

CCBE Recommendation on the recognition of certificates under Directive 98/5

08/07/2024

The question of an alternative certificate attesting registration of Irish solicitors under Article 3 of Directive 98/5 has caused some discussion among the CCBE membership. In order to provide the necessary guidance toward the competent Authority (national and local Bars), and as a follow-up of the discussion held during the CCBE Standing Committee on 8 February 2024, the CCBE EU Lawyers Committee has prepared the following background note, and the proposed recommendation as set out below.

Background information

Introduction

- Lawyers remain the only liberal profession within the European Union (EU) that is covered by a separate arrangement for the recognition of their qualification, adopted through two sectorial directives: Directives 77/249 and 98/5 (the Lawyers' Directives).
- This system is based on the mutual recognition of the lawyer's titles/qualifications, without immediate integration into the profession of the host Member State. If one is allowed to practise 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 host Member State.
- Regarding this legal framework, the CCBE has, in the past, taken proactive measures to ensure uniform application of Directive 98/5 by the respective national Bars and Law Societies ([CCBE guidelines on the implementation of the Directive](#)), together with the adoption of a CCBE code of conduct (revised since its adoption in 1988).
- The *CCBE Interpretation issues in relation to free movement of lawyers* ([English](#) / [French](#)) (adopted in February 2020) extends this heritage, and recalls that, **when an interpretation issue can arise, the CCBE makes every effort to resolve such issue in a spirit of cooperation, understanding and solidarity, at the same time stating the (EU Lawyers) Committee's reasoned, but not binding, opinion on the correct interpretation of the provisions of Directive 98/5.**
- In addition, the CCBE guidelines for Bars & Law Societies on Free Movement of Lawyers within the European Union (first edition in 2016, updated in 2021) result from the analysis of many practical issues dealt with by the CCBE, together with the legal developments from relevant case-law of the Court of Justice of the EU. The knowledge and acquired experience over the years, thanks to the CCBE delegations, led to develop this guidance addressed to Bars and Law Societies, in their capacity of national Competent Authority.

The current issue with the recognition of certificates issued by the Law Society of Ireland (under Directive 98/5)

- Against this background, the CCBE has been discussing a query with the “certificate of attestation” of the Law Society of Ireland (hereafter “certificate”). This certificate concerns solicitors who do not have an establishment in Ireland. In contrast, solicitors practising in Ireland need to renew their licence every year (the so-called “practising certificate”).
- By this certificate, the said solicitors are enrolled but not able to practise in Ireland under their title of solicitor as qualified under Irish law. For doing so, they would need their licence to practise and the Professional Indemnity Insurance (PII), to be renewed.
- In the response to CCBE ahead of the Standing Committee in Vienna of 8 February 2024, received in January 2024, the Law Society of Ireland explained in detail the existing distinction between “registration” and “authorisation to practise” as a solicitor in Ireland. Based on the case law of the Court of Justice (CJEU), it is argued that the presentation by an applicant lawyer to the competent Authority of a host Member State of a certificate attesting to their registration with their home Member State must be regarded as sufficient for their registration in the host Member State (not the “practice”).
- In most Member States, however, there is no such distinction to be drawn: the lawyer’s certificate attesting “registration” does include “practice” in the home state.
- It is therefore very questionable that these solicitors who are not holding the required Irish practising certificate could be regarded as “lawyers” under Directive 98/5 (see our previous information note at the Standing Committee of Vienna of 8 February 2024). This point will however require an authoritative interpretation, which can be only brought by the CJEU.
- Since such a case has not yet been arising, the CCBE would like to provide guidance to the CCBE delegations by proposing the following recommendation:

The proposed CCBE Recommendation is as follows:

First recommendation: Full transparency on the “certificate of attestation” toward the competent authorities of the host Member State (national and local Bars)

1. It is the understanding of the CCBE that the certificate of the Law Society of Ireland has been designed **only** for the purpose of registration of Irish solicitors under Article 3 of Directive 98/5 (hereafter “the Directive”) in another Member State, meaning these solicitors are no longer seeking to practise and be established in Ireland.
2. The CCBE would like to call upon the Law Society of Ireland to provide clarity that this certificate does not equal to a practising certificate. To date, this certificