V032

If V016 = 3

What difficulties related to practicing the profession of lawyer do you expect to encounter when establishing abroad?

Multiple answers possible

Items	Code
1	I expect no difficulties related to practicing the profession
2	Difficulties related to language
3	Lack of understanding and acceptance by clients of the other country
4	Lack of understanding and acceptance by other professionals (laywers, judges, etc)
5	Difficulties related to the requirement to work in conjunction in a local lawyer when representing a client in legal proceedings when working under my home professional title
6	Difficulties in getting admission to the profession by recognition of my professional qualifications
7	Difficulties related to observance of professional rules of more than one country (double deontology)
8	Difficulties related to professional indemnity insurance (e.g. double premiums, coverage)
9	Difficulties because I am employed by another lawyer / in a company
10	Difficulties because I am working in a grouping or firm in which some persons are not lawyers (multidisciplinary practice)
11	Difficulties because the managers/owners of my firm are not all lawyers
12	Some professional activities are reserved for local lawyers
13	Lack of professional expertise in the law of another EU Member State
14	Continuing requirements to the bar in the home country (e.g. annual registration, permanent education)
15	Other, namely:

Do not know

V033

If V016 = 3

What other difficulties do you expect to encounter when establishing abroad?

Multiple answers possible

Items	Code
1	Difficulties related to social insurance/benefits
2	Difficulties in finding a job for my partner/spouse

3	Dealing with the necessary administrative formalities
4	Having my pension rights transferred
5	Difficulties with income taxes or similar
6	Difficulties related to housing
7	Accessing health care or other social benefits
8	Access to child care, school or university for your children
9	Adapting to a different culture
10	Leaving family/friends
11	The cost of living abroad
12	Other, namely:
13	I expect no other difficulties

Do not know

V034

Do you have any additional comments on establishment as a lawyer in another Member State?

(Open)

V035

Have you ever provided services temporarily in an EU country in which you were not established (personal, by mail, email, telephone, etc.)?

In another EU country means that you and/or the client were in another country while the services were provided.

Items	Code	
1	Yes	
2	No	-> V046

V036

In which other EU country or countries have you provided these services?

Please tick multiple boxes if applicable.

Items	Code	Voorwaarde
1	Austria	
2	Belgium	
3	Bulgaria	
4	Cyprus	
5	Czech Republic	
6	Denmark	
7	Estonia	
8	Finland	
9	France	
10	Germany	
11	Greece	
12	Hungary	
13	Ireland	
14	Italy	
15	Latvia	
16	Lithuania	
17	Luxembourg	
18	Malta	
19	the Netherlands	

20	Norway
21	Poland
30	Portugal
22	Romania
23	Slovak Republic
24	Slovenia
25	Spain
26	Sweden
27	UK - England or Wales
28	UK - Scotland
29	UK - Northern Ireland

V038
Where do the clients of these services mainly come from?
Multiple response

Items	Code
1	Mainly clients who are settled in my home country
2	Mainly clients who are settled in another country, but originally come from my home country
4	Other clients settled in other countries

Other, namely:
No answer

V039
Which law did you practice while providing these services in the other EU countries?

Items	Code
1	Mainly the law of my country of establishment
2	Mainly the law of the country where I provided the services
3	Mainly EU/international law
4	A mixture of these

Other, namely:
No answer

V040
Why did you provide services in other EU Member States?
Multiple answers possible

Items	Code
1	business opportunities in the other country
2	to serve existing clients
3	improvement of professional skills

other, namely:
no answer

V041
If TEL36 > 1

What was the last other EU country in which you provided services?
The following questions will be about the services provided in that country

_____

V037

What type(s) of professional activities have you engaged in when providing these services in other EU Member States?

Multiple answers possible

_____

Items	Code
1	drafting contracts
2	court work / representing clients in court / before administrative agencies
3	providing legal advice
4	conveyancing
5	wills, trusts
6	drafting legislation/regulations etc.

other, namely:

no answer

_____

V042

From where did you provide the services?

Multiple answers possible

_____

Items	Code
1	I travelled to the client in another Member State
2	I provided the services from my home country to the client in another country (e.g. by (e-)mail and/or telephone)
3	I was in another Member State but the client was in my home country

Other, namely:

_____

V043

Were you working under the professional title of <%~country2%> (the country where the services were provided)?

_____

Items	Code
1	Yes, I was working under the professional title of the country in which the services were provided
2	No, I was working under the professional title of another country

_____

V044

Vraagsoort

When you provided these services in <%~country2%>:

Items	Code
1	to what extent did you have to spend time on administrative procedures (such as contacting or registering at the bar) for being able to provide legal services in another country?
2	to what extent did you have to spend administrative costs to provide legal services in another country (e.g. a bar fee)?
3	to what extent was information about providing legal services in another EU Member State available in your country of establishment?
4	to what extent was information about providing legal services in another EU Member State available in the country in which you wanted to provide legal services?
5	to what extent was support available from the authorities in your country of establishment?

6	to what extent was support available from the authorities in the country you wanted to provide services in?

Labels	Code
1	not
2	somewhat
3	much
4	very much
do not know	

V045
What difficulties related to practicing the profession of lawyer have you encountered when rendering these services as a lawyer in <%~country2%>?
Multiple answers possible

Items	Code
1	difficulties related to language
2	lack of understanding and acceptance by clients
3	lack of understanding and acceptance by other professionals (laywers, judges, etc)
4	Difficulties related to the requirement to work in conjunction in a local lawyer when representing a client in legal proceedings
5	Difficulties related to observance of professional rules of more than one country (dou-ble deontology)
6	Difficulties related to professional indemnity insurance (e.g. double premiums, cover-age)
7	Difficulties because I was employed by another lawyer / in a company
8	Difficulties because I was working in a grouping or fim in which some persons are not lawyers (multidisciplinary practice)
9	Difficulties because the managers/owners of my firm were not all lawyers
10	some professional activities were reserved for local lawyers
11	Lack of professional expertise in the law of another EU Member State
12	none of these
other, namely:	

V046
If V035 = 2
Would you consider providing services temporarily in another EU Member State, in which you did not provide services until now, some time in the future?

Items	Code	
1	Yes.	
2	Maybe	
3	No, because I expect too many difficulties.	
4	No, because I am not interested	-> V049

V047
If (V046 = 1) or (V046 = 2)
In which other EU country/countries?
Multiple answers possible

Items	Code
1	Austria
2	Belgium
3	Bulgaria
4	Cyprus
5	Czech Republic
6	Denmark
7	Estonia
8	Finland
9	France
10	Germany
11	Greece
12	Hungary
13	Ireland
14	Italy
15	Latvia
16	Lithuania
17	Luxembourg
18	Malta
19	The Netherlands
20	Norway
21	Poland
30	Portugal
22	Romania
23	Slovak Republic
24	Slovenia
25	Spain
26	Sweden
27	UK - England or Wales
28	UK - Scotland
29	UK - Northern Ireland

Do not know

V048
If (V046 = 1) or (V046 = 2)
What difficulties related to practicing the profession of lawyer do you expect to encounter when providing these services?
Multiple answers possible

Items	Code
1	Difficulties related to language
2	Lack of understanding and acceptance by clients of the other country
3	Lack of understanding and acceptance by other professionals (laywers, judges, etc)
4	Difficulties related to the requirement to work in conjunction in a local lawyer when representing a client in legal proceedings when working under my home professional title
5	Having my professional qualifications recognised

6	Difficulties because of the need to respect the professional rules from the other country (double deontology)
7	Difficulties related to professional indemnity insurance (e.g. double premiums, coverage)
8	Difficulties because I am employed by another lawyer / in a company
9	Difficulties because I am employed by another lawyer / in a company
10	Difficulties because the managers/owners of my firm are not all lawyers
11	Some professional activities were reserved for local lawyers
12	Lack of professional expertise in the law of another EU Member State
13	No difficulties related to practicing the profession •

Other, namely:
Do not know

V049
Do you have any additional comments on providing services temporarily in another Member State?
(Open)

V050
If (V016 = 1) or ((V016 = 2) or (V035 = 1))
Have you ever been required to work in conjunction with a local lawyer when working in another country than the one in which you were qualified as a lawyer (working under the professional title of you home country), for the pursuit of activities relating to the representation or defence of a client in legal proceedings?

Items	Code	
1	Yes	
2	No	-> V055

V051
If V050 = 1
What benefits have you experienced when working in conjunction with a local lawyer?
Multiple answers possible

Items	Code
1	The local lawyer can provide knowledge of local customs and court procedures
2	The local lawyer can give advice on national law of the host country
3	I experience greater acceptance by the court/administrative body before which I appeared because I worked in conjunction with a local lawyer
4	The conjunction provides a basis for wider professional cooperation
5	No benefits

Other, namely:

V052
If (V016 = 1) or ((V016 = 2) or (V035 = 1))
Have you experienced any difficulties in working in conjunction with a local lawyer?
Multiple answers possible

_____

Items	Code
1	No
2	Yes, the costs
3	Yes, difficulty in finding a local lawyer who would agree to work in conjunction with me
4	Yes, it limited my ability to do the work independently

Other difficulties, namely:

_____

V053
If (V016 = 1) or ((V016 = 2) or (V035 = 1))
How much have been, on average, the extra costs for the client for his representation or defense because of the requirement of working in conjunction with a local lawyer?

_____

Items	Code
1	0 - 25% extra costs
2	26% - 50% extra costs
3	51% - 75% extra costs
4	76- 100% extra costs
5	more than 100% extra costs
6	do not know / do not wish to answer

_____

V054
If (V016 = 1) or ((V016 = 2) or (V035 = 1))
Do you have any additional comments on working in conjunction with a local lawyer?
(Open)

_____

V055
Have you obtained the right to use the professional title of an EU country other than that in which you initially qualified as a lawyer?

_____

Items	Code	Routing
1	Yes	
2	No	-> V063

_____

V056
For which other EU country or countries did you obtain this right?
Multiple answers possible

_____

Items	Code	Voorwaarde
1	Austria	
2	Belgium	
3	Bulgaria	
4	Cyprus	
5	Czech Republic	
6	Denmark	
7	Estonia	

8	Finland
9	France
10	Germany
11	Greece
12	Hungary
13	Ireland
14	Italy
15	Latvia
16	Lithuania
17	Luxembourg
18	Malta
19	the Netherlands
20	Norway
21	Poland
30	Portugal
22	Romania
23	Slovak Republic
24	Slovenia
25	Spain
26	Sweden
27	UK - England or Wales
28	UK - Scotland
29	UK - Northern Ireland

_____

V057
What was the last other EU country for which you obtained this right? The following questions will be about this country.

_____

V057a
When did you obtain this right?
(year)

_____

V058
Why did you obtain the right to use the title of <%~country3%>?
Multiple answers possible

_____

Items	Code
1	It enhances my professional status
2	I wanted full rights to practice the law of that country
3	To be able to deliver more comprehensive services to clients
4	To avoid being required to work in conjunction with a local lawyer in that country
5	To enhance my career opportunities
6	Because I expected clients from that country to make more use of my services if I use the title of their country

Other, namely:
No answer

_____

V059
How did you obtain the right to use the title of <%~country3%>?

_____

Items	Code
1	I obtained it after being established and practicing law in that country for (at least) three years (under the Lawyers' Establishment Directive 98/5/EC)
2	I obtained it after completing an aptitude test (under the Diploma Directive 2005/36/EC or 89/48/EEC)
3	I obtained the title after completing a regular lawyer training for that country (e.g. a university degree and/or a lawyer traineeship)

Other, namely:

_____

V060
If V059 = 1
What was involved in the procedure to integration after (at least) three years work?
Multiple answers possible

_____

Items	Code
1	Providing a list of cases/description of work experience in the country of establishment
2	A formal interview with the Bar Association
3	An aptitude test / exam
4	A language ability test
5	Providing translation of official documents from home country
6	A fee (besides fee for registration at the bar)
7	A course / seminar
8	None of these

Other, namely:

_____

V061
If V059 = 2
Why did you obtain the right to use the title by an aptitude test, and not automatically after being established for three years?

_____

Items	Code
1	I did not want to establish there
2	I did want to establish there, but wanted to obtain the right earlier and not after three years
3	I wanted to establish there, but did not know there was another possibility
4	I wanted to establish there, but the possibility of integrating automatically after three years did not exist at that moment (before implementation of the Lawyers' Establishment Directive of 1998).

Other reason, namely:
No answer

_____

V062
If V059 = 2
What is your opinion on the level of complexity of the aptitude test, considering its objective (to assess the ability of the applicant to pursue the profession of lawyer in that Member State)?

_____

Items	Code
1	Much too low
2	Too low
3	Sufficient

4	Too high
5	Much too high
6	No opinion

V063

If V055 = 2

Would you consider obtaining the right to use the professional title of EU country other than that in which you initially qualified as a lawyer some time in the future?

Items	Code	
1	Yes.	
2	Maybe	
3	No, because I expect too many difficulties.	
4	No, because I am not interested	-> V066

V064

If (V063 = 1) or (V063 = 2)

In which other EU country/countries would you be interested to qualify as a lawyer?

Multiple answers possible

Items	Code
1	Austria
2	Belgium
3	Bulgaria
4	Cyprus
5	Czech Republic
6	Denmark
7	Estonia
8	Finland
9	France
10	Germany
11	Greece
12	Hungary
13	Ireland
14	Italy
15	Latvia
16	Lithuania
17	Luxembourg
18	Malta
19	The Netherlands
20	Norway
21	Poland
31	Portugal
22	Romania
23	Slovak Republic
24	Slovenia
25	Spain
26	Sweden
27	UK - England or Wales
28	UK - Scotland
29	UK - Northern Ireland
30	Don’t know yet

_____

V065
If (V063 = 1) or (V063 = 2)
Why would you want to obtain this right?
Multiple answers possible

_____

Items	Code
1	It enhances my professional status
2	I want full rights to practice law of that country
3	To be able to deliver more comprehensive services to clients
4	To avoid being required to work in conjunction with a local lawyer in that country
5	To enhance my career opportunities
6	Because I expected clients from that country to make more use of my services if I use the title of their country

other, namely:
No answer

_____

V066
Do you have any additional comments on obtaining the right to use the professional title of another EU country than the one in which you initially qualified as a lawyer?
(Open)

_____

V067
If (V016 = 3) and ((V035 = 2) and (V055 = 2))
Are you familiar with the possibility of providing legal services in another EU Member State under home professional title (under the 'Lawyers' Services Directive')?

_____

Items	Code
1	no
2	heard about it
3	familiar with it

_____

V068
If (V016 = 3) and ((V035 = 2) and (V055 = 2))
Are you familiar with the possibility to establish as a lawyer in another EU Member State under your home country professional title (under the 'Lawyers' Establishment Directive')

_____

Items	Code
1	no
2	heard about it
3	familiar with it

_____

V069
If (V016 = 3) and ((V035 = 2) and (V055 = 2))
Are you familiar with the possibility of obtaining the right to use the professional title of another EU country by completing an aptitude test?

_____

Items	Code
1	no
2	heard about it
3	familiar with it

_____

V070

If (V016 = 3) and ((V035 = 2) and (V055 = 2))

Are you familiar with the possibility of obtaining the right to use the professional title of another EU country after being established there for three years, without needing to complete an aptitude test (under the 'Lawyers' Establishment Directive')?

_____

Items	Code
1	no
2	heard about it
3	familiar with it

_____

V071

What kind of commercial communications is used by you or your firm?

Multiple answers possible

_____

Items	Code
1	Personal and/or firm website
2	Active soliciting of clients
3	Handing out business cards
4	Advertising in media
5	Making use of social media (e.g. LinkedIn)
6	None

Other, namely:

No answer

_____

V072

If V071 doesn't contain [6]

Did you or your firm adapt communication strategies (e.g. the website) to extend the practice beyond the country in which you are established?

_____

Items	Code
1	Yes
2	No

No answer

_____

V073

If V071 doesn't contain [6]

To what extent has commercial communication increased demand of your or your firms services from clients in other Member States?

_____

Items	Code
1	To a great extent
2	To some extent
3	No influence

I do not know / no answer

_____

V074
Do you have any additional comments on commercial communications and cross border practice?
(Open)

V075
Please could you indicate to what extent you agree with the following statements:

Lawyers from other EU countries providing services or establishing in the country where I am established...

Items	Code
1	noticeably enhance competition pressure
2	cause pressure to decrease fees for legal services
3	cause pressure to increase the quality of legal services
4	lead to an increase in the range of legal services offered in this country
5	lead to an increase in accessibility of lawyers' services
6	are a threat to the national profession of lawyer

Labels	Code
1	fully agree
2	agree
3	neutral
4	disagree
5	fully disagree

no opinion

V014
What is your gender?

Items	Code
1	male
2	female

no answer

V015
In what year were you born?
(year)
No answer

V076
Do you have any additional comments?
(Open)

Response Tables

Table I Main fields of law practiced by survey participants

	n	%
Contract law	1170	49,5%
Corporate and company law	824	34,8%
Tort	638	27,0%
Family law	634	26,8%
Employment/social security	618	26,1%
Property/real estate	486	20,5%
Criminal law	420	17,8%
EU and international law	319	13,5%
Intellectual property	261	11,0%
Tax	227	9,6%
Constitutional and administrative law	198	8,4%
Financial law	185	7,8%
Arbitration	140	5,9%
Other, namely:	617	26,1%
No answer	13	0,5%
Total	2.365	100,0%

Multiple responses were possible; percentages based on number of respondents

Participating lawyers practice in a number of fields (table I). Half of the participants regularly practices contract law, around a third corporate and company law. Around a quarter practices tort, family law, and/or employment and social security law.

Table II Main clients of survey participants

	n	%
Small and medium sized enterprises	1679	71,0%
Private individuals	1550	65,5%
Large enterprises	657	27,8%
Public sector	237	10,0%
Other, namely:	89	3,8%
No answer	15	0,6%
Total	2.365	100%

Multiple responses were possible; percentages based on number of respondents

Over two thirds of the participating lawyers regularly work for small and medium sized companies, while around two third (also) serve private individuals. Over a quarter regularly works for large enterprises.

Table III Number of lawyers in law firm

	Frequency	Percent
1 lawyer (self-employed)	976	41%
2 - 5 lawyers	671	28%
6 - 10 lawyers	202	9%
11 - 20 lawyers	129	5%
21 - 50 lawyers	123	5%
51 - 100 lawyers	78	3%
101 lawyers or more	176	7%
Do not know	10	0%
Total	2365	100%

Less than half of the lawyers are working in a self-employed capacity. More than a quarter works in a small group of 2-5 lawyers. The others work in larger firms.

Table IV Age and sex of participating lawyers

	Male	Female	No answer	Total n	Total %
< 25	0%	0%	0%	4	0%
25 - <35	14%	26%	2%	418	18%
35 - <45	29%	32%	9%	703	30%
45 - <55	23%	21%	0%	520	22%
55 - <65	19%	9%	5%	362	15%
>=65	7%	1%	2%	118	5%
No answer	9%	9%	81%	240	10%
Total	100%	100%	100%	2365	100%

In total, 66% of the lawyers that have participated in the survey are males, while 32% is female.[1] Around half of the lawyers is aged between 35 and 55 years.

In the context of the study no detailed data were available on characteristics of the population of all lawyers in Europe, so it was not possible to check to what extent the survey is representative as far as the variables contained in the above tables are concerned.

[1] A small proportion (2%) of the lawyers did not answer the question on their sex.

Table V Countries in which lawyers are or have been established

	n	%
Austria	9	3%
Belgium	16	6%
Cyprus	5	2%
Czech Republic	7	3%
Denmark	5	2%
Estonia	3	1%
Finland	3	1%
France	21	8%
Germany	50	19%
Greece	4	2%
Hungary	2	1%
Ireland	1	0%
Italy	63	24%
Luxembourg	32	12%
Malta	1	0%
the Netherlands	14	5%
Poland	10	4%
Romania	1	0%
Slovak Republic	9	3%
Spain	35	13%
Sweden	8	3%
UK - England or Wales	20	8%
UK – Scotland	1	0%
Portugal	1	0%
Total	267	100%

Multiple responses were possible; percentages based on number of respondents

Table VI Countries in which temporary cross-border services have been provided

	n	%
Austria	307	32,1%
Belgium	214	22,4%
Bulgaria	20	2,1%
Cyprus	34	3,6%
Czech Republic	58	6,1%
Denmark	116	12,1%
Estonia	43	4,5%
Finland	63	6,6%
France	345	36,1%
Germany	206	21,5%
Greece	70	7,3%
Hungary	42	4,4%
Ireland	53	5,5%
Italy	225	23,5%
Latvia	20	2,1%
Lithuania	26	2,7%
Luxembourg	111	11,6%
Malta	25	2,6%
the Netherlands	224	23,4%
Norway	55	5,8%
Poland	110	11,5%
Portugal	28	2,9%
Romania	36	3,8%
Slovak Republic	48	5,0%
Slovenia	16	1,7%
Spain	194	20,3%
Sweden	90	9,4%
UK - England or Wales	346	36,2%
UK - Scotland	44	4,6%
UK - Northern Ireland	20	2,1%
Total	956	100%

Multiple responses were possible; percentages based on number of respondents

Table VII Host countries in which lawyers that participated in the survey have integrated into the profession

	n	%
Austria	5	3,2%
Belgium	5	3,2%
Cyprus	4	2,6%
Czech Republic	5	3,2%
Denmark	3	1,9%
Estonia	2	1,3%
Finland	1	0,6%
France	18	11,7%
Germany	27	17,5%
Greece	2	1,3%
Hungary	2	1,3%
Italy	24	15,6%
Lithuania	1	0,6%
Luxembourg	14	9,1%
Malta	1	0,6%
the Netherlands	9	5,8%
Poland	3	1,9%
Slovak Republic	6	3,9%
Spain	23	14,9%
Sweden	8	5,2%
UK - England or Wales	16	10,4%
UK - Scotland	2	1,3%
Total	154	100,0%

Multiple responses were possible; percentages based on number of respondents

The table above gives an overview of the host countries in which the lawyers that have participated in the survey have gained admission to the profession. It must be noted that the countries of destination are to a certain degree linked to the response rates in various countries.

Annex 2 List of Competent Authorities

Introduction

Both Lawyer Directives refer to competent authorities. For example, the Lawyers' Establishment Directive states that European lawyers wishing to establish themselves in another EU country must register with the competent authority. Usually the Bar Association is the competent authority. The bar is organized differently across the Member States of the European Union. In some Member States there is a national Bar Association, whereas other have a more decentralized system with regional or even local bars, with which European lawyers must register. This annex lists the competent authorities where European lawyers must registers in the 27 Member States of the European Union.

1. Austria

On the national level, there is the *Österreichischer Rechtsanwaltskammertag*. There are also regional bars:

1 Rechtsanwaltskammer Burgenland
2 Rechtsanwaltskammer für Kärnten
3 Rechtsanwaltskammer Niederösterreich
4 Oberösterreichische Rechtsanwaltskammer
5 Salzburger Rechtsanwaltskammer
6 Steiermärkische Rechtsanwaltskammer
7 Tiroler Rechtsanwaltskammer
8 Vorarlberger Rechtsanwaltskammer
9 Rechtsanwaltskammer in Wien

2. Belgium

- Ordre des barreaux francophones et germanophones
- Orde van Vlaamse Balies

3. Bulgaria

In Bulgaria there are 27 Lawyers' Colleges (bars) in every district of the country with a corresponding Lawyers' Council and Disciplinary court. European lawyers have to register with a district bar council. There is also a national Supreme Bar Council.

The district bar councils are:

10 Благоевград
11 Бургас
12 Варна
13 Велико търново
14 Видин
15 Враца
16 Габрово
17 Добрич
18 Кърджали
19 Кюстендил
20 Ловеч
21 Монтана
22 Пазарджик
23 Перник
24 Плевен
25 Пловдив
26 Разград
27 Русе
28 Силистра
29 Сливен
30 Смолян
31 Софийска
32 Стара загора
33 Търговище
34 Хасково
35 Шумен
36 Ямбол

4. Cyprus

The Cyprus Bar Association is the national association of lawyers.

There are regional six Bar Associations, but EU lawyer can register at the national Bar Association.

- Regional bar of Lefkosia
- Regional bar of Lemesos
- Regional bar of Ammohostos
- Regional bar of Larnaka
- Regional bar of Pafos
- Regional bar of Kerinia

5. Czech Republic

There is a national associations, the Czech Bar Association.

6. Denmark

- Danish Bar and Law Society

7. Estonia

Estonian Bar Association

8. Finland

- Finnish Bar Association

9. France

There are 180 local bars, who are associated in the Conseil National des Barreaux (CNB). Each local bar is in charge of registering EU lawyers

The 180 local Bars are:

1 Agen (47)
2 Aix en Provence (13)
3 Ajaccio (20)
4 Alès (30)
5 Albertville (73)
6 Albi (81)
7 Alençon (61)
8 Amiens (80)
9 Angers (49)
10 Annecy (74)
11 Argentan (61)
12 Arras (62)
13 Auch (32)
14 Aurillac (15)
15 Auxerre (89)
16 Avesnes sur Helpe (59)
17 Avignon (84)
18 Avranches (50)
19 Bastia (20)
20 Bayonne (64)
21 Beauvais (60)
22 Belfort (90)
23 Belley (01)
24 Bergerac (24)
25 Bernay (27)
26 Besançon (25)
27 Bethune (62)
28 Beziers (34)
29 Blois (41)
30 Bobigny/Seine-St-Denis (93)
31 Bonneville (74)
32 Bordeaux (33)
33 Boulogne sur Mer (62)
34 Bourg en Bresse (01)
35 Bourges (18)
36 Bourgoin-Jallieu (38)
37 Bressuire (79)
38 Brest (29)
39 Briey (54)
40 Brive (19)
41 Caen (14)
42 Cahors (46)
43 Cambrai (59)
44 Carcassonne (11)
45 Carpentras (84)
46 Castres (81)
47 Cayenne (973)
48 Chalon sur Saône (71)
49 Chalons en Champagne (51)
50 Chambéry (73)
51 Charente (16)
52 Charleville Mezières (08)
53 Chartres (28)
54 Chateauroux (36)
55 Chaumont (52)
56 Cherbourg (50)
57 Clermont-Ferrand (63)
58 Colmar (68)
59 Compiègne (60)
60 Coutances (50)
61 Créteil/Val-de-Marne (94)
62 Dax (40)
63 Dieppe (76)
64 Digne (04)
65 Dijon (21)
66 Dinan (22)
67 Dole (39)
68 Douai (59)
69 Draguignan (83)
70 Dunkerque (59)
71 Epinal (88)
72 Evreux (27)
73 Evry/Essonne (91)
74 Foix (09)
75 Fontainebleau (77)

76 Fort de France/Martinique (972)
77 Gap/Hautes-Alpes (05)
78 Grasse (06)
79 Grenoble (38)
80 Guadeloupe (971)
81 Gueret (23)
82 Guimgamp-Lannion (22)
83 Havre (76)
84 Hazebourck (59)
85 La Rochelle - Rochefort (17)
86 Laon (02)
87 Laval (53)
88 Le Mans (72)
89 Libourne (33)
90 Lille (59)
91 Limoges (87)
92 Lisieux (14)
93 Lons le Saunier (39)
94 Lorient (56)
95 Lure (70)
96 Lyon (69)
97 Marmande (47)
98 Marseille (13)
99 Mâcon (71)
100 Meaux (77)
101 Melun (77)
102 Mende (48)
103 Metz (57)
104 Meuse (55)
105 Millau (12)
106 Mont de Marsan (40)
107 Montargis (45)
108 Montauban (82)
109 Montbeliard (25)
110 Montbrison (42)
111 Montluçon (03)
112 Montpellier (34)
113 Morlaix (29) -> Brest
114 Moulin (03)
115 Mulhouse (68)
116 Nancy (54)
117 Nanterre/Haut-de-Seine (92)
118 Nantes (44)
119 Narbonne (11)
120 Nîmes (30)
121 Nevers (58)
122 Nice (06)
123 Niort (79)
124 Nouméa (98)
125 Orléans (45)
126 Paris (75)
127 Pau (64)
128 Perigueux (24)
129 Peronne (80) -> Amiens
130 Perpignan (66)
131 Pointe à Pitre (97)
132 Poitiers (86)
133 Pontoise/Val-d'Oise (95)
134 Privas (07)
135 Puy en Velay (43)
136 Quimper (29)
137 Reims (51)
138 Rennes (35)
139 Riom (63)
140 Roanne (42)
141 Roche sur Yon (85)
142 Rochefort sur Mer (17)
143 Rodez (12)
144 Rouen (76)
145 Sables d'Olonne (85)
146 Saint Omer (62)
147 Saint-Brieuc (22)
148 Saint-Denis (97490)
149 Saint-Dié (88)
150 Saint-Etienne (42)
151 Saint-Gaudens (31)
152 Saint-Malo (35)
153 Saint-Nazaire (44)
154 Saint-Pierre la Réunion (97410)
155 Saint-Quentin (02)
156 Saintes (17)
157 Sarreguemines (57)
158 Saumur (49)
159 Saverne (67)
160 Senlis (60)
161 Sens (89)
162 Soisson (02)
163 Strasbourg (67)
164 Tarascon (13)
165 Tarbes (65)
166 Thionville (57)
167 Thonon les Bains (74)
168 Toulon (83)
169 Toulouse (31)
170 Tours (37)
171 Troyes (10)
172 Tulle - Ussel (19)
173 Valence (26)
174 Valenciennes (59)
175 Vannes (56)
176 Versailles (78)
177 Vesoul (70)
178 Vichy (03)
179 Vienne (38)
180 Villefranche sur Saône (69)

10. Germany

There is a federal *Bundesrechtsanwaltskammer* in Germany, however, there are also bar associations (Rechtsanwaltskammern) for each Bundesland.

There are 28 regional Rechtsanwaltskammern:

1 Rechtsanwaltskammer bei dem Bundesgerichtshof
2 Rechtsanwaltskammer Bamberg
3 Rechtsanwaltskammer Berlin
4 Brandenburgische Rechtsanwaltskammer
5 Rechtsanwaltskammer für den Oberlandesgerichtsbezirk Braunschweig
6 Hanseatische Rechtsanwaltskammer Bremen
7 Rechtsanwaltskammer für den Oberlandesgerichtsbezirk Celle
8 Rechtsanwaltskammer Düsseldorf
9 Rechtsanwaltskammer Frankfurt
10 Rechtsanwaltskammer Freiburg

11 Hanseatische Rechtsanwaltskammer Hamburg
12 Rechtsanwaltskammer für den Oberlandesgerichtsbezirk Hamm
13 Rechtsanwaltskammer Karlsruhe
14 Rechtsanwaltskammer Kassel
15 Rechtsanwaltskammer Koblenz
16 Rechtsanwaltskammer Köln
17 Rechtsanwaltskammer Mecklenburg-Vorpommern
18 Rechtsanwaltskammer für den Oberlandesgerichtsbezirk München
19 Rechtsanwaltskammer Nürnberg
20 Rechtsanwaltskammer für den Oberlandesgerichtsbezirk Oldenburg
21 Rechtsanwaltskammer des Saarlandes
22 Rechtsanwaltskammer Sachsen
23 Rechtsanwaltskammer des Landes Sachsen-Anhalt
24 Schleswig-Holsteinische Rechtsanwaltskammer
25 Rechtsanwaltskammer Stuttgart
26 Rechtsanwaltskammer Thüringen
27 Rechtsanwaltskammer Tübingen
28 Pfälzische Rechtsanwaltskammer Zweibrücken

11. Greece

Greece has 63 local bars. The Athens bar is the representative of Greece to the CCBE.

1 Athens
2 Agrinio
3 Aigion
4 Alexandroupolis
5 Amaliados
6 Amfissa
7 Arta
8 Veria
9 Volos
10 Giannitson
11 Gravenon
12 Gythion
13 Drama
14 Edessa
15 Haryana
16 Zakynthos
17 Ilia
18 Heraklion
19 Thesprotia
20 Thessaloniki
21 Thebes
22 Ioannina
23 Kavala
24 Kalavryta
25 Kalamata
26 Karditsa
27 Kastoria
28 Katerini
29 Corfu
30 Kefalonia
31 Kilkis
32 Kozani
33 Corinth
34 Kyparissia
35 Kos
36 Lamia
37 Larissa
38 Lassithi
39 Livadia
40 Lefkada
41 Messolongi
42 Mytilene
43 Naxos
44 Nafplion
45 Xanthi
46 Orestiada
47 Patron
48 Piraeus
49 Preveza
50 Rethymno
51 Rodopi
52 Rhodes
53 Samos
54 Serres
55 Sparta
56 Syros
57 Trikala
58 Tripoli
59 Florina
60 Chalcis
61 Halkidiki
62 Chania
63 Chiou

12. Hungary

There is a national bar, the Hungarian Bar Association, but registration of European lawyers has to be done at one of the 20 local bars:

1 Budapesti Ügyvédi Kamara
2 Bács-Kiskun Megyei Ügyvédi Kamara
3 Békés Megyei Ügyvédi Kamara
4 BAZ Megyei Ügyvédi Kamara
5 Debreceni Ügyvédi Kamara
6 Fejér Megyei Ügyvédi Kamara
7 Győr-Moson-Sopron Megyei Ügyvédi Kamara
8 Heves Megyei Ügyvédi Kamara

9 Jász-Nagykun-Szolnok Megyei Ügyvédi Kamara
10 Komárom-Esztergom Megyei Ügyvédi Kamara
11 Nógrád Megyei Ügyvédi Kamara
12 Nyíregyházi Ügyvédi Kamara
13 Pest Megyei Ügyvédi Kamara
14 Pécsi Ügyvédi Kamara
15 Somogy Megyei Ügyvédi Kamara
16 Szegedi Ügyvédi Kamara
17 Tolna Megyei Ügyvédi Kamara
18 Vas Megyei Ügyvédi Kamara
19 Veszprém Megyei Ügyvédi Kamara
20 Zala Megyei Ügyvédi Kamara

13. Ireland

- The Law Society of Ireland (solicitors)
- Bar Council of Ireland (barristers)

14. Italy

There is a national bar association, the Consiglio Nazionale Forense. European lawyers must register with one of the regional bars in Italy. There are 165 local bars in Italy which corresponds to the number of court districts in the country.

1 Acqui Terme
2 Agrigento
3 Alba
4 Alessandria
5 Ancona
6 Aosta
7 Arezzo
8 Ariano Irpino
9 Ascoli Piceno
10 Asti
11 Avellino
12 Avezzano
13 Barcellona Pozzo di Gotto
14 Bari
15 Bassano Del Grappa
16 Belluno
17 Benevento
18 Bergamo
19 Biella
20 Bologna
21 Bolzano
22 Brescia
23 Brindisi
24 Busto Arsizio
25 Cagliari
26 Caltagirone
27 Caltanissetta
28 Camerino
29 Campobasso
30 Casale Monferrato
31 Cassino
32 Castrovillari
33 Catania
34 Catanzaro
35 Chiavari
36 Chieti
37 Civitavecchia
38 Como
39 Cosenza
40 Crema
41 Cremona
42 Crotone
43 Cuneo
44 Enna
45 Fermo
46 Ferrara
47 Firenze
48 Foggia
49 Forlì Cesena
50 Frosinone
51 Gela
52 Genova
53 Gorizia
54 Grosseto
55 Imperia
56 Isernia
57 Ivrea
58 L'Aquila
59 La Spezia
60 Lagonegro
61 Lamezia Terme
62 Lanciano
63 Lanusei
64 Larino
65 Latina
66 Lecce
67 Lecco
68 Livorno
69 Locri
70 Lodi
71 Lucca
72 Lucera
73 Macerata
74 Mantova
75 Marsala
76 Massa Carrara
77 Matera
78 Melfi
79 Messina
80 Milano
81 Mistretta
82 Modena
83 Modica
84 Mondovì
85 Montepulciano
86 Monza
87 Napoli
88 Nicosia
89 Nocera Inferiore
90 Nola
91 Novara
92 Nuoro
93 Oristano
94 Orvieto
95 Padova
96 Palermo
97 Palmi
98 Paola

99 Parma
100 Patti
101 Pavia
102 Perugia
103 Pesaro
104 Pescara
105 Piacenza
106 Pinerolo
107 Pisa
108 Pistoia
109 Pordenone
110 Potenza
111 Prato
112 Ragusa
113 Ravenna
114 Reggio Calabria
115 Reggio Emilia
116 Rieti
117 Rimini
118 Roma
119 Rossano
120 Rovereto
121 Rovigo
122 Sala Consilina
123 Salerno
124 Saluzzo
125 Sanremo
126 Sant'Angelo dei Lombardi
127 Santa Maria Capua Vetere
128 Sassari
129 Savona
130 Sciacca
131 Siena
132 Siracusa
133 Sondrio
134 Spoleto
135 Sulmona
136 Taranto
137 Tempio Pausania
138 Teramo
139 Termini Imerese
140 Terni
141 Tivoli
142 Tolmezzo
143 Torino
144 Torre Annunziata
145 Tortona
146 Trani
147 Trapani
148 Trento
149 Treviso
150 Trieste
151 Udine
152 Urbino
153 Vallo della Lucania
154 Varese
155 Vasto
156 Velletri
157 Venezia
158 Verbania
159 Vercelli
160 Verona
161 Vibo Valentia
162 Vicenza
163 Vigevano
164 Viterbo
165 Voghera

15. Latvia

There is a national association, the Latvian Bar Association.

16. Lithuania

There is a national association, the Lithuanian Bar Association (Lietuvos Advokatūra).

17. Luxembourg

There are two bar associations in Luxembourg, the Luxembourg Bar Association and the Bar of Diekirch. All European lawyers have to register with the Luxembourg Bar Association.

18. Malta

The Malta Chamber of Advocates is the only local Association representing all lawyers practicing in Malta. It is a member of the CCBE. As such, it is not a legally recognized Bar Association as is in use in other countries. There exists a Commission for the Administration of Justice which was set up in order to regulate Lawyers, Legal Procurators and Judges. The Commission has, within it, a Committee on Lawyers and Legal Procurators, which regulates all disciplinary actions relating to Lawyers and Legal Procurators. The Committee consists of a panel of five Board Members, three of whom are nominated and appointed by the Chamber of Advocates.

19. The Netherlands

European lawyers can register either with the national bar association, the *Nederlandse Orde van Advocaten*, or with one of the nineteen local bars:

1 Alkmaar
2 Amsterdam
3 Haarlem
4 Utrecht
5 Almelo
6 Arnhem
7 Zutphen
8 Zwolle-Lelystad
9 Dordrecht
10 Den Haag
11 Middelburg (Zeeland)
12 Rotterdam
13 Breda
14 s-Hertogenbosch
15 Maastricht
16 Roermond
17 Assen
18 Groningen
19 Leeuwarden

20. Poland

There are two legal professions in Poland: advocate and legal advisor. For both there is a national association and multiple regional associations. European lawyers need to register with the regional associations.

The profession of Legal Advisers is regulated by the National Council of Legal Advisers (Krajowa Izba Radców Prawnych – KIRP) at the national level and by 19 local Councils at the local level:

1	Białystok	8	Lublin	15	Toruń
2	Bydgoszcz	9	Łódź	16	Wałbrzych
3	Gdańsk	10	Olsztyn	17	Warsaw
4	Katowice	11	Opole	18	Wrocław
5	Kielce	12	Poznań	19	Zielona Góra
6	Koszalin	13	Rzeszów		
7	Kraków	14	Szczecin		

The profession of Adwokat is regulated by the Polish Bar Council (Naczelna Rada Adwokacka) at the national level and 24 local bar associations at the local level:

1	Białymstoku	9	Krakowie	17	Rzeszowie
2	Bielsku-białej	10	Lublinie	18	Siedlcach
3	Bydgoszczy	11	Łodzi	19	Szczecinie
4	Częstochowie	12	Olsztynie	20	Toruniu
5	Gdańsku	13	Opolu	21	Wałbrzychu
6	Katowicach	14	Płocku	22	Warszawie
7	Kielcach	15	Poznaniu	23	Wrocławiu
8	Koszalinie	16	Radomiu	24	Zielonej górze

21. Portugal

There is a national association, the Order of Advocates.

22. Romania

The legal profession in Romania is organised on a decentralised basis. A lawyer needs to register with one of the local bar associations in Romania. There is a National Association of Romanian Bars (Uniunea Nationala A Barourilor Din Romania or UNBR), which consists of representatives from each of the 42 regional bar associations and has advisory jurisdiction over issues related to the regulation and discipline of avocati.

The local bars are:

1 Alba
2 Arad
3 Argeş
4 Bacău
5 Bihor
6 Bistriţa-năsăud
7 Botoşani
8 Braşov
9 Brăila
10 Bucureşti
11 Buzău
12 Caraş-severin
13 Călăraşi
14 Cluj
15 Constanţa
16 Covasna
17 Dâmboviţa
18 Dolj
19 Galaţi
20 Giurgiu
21 Gorj
22 Harghita
23 Hunedoara
24 Ialomiţa
25 Iaşi
26 Maramureş
27 Mehedinţi
28 Mureş
29 Neamţ
30 Olt
31 Prahova
32 Satu–mare
33 Sălaj
34 Sibiu
35 Suceava
36 Teleorman
37 Timiş
38 Tulcea
39 Vaslui
40 Vâlcea
41 Vrancea

23. Slovakia
There is a national association, the Slovak Bar Association.

24. Slovenia
There is a national association, the Bar Association of Slovenia.

25. Spain
Spain has 83 local bar associations, at which European lawyers need to register. There is also a national association. The 83 local bar associations are grouped regionally into 10 Consejos Autonómicos de Colegios de Abogados which act as an intermediate body to represent the local bars in the region. There is a national bar association (Consejo General de la Abogacía Española) representing the profession of abogado at a national level in Spain, for example with the CCBE.

The Consell de Collegis d'Avocats de Catalunya is a grouping of fifteen bar associations of Catalonia. It applies a different Code of Ethics from the rest of Spain.

1 A Coruña
2 Álava
3 Albacete
4 Alcalá de Henares
5 Alcoy
6 Alicante
7 Almería
8 Alzira
9 Antequera
10 Ávila
11 Badajoz
12 Baleares
13 Barcelona
14 Burgos
15 Cáceres
16 Cádiz
17 Cantabria
18 Cartagena
19 Castellón
20 Ceuta
21 Ciudad Real
22 Córdoba
23 Cuenca
24 Elche
25 Estella
26 Ferrol
27 Figueres
28 Gijón
29 Girona
30 Granada
31 Granollers
32 Guadalajara

33 Gipúzkoa
34 Huelva
35 Huesca
36 Jáen
37 Jérez
38 La Rioja
39 Lanzarote
40 Las Palmas
41 León
42 Lleida
43 Lorca
44 Lucena
45 Lugo
46 Madrid
47 Málaga
48 Manresa
49 Mataró
50 Melilla
51 Murcia
52 Orihuela
53 Ourense
54 Oviedo
55 Palencia
56 Muy Pamplona
57 Pontevedra
58 Reus
59 Sabadell
60 Salamanca
61 Sant Feliu de Llobregat
62 Santa Cruz de La Palma
63 Santa Cruz de Tenerife
64 Santiago de Compostela
65 Segovia
66 Sevilla
67 Soria
68 Sueca
69 Tafalla
70 Talavera de la Reina
71 Tarragona
72 Terrassa
73 Teruel
74 Toledo
75 Tortosa
76 Tudela
77 Valencia
78 Vallladolid
79 Vic
80 Vigo

81 Vizcaya
82 Zamora
83 Real e Zaragoza

26. Sweden

The Swedish Bar Association (Sveriges Advokatsamfund) is the national association of lawyers.

27. United Kingdom

The United Kingdom is divided geographically into England & Wales, Scotland and Northern Ireland. Furthermore, all three know a divided legal profession. There are solicitors and barristers (advocates in Scotland), each with their own association. There are thus six representative organizations for the legal professions in the UK, where European legal professionals must register:

- England & Wales - General Council of the Bar
- England & Wales - The Law Society
- Northern Ireland – The Bar Council
- Northern Ireland - Law Society
- Scotland - Faculty of Advocates
- Scotland - The Law Society

Annex 3 Regulatory Reforms in Member States

In the country studies we have attempted to identify the most recent developments in the last five years on national level to the legal framework governing the access and exercise of the legal profession. This section provides an overview.

(1) Austria

There have not been recent regulatory developments relevant for the free movement of lawyers.

(2) Belgium

Due to the bachelor-master reform of the Belgian education system and due to the different legislative and regulatory rules that demanded for a diploma of 'licentiaat' or 'doctor in de rechten', two Acts were promulgated on 30 December 2009 that indicated that a 'master' diploma is equal to the old 'licentiaat' or 'doctor' diploma. This equalization was subjected to the condition that the applicant needs to dispose of a sufficient knowledge of Belgian law. This means that one needs to have successfully completed the following exams at a Belgian university: law of the state, law of obligation, civil procedural law, criminal law and criminal procedural law. One also needed to have completed an exam on four of the following subjects: property law, family law, special obligations, administrative law, labor law, social security law, trade law and fiscal law. The entry into force of the two Acts was retroactively defined on 1 July 2009.

In its judgment of 14 July 2011, the Belgian constitutional court has partially nullified Article 2 of the two Acts of 30 December 2009. The condition on the knowledge of Belgian law was erased. The current remainder of the article indicates that with regard to the application of the conditions of diploma recognition, a master diploma in law will be treated as equal to a diploma of 'licentiaat' or 'doctor'.

According to the Order of Flemish Bar Associations (OVB), the situation that is created in this way is disturbing. The OVB indicates that it makes no sense to interpret the article as if from now on, every diploma of master in laws would be held equal to the diploma of 'licentiaat'. Concretely this entails that with regard to the assessment of foreign degrees one will refer to the system that was in force before 2009 which is the safety net of the recognition of foreign diplomas or the aptitude test. Bar Associations and the Ministry of Justice are consulting each other, hoping that the legislator will act.

(3) Bulgaria

Bulgaria joined the European Union (EU) in 2007 and its legal landscape underwent significant changes on account of its accession. The market for cross border services has started to develop only in recent years, after the accession of Bulgaria to the EU and is still very limited.

The developments in the clients' needs for cross-border services by lawyers are mainly influenced by the EU accession of Bulgaria, the regulatory reforms due to the implementation of the Directives and thus the liberalization of the regime for provision of legal services or

establishment of EU lawyers.

The Lawyers Act was last amended in October 2011.

The harmonization of the Bulgarian legislation with the Lawyers' Establishment Directive (98/5/EC) and the Lawyers' Services Directive (77/249/EC) was implemented in two main phases. The first phase encompass the pre-accession period, when the harmonization was part of the negotiations for EU accession under Chapter 2 "Free movement of persons". The last pre-accession amendments in the Lawyers act were implemented in 2005. The reasoning of the draft law amending the Lawyers act consisted in finalization of the implementation of the two Directives into Bulgarian legislation. However, the pre-accession amendments harmonized only partially Bulgarian legislation with the relevant acquis. According to the Parliamentary Commission on European Affairs the main shortcomings were connected with lack of implementation of article 1 of the Directives, the discriminative requirement of Bulgarian nationality for a person to obtain the qualification of a lawyer, article 3 of the Lawyers' Services Directive (77/249/EC), article 10, 3b from the Lawyers' Establishment Directive (98/5/EC) regarding the interview with the competent authority of the host Member State. The draft law also did not solve the problem with the lack of differentiation between the regimes for practicing lawyers from the EU and from third countries.

All these shortcomings of the pre-accession harmonization process eventually led to start of infringement procedure against Bulgaria. The started infringement procedure led to new legal amendments in the Lawyers act in 2010, which were found unsatisfactorily by the EC. However, according to BSBC these amendments finalized the implementation of the Directives in the Bulgarian legislation and no barriers were left for the free movement related to national regulations.

In December 2011 the European Commission informed Bulgaria that it will enter in the litigation phase of the infringement procedure, unless the Directives are fully implemented in the Bulgarian legislation. Several bilateral meetings on expert level were initiated between the MJ and EC and the implementation draft law was discussed with the EC experts step by step. In order to prevent opening of a litigation procedure by the EC, the Bulgarian Ministry of Justice initiated new amendments of the Lawyers act as of 20.03.2012. The new amendments are focused mainly on:

- Defining the term "lawyer from the European union" by creating new chapter in the Lawyers act in line with article 20 and 21, paragraph 1 TFEU. The present act does not distinguish precisely between EU lawyers and lawyers from third countries, which will be overcome through the new amendments. The restrictive legislative requirement that only legally capable European citizens, who have acquired a Bulgarian degree in law, may become lawyer in Bulgaria will be revoked. The legal amendments will allow lawyers who have obtained their professional qualification in other Member States to register in a Lawyers' college in Bulgaria, if their diploma is being recognized according to the relevant procedure in the LA.
- Distinguishing between permanent establishment of an EU lawyer in Bulgaria and temporarily provision of services on the territory of Bulgaria by an EU lawyer. New sections will be created under chapter 3. The second section harmonizes the Lawyers act with Directive 98/5/EC, already harmonized in articles 13, 15-19 of the present LA. The third section harmonizes the LA with Directive 77/249/EEC.

- Abolishing all differences between the rights and obligations of Bulgarian and EU lawyers.
- Equal treatment in line with article 56 and 57 TFEU regarding the freedom of movement of services.
  - The concrete amendments concern article 31 LA, stipulating that the lawyer and the permanently established EU lawyer shall have free access and can take information about cases, receive copies of papers and data with priority in the court, the bodies of the pre-court procedure, the administrative bodies and other services in the country and everywhere where it is necessary only on the basis of his/her quality as lawyer or EU lawyer, which he shall certify with presenting of lawyer's card. The EU lawyers providing services temporarily on the territory of Bulgaria also benefit from these rights by presenting power of attorney.
  - Other amendments concern articles 76 and 77 of the present LA, regulating contracts between lawyers and law firm/partnership. According to the present legislation, only Bulgarian lawyer, foreign lawyer, entered in the Unified register of foreign lawyers or law firm/partnership can conclude contract for cooperation. The proposed amendments will allow EU lawyers and groups of EU lawyers, permanently established or providing services temporarily on the territory of Bulgaria, to benefit from the rights to conclude contracts for cooperation with Bulgarian lawyers and partnerships of lawyers.
  - Under the present LA, only Bulgarian lawyers, foreign lawyers registered in the Unified register of foreign lawyers and law firm/partnership can unite their activity by contract for partnership. After the amendments enter in force, EU lawyers and groups of EU lawyers, permanently established or providing services temporarily on the territory of Bulgaria, will not be discriminated anymore and will have the same rights.
  - The requirement for EU lawyers, providing services temporarily on the territory of Bulgaria, to have a court address and a representative for handing over messages and subpoenas on the territory of the Republic of Bulgaria will be revoked since it is in breach with article 56 TFEU.
  - The new amendments will also harmonize the present LA (article 52, 72a) with article 12 of Directive 98/5/EC, which at present discriminates groups of EU lawyers.

(4) Cyprus

There have not been recent regulatory developments relevant for the free movement of lawyers.

(5) Czech Republic

There have not been recent regulatory developments relevant for the free movement of lawyers.

(6) Denmark

There have not been recent regulatory developments relevant for the free movement of lawyers.

(7) Estonia

There have not been recent regulatory developments relevant for the free movement of lawyers.

(8) France

Recent legal developments include the adoption of Loi n°2011-331 du 28 mars 2011 de modernization des professions judiciaires et juridiques réglementées (hereafter '2011 Modernization Law'). This text introduces two important reforms likely to enhance the interaction between lawyers established in different countries of the European Union:

- Article 6 of Loi n° 2011-331 modifies Article 8 of Loi n°71-1130 and facilitates the free provision of cross-border legal services: lawyers established in another Member State may be associated with the activities of law firms established in France and provide legal services on behalf of a French law firm in that other Member State. For example, a lawyer established in Germany and associated with a French law firm can provide services in Germany on behalf of the French law firm. There are no limitations on the capital to be shared for the purpose of having such an association. This new provision thus eliminates the need that French law firms willing to export their services may have to create specific structures in another Member State in order to provide services there within the meaning of the *Gebhard* case (ECJ Case C-55/94).
- Article 32 of Loi n° 2011-331 creates the possibility (in the new version of Article 31-2 of Loi n°90-1258 du 31 décembre 1990 relative à l'exercice sous forme de sociétés des professions libérales soumises à un statut législatif ou réglementaire ou dont le titre est protégé) for several members of the legal professions (including 'avocats') as well as other professions (such as 'experts-comptables'), practicing in France as well as in another Member State to become members of a joint multi-disciplinary holding ('interprofessionnalité capitalistique'). Such multi-disciplinary holdings may have a cross-border dimension. In order to ensure a close link between the activities of the members and financial participation in the holding, it is requested that more than half of the capital and voting rights be retained by professionals actually practicing in the fields covered by the structure. A document addressed to the European Commission and detailing the functioning of this new mechanism is attached (Document 6 in attachment provides an overview).

These reforms originate in a request from the legal profession and an initiative of the President of the Republic respectively.

Building on earlier efforts , Loi n°2011-331 also facilitates the creation of mono-professional holdings including several members of legal professions (e.g. 'avocat', 'notaire', 'huissiers') by adjusting Article 31-1 of Loi n°90-1258 (Loi 'du 31 décembre 1990 relative à l'exercice sous forme de sociétés des professions libérales soumises à un statut législatif ou réglementaire ou dont le titre est protégé'). Holdings may now be created by a mere declaration. They may have as their object participation in a foreign subsidiary.

(9) Finland

Finland is among the EU Member States with the lowest degree of entry and conduct regulation in the legal services market. Nevertheless, some legislative changes restricting the (until now) very liberal policies have been agreed upon recently. An amendment of the Advocates Act and a new act on legal counsels (715/2011) will come into force, enabling centralized supervision and control over all those willing to represent clients in court[1], which was previously impossible.

[1] See Finlex: http://www.finlex.fi/fi/laki/alkup/2011/20110715.,

The 2013 amendment of the Advocates Act changes the requirements for EU lawyers wanting to establish in Finland. Its purpose is to regulate the legal assistance provided by domestic non-lawyers and thus improve the overall quality of services, but it may have some effects on lawyer mobility as well. A change is introduced by the amendment concerning the requirement of EEA citizenship to be able to join the Bar Association. From 1.1.2013 onwards, all demands concerning nationality are removed.

(10) Germany

There have not been recent regulatory developments relevant for the free movement of lawyers.

(11) Greece

Article 44 of the Lawyers' Code, that has been amended by Law N. 3919/2011, now provides that lawyers (as individual professionals or as members of law firms) have the right to practice not only within the region of the Bar to which they are registered, but also in the regions of all other Greek Bars. In other words, the preexistent geographical restrictions have recently been abolished.

Law N.4038/2012 has further liberalized the legal services market and allows two or more lawyers to form a Professional Civil Partnership (Αστική Επαγγελματική Δικηγορική Εταιρία/ Astiki Epaggelmatiki Dikigoriki Etairia) in order to provide legal services.[1] Law firms are now also allowed to create branches within the Greek territory. Until recently, Article 6 of Law 3919/2011 did not allow lawyers registered in different Regional Bars to form a law firm (with the exception of lawyers registered in the Bar of Athens and Piraeus), while it also prohibited law firms registered in a Regional Bar to create branches within the territory of another Regional Bar. This prohibition has been abolished by Law N. 4038/2012.

In addition, the rather strict regulation of advertising for legal services has to some extent been relaxed. Law 4038/2010 has added Article 38A to the Lawyers' Code, as a result of which some advertising is now permitted, both in Greece and abroad, as far as it is in line with the prestige and dignity of the legal profession (Article 38A, para.1 of the Lawyers' Code.) For example it is now permitted for lawyers to publish on the press or on-line their conduct details, any specialization they may have and mention any additional education they have received.

Greece is one of the few European countries where it is not yet obligatory for lawyers to enjoy professional indemnity insurance. However, such an obligation will be introduced in the near future, according to interviewees from local bars (there is no national Bar Association in Greece). This intention for the introduction of such an insurance obligation is already reflected in the text of the Presidential Decree implementing Directive 98/5/EC (Article 8, para. 3 of Presidential Decree 152/2000). According to the latter, European lawyers practicing in Greece under the professional title of their Member State of origin are obliged to enjoy professional indemnity insurance, in accordance with the rules applying to the conduct of such professional activities in Greece. In case European lawyers enjoy such an insurance that is subject to similar conditions and provides the required coverage at the Member

[1] Article 6 of Law N.4038/2012, amending Article 1, paragraph 1 of the Presidential Decree 81/2005.

State of origin, they are released from this obligation. If this is not the case, the Administrative Council of the Regional Bar retains the right to demand from the European lawyer to take an additional professional insurance.

Fees for legal services can now be freely negotiated with clients, without the existence of any minimum threshold.

Furthermore, tax/VAT has been imposed on legal services, so that lawyers are now fiscally treated in the same way as any freelancer, merchant, etc.

(12)Hungary

Although recently some major legal reforms have taken place, including the adoption of a new Constitution (entered into force in 2012), the Act XI of 1998 on Attorneys and other regulations on lawyers have remained almost untouched since the implementation of the Lawyers' Directives. Since the implementation of the Lawyers' Directives, the Act on Attorneys was amended several times, for example in 2009, when the Services Directive was implemented with the introduction of requirements for occasionally practicing EC lawyers to send a notice to the Hungarian Bar Association.

(13) Ireland

In Ireland the Government approved the publication on 4 October 2011 of a new Legal Services Regulation Bill. The Bill calls for the establishment of an Independent Regulator – the Regulator will consist of 11 members: 7 non-lawyers, 2 representatives from the Bar Council and 2 representatives from the Law Society. All 11 representatives will be appointed by the Irish Minister for Justice, Equality and Defense. The new authority will have all powers of regulation including conduct, discipline and complaints handling.[1]

(14) Italy

The Royal Law Decree of 1933 has undergone several reforms since its creation, one of the most fundamental of which abolished the profession of procuratore legale and retained only that of avvocato. This was significant as it created one national profession, since an avvocato may practice in the whole of the territory of Italy while the profession of procuratore legale was subject to restrictions. Further reforms have come about through necessity, in some cases following findings of the Court of Justice.

In 1997 a reform took place regarding practicing in association. Law No. 266 of the 7th August 1997 repealed the earlier law of 1939, which prohibited lawyers from practicing in any formation other than an association and introduced the formation of professional companies. This subject was also dealt with in the 2001 legislative decree, which implemented Directive 98/5/EC (see infra). This decree provided for the common practice of professions although excludes the possibility of multidisciplinary partnerships.

There has also been a reform in 2007 in the form of a regulation by the National Bar Association, which provides that all lawyers must undertake continuous vocational training. This training will take place over three year cycles and over the course of these three years law-

[1] The CCBE has written a letter expressing their concern about the proposed reforms to the director of the International Monetary Fund (online: http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/CCBE_and_ABA_letter_1_1325686329.pdf).

yers must achieve the minimum limit of 75 credits.
Another reform occurred in 2009 with changes to civil procedure made by Law No. 69 of 18th June 2009, which implemented Directive 2008/52/EC and among other things required the increase in the use of Alternative Dispute Resolution before recourse to the courts. The aim of such a reform was to reduce court workload; however it has been commented that the reforms have not gone far enough and have created more problems than they solve. Additionally to these comments, others have noted that there exist more pressing matters to be considered for reform.
Regarding the most recent proposals for reform, being those of the current technocrat government led by Prime Minister Mario Monti, there appears to have been a backlash against changing the profession. The proposals to liberalize the profession (e.g. with regard to external ownership of law firms) have come under fire and have resulted in lawyers going on strike during the month of March 2012 and by boycotting the opening ceremonies of the legal year in Rome. It would appear in particular that members of the legal profession in Italy are split between wanting to make reforms and to maintain the status quo. According to recent polls, however, a majority are in favor of the reforms.
The governments' proposals were first laid down in Law Decree (Decreto legge) No. 1/2012 and have been adopted by the Parliament, with some minor changes, in Law (Legge) No. 27/2012, Article 9. The new provisions centre on the abolition of the minimum fixed professional tariffs. This means that lawyers must agree a fee for services with clients at the outset and must explain all possible eventualities, which may have a bearing upon the price of the lawyer's service.

(15) Latvia
There have been no regulatory reforms undertaken in Latvia in the last five years that would affect free movement and access to the legal profession for EU lawyers directly. Amendments to the Latvian Bar Act relating to practicing of lawyers from EU Member States were enacted on 1 May 2004 (when Latvia joined the EU). After 2004, there have been several amendments to the Latvian Bar Act; however, such amendments have not influenced free movement of EU lawyers (regulation applicable to EU lawyers has remained the same). The amendments adopted on the other hand led to stricter rules for local lawyers and assistant lawyers for becoming members of the Bar. Assistant lawyers must have a minimum of five years experience before being admitted as a lawyer. Previously, this was three years.

(16) Lithuania
The main legal developments in Lithuania with regard to the free movement of lawyers took place in connection with the accession to the EU in 2004. The Law of the Bar, which implemented the lawyers' services (77/249/EC) and establishment (98/5/EC) directives, was adopted on 18 March 2004 and the Lithuanian Bar Association joined the CCBE as a full member the same date as Lithuania joined the EU (1 May 2004).

(17) Luxembourg
Some years ago, in order to become inscribed on one of the *tableaux* the prospective *avocat* should have a meeting with the relevant Bar in order to verify the language capacities of the prospective *avocat*. This requirement has been annulled by the Act of 21 June 2007. Inscription on 'Liste IV' (list of European lawyers) will now follow if the prospective *avocat* is able to produce a certificate from his home Member State's competent authority stating

that the lawyer is entitled to exercise the legal profession in his home Member State.

(18) Malta

When Malta joined the EU in 2004 the country, including its legal profession was catapulted in the internal market and its legal profession had to quickly adapt to the realities of the free movement of lawyers in that European Union. In a consultative paper from 2008 the Maltese Chamber of Advocates propagates far-reaching legal changes in order to prepare and adapt the legal profession to the demands of a 21st century society.[1] In that consultative paper the Chamber of Advocates sets out the dire necessity to assertively change the rules with regard to the legal profession(s) in Malta and the need to create a separate Lawyer's Act. Even though the consultative paper was created in 2008, there is no evidence of legal reform in Malta at the moment that indicates that the necessities indentified by the Chamber of Advocates are shared by the Maltese legislature in 2012.

(19) Netherlands

There have not been any recent regulatory developments directly relevant for the free movement of lawyers. There are some developments however relating to the legal profession. The cabinet has agreed in 2011 on a proposal for a Supervisory Board for lawyers, composed of three non-lawyers, with supervisory power also over regional Bar Presidents. The new Board may delegate its supervisory powers to "others" beyond the local Bar Presidents (e.g. an accountant), but it is still unclear if these "others" could query the files of a lawyer regardless of professional secrecy. The text of the proposal has not yet been made public and has still to be approved by Parliament. Following the fall of the Dutch government in April 2012, it may take a while before the proposal is discussed again (if at all).

(20) Poland

The Law on the Provision by Foreign Lawyers of Legal Assistance in the Republic of Poland dates back to 2002. Since then, the only major amendments concerned Art. 15 thereof, which was changed 3 times in total. Initially, Poland decided to make use of the safeguards provided for in Art. 11 (5) Directive 98/5/EC and foreign (as well as national) lawyers were prohibited from practicing the profession of lawyer within a grouping in which some persons were not members of the profession. Currently, however, under Art. 15 of the Law on the Provision by Foreign lawyers of Legal Assistance in the Republic of Poland, lawyers are allowed to practice in a civil or commercial partnership, together with tax advisers or patent attorneys.

In 2007 and 2008 the situation in Poland has been closely followed by both the CCBE and the International Bar Association (IBA) because of amendments to laws on the judiciary system. This has resulted in two reports. The first report identifies a number of worries of both CCBE and IBA, mainly about the independence of the judiciary and the rule of law, because of proposed amendments by the Polish government. The second report was published after a new government was installed in Poland. This new government did not pursue a number of the proposed changes, to the satisfaction of CCBE and IBA. However, the report does identify some issues that still require attention according to CCBE and IBA. It recom-

[1] Chamber of Advocates, *Regulating the Legal Profession for the 21st Century, A Consultative Document*, via http://www.avukati.org.

mends to repeal the legislation granting the Minister of Justice a supervisory role over the legal professional bodies or at a minimum negotiate a workable compromise between the Minister of Justice and the legal professional bodies, and to undertake consultation and collaboration with the National Council for Legal Advisers and the Polish Bar Council in the development of alternative entrance arrangements to the legal profession.

(21) Portugal

The Bar Association of Portugal has reported about a reform to the current legal aid system – the Government plans to hire lawyers directly to perform legal aid services (whereas it is currently within the Bar's competence to appoint a lawyer to a specific case). These lawyers would receive a monthly salary and become employees of the state.

(22) Romania

The transposition and implementation of the EU legal framework regarding the free movement of lawyers was part of the wider commitment assumed by Romania within the pre-accession strategy for transposing the acquis communautaire regarding the area of free movement of persons and services. Already in 2004, the Commission acknowledged that Romania had made significant legislative progress aimed at transposing the relevant acquis on mutual recognition and professional qualifications as regards both general systems and sectoral directives.[1] Concerning the legal profession, Law 201/2004 ensured formally the transposition of Directives 77/249/EC and 98/5/EC into the Romanian legal system.[2] In spite of the early transposition of the free movement of Lawyers' Directives, article II of Law 201/2004 stipulated that its provisions would enter into force only on the date of Romania's accession to the EU (i.e. 1 January 2007). It should be pointed out that during the pre-accession period, the transposition of Directives 77/249/EC and 98/5/EC into the national legislation was the responsibility of the Ministry of Justice; after transposition, the implementation of these directives has been entrusted mainly to the National Union of Bars of Romania (UNBR).

(23) Slovakia

In the area of advocacy and legal services most developments after 1993 were heavily influenced by the accession process of Slovakia to the EU and the corresponding need to harmonize domestic law with the EU acquis communautaire.

(24) Slovenia

New approaches in Slovenian society, politics, economy and legal system followed from its independence in 1991. Slovenia's political, socio-economic and legal landscape underwent therefore significant changes, triggered by four important factors: (1) its acquired statehood, (2) a changed national and international "politico-economic situation", (3) the process of globalization and (4) most notably the approximation to the European Union.
It is undeniable that in particular the last factor was of paramount importance for the further development and shape of Slovenian foreign policy, economy and its legal system. In order to accomplish its goal of becoming a member of the European Union, Slovenia made

[1] Commission of the European Communities, *Regular Report on Romania's progress towards accession,* Brussels, COM (2004) 657 final.
[2] Law 201/2004 amending Law 51/1995 regarding the organisation and exercise of the profession of lawyer (published in the Romanian Official Gazette, Part I, No. 483 of 28 May 2004.

strong efforts to fulfill the Copenhagen Criteria and adopt the acquis communautaire, the legal corpus of the EU, in an adequate manner for the purpose of qualifying for EU membership. Slovenia joined the European Union in 2004 and was therefore required to adapt its national legislation to the aims of the Union and its internal market.

However, Slovenia's EU membership was only the first stage of the legal reform, while the second stage of the legal reform continues to this day. Its EU accession has changed the face of not only its economic sector but also of the legal one. The legal field and in particular the practice of law have been subject to significant transformation since the beginning of the process of European integration, which came along with EU membership. Its accession to the EU has pushed Slovenia to work towards increasing competitiveness in the market of legal services, facilitating the access to the legal profession, lowering barriers to cross-legal practice, and internationalizing European legal education. This is triggered by the processes of globalization and Europeanization.

Many traditional features of the legal professions in Central and Eastern European countries such as Slovenia are changing. On the one hand, these changes are brought by the European Union, both in terms of new law and directives, and on the other hand in terms of the new market demands created by the integration of national markets with the EU market and a European view of competition.

Slovenia's Bar Act, which is currently in force, was adopted in 1993 and underwent several amendments. It was most recently amended in 2009.

(25) Spain

It has often been claimed that the degree of formation of lawyers in Spain is very low, because any graduate in law was, until recently, able to access the profession, without the need of acquiring additional training.

The atypical regime governing the access to the profession was amended in the year 2006. The new conditions are regulated by the Law 34/2006 and by its implementing regulation, the Royal Decree 775/2011. Since then, the following requisites have to be fulfilled in order to access the profession of lawyer:

84 The possession of a degree in Law issued by a Spanish University.

85 The completion of a preparatory course aimed at training candidates for the exercise of the profession. This course can be taught by public or private universities (Master Program), the schools of legal practice dependent of the bar as well as by a combination of both.

86 The conduction of a training internship –which is part of the preparatory course referred in '2'- at an entity linked to the exercise of the legal profession (i.e. law firm, court…).

87 Passing a written exam, whose content is determined by the Ministry of Justice and which is aimed at the accreditation of professional competences acquired through the preparatory courses referred in '2'. The exam is celebrated at least annually, the same day and with the same content in all the Spanish territory. Candidates shall be, at least, 18 years old, they shall have passed the preparatory courses and they cannot be disqualified for the exercise of the profession.

88 Becoming a member of a Spanish Bar.

The Law 34/2006, which became effective the 31 October 2011, constitutes a very relevant innovation in comparison with the previous system, where candidates for lawyers were only required to have a degree in law and to register and becoming member at a Bar. Put it in a different way, before the Law 34/2006 there was no need to complete a preparatory course (2), conduct external training (3) and pass an exam (4). The main expected outcomes sourcing from the new requisites governing access to the profession are first, better-trained lawyers and, second, a likely reduction in the number of lawyers (but not necessarily of graduates in law).

In 2007 Spain passed a new law on professional services firms, that makes it possible for non-lawyers to participate in the management or ownership of a law firm (up to 25%). Professional services firms can also be multidisciplinary, as long as all services provided by the firm are regulated professional activities and share a common objective.

(26) Sweden

The requirements for becoming a member of the Bar Association are laid down in the Swedish Code of Judicial Procedure and in the Charter of the Bar Association. The Charter used to require that the applicant has practiced law in a satisfactory way for at least five years after having passed the necessary academic examinations. After an amendment entering into force on 1 January 2011, the Charter now requires that the applicant has practiced law for three years.[1]

(27) United Kingdom

England and Wales

The main regulatory reform is the implementation of the Legal Services Act 2007. This has been discussed in section 4.3.1.

Scotland

The Legal Services (Scotland) Act 2010 allows solicitors to provide legal services via a range of new different business models - such as allowing non-solicitor partners, working in partnership with other professionals, and minority external ownership (up to 49%).

The act also contains requirements for all licensed providers to appoint suitably qualified persons responsible for ensuring that the business complies with the regulatory scheme and professional principles safeguards to ensure that those owning or directing a licensed provider are fit and proper persons.[2]

[1] The Swedish Bar Association (2011), *Some Salient Features of the Legal Profession in Sweden* (http://www.advokatsamfundet.se/Documents/Advokatsamfundet_eng/From%20Scandinavian%20Studies%20of%20Law.pdf, accessed 6 June 2012).

[2] Source: Law Society of Scotland (http://www.lawscot.org.uk/members/legal-reform-and-policy/law-reform/alternative-business-structures).

Annex 4 Examples of different language versions

This annex provides some examples of phrasing differences between different language versions of the Lawyers' directives. Differences are underlined.

Lawyers' Establishment Directive, article 4(4) (double deontology)

English
4. A lawyer pursuing activities other than those referred to in paragraph 1 shall remain subject to the conditions and rules of professional conduct of the Member State from which he comes without prejudice to respect for the rules, whatever their source, which govern the profession in the host Member State, especially those concerning the incompatibility of the exercise of the activities of a lawyer with the exercise of other activities in that State, professional secrecy, relations with other lawyers, the prohibition on the same lawyer acting for parties with mutually conflicting interests, and publicity. The latter rules are applicable only if they are capable of being observed by a lawyer who is not established in the host Member State and to the extent to which their observance is objectively justified to ensure, in that State, the proper exercise of a lawyer's activities, the standing of the profession and respect for the rules concerning incompatibility.

French
4. Pour l'exercice des activités autres que celles visées au paragraphe 1, l'avocat reste soumis aux conditions et règles professionnelles de l'État membre de provenance sans préjudice du respect des règles, quelle que soit leur source, qui régissent la profession dans l'État membre d'accueil, notamment de celles concernant l'incompatibilité entre l'exercice des activités d'avocat et celui d'autres activités dans cet État, le secret professionnel, les rapports confraternels, l'interdiction d'assistance par un même avocat de parties ayant des intérêts opposés et la publicité. Ces règles ne sont applicables que si elles peuvent être observées par un avocat non établi dans l'État membre d'accueil et dans la mesure où leur observation se justifie objectivement pour assurer, dans cet État, l'exercice correct des activités d'avocat, la dignité de la profession et le respect des incompatibilités.

German
(4) Für die Ausübung anderer als der in Absatz 1 genannten Tätigkeiten bleibt der Rechtsanwalt den im Herkunftsstaat geltenden Bedingungen und Standesregeln unterworfen ; daneben hält er die im Aufnahmestaat geltenden Regeln über die Ausübung des Berufes, gleich welchen Ursprungs, insbesondere in bezug auf die Unvereinbarkeit zwischen den Tätigkeiten des Rechtsanwalts und anderen Tätigkeiten in diesem Staat, das Berufsgeheimnis, die Beziehungen zu Kollegen, das Verbot des Beistands für Parteien mit gegensätzlichen Interessen durch denselben Rechtsanwalt und die Werbung ein. Diese Regeln sind nur anwendbar, wenn sie von einem Rechtsanwalt beachtet werden können, der nicht in dem Aufnahmestaat niedergelassen ist, und nur insoweit, als ihre Einhaltung in diesem Staat objektiv gerechtfertigt ist, um eine ordnungsgemässe Ausübung der Tätigkeiten des Rechtsanwalts sowie die Beachtung der Würde des Berufes und der Unvereinbarkeiten zu gewährleisten.

Lawyers' Services Directive, article 6 (employed lawyers).

English
Any Member State may exclude lawyers who are in the salaried employment of a public or private undertaking from pursuing activities relating to the representation of that undertaking in legal proceedings in so far as lawyers established in that State are not permitted to pursue those activities.

French
Chaque État membre peut exclure les avocats salariés, liés par un contrat de travail avec une entreprise publique ou privée, de l'exercice des activités de représentation et de défense en justice de cette entreprise dans la mesure où les avocats établis dans cet État ne sont pas autorisés à les exercer.

German
Jeder Mitgliedstaat kann die im Gehaltsverhältnis stehenden Rechtsanwälte, die durch einen Arbeitsvertrag an ein staatliches oder privates Unternehmen gebunden sind, von der Ausübung der Tätigkeiten der Vertretung und Verteidigung im Bereich der Rechtspflege für dieses Unternehmen insoweit ausschließen als die in diesem Staat ansässigen Rechtsanwälte diese Tätigkeiten nicht ausüben dürfen.

Panteia
Bredewater 26
PO BOX 7001
2701 AA Zoetermeer
The Netherlands
tel: +31 79 343 01 00
fax: +31 79 343 01 01
info@panteia.nl
www.panteia.nl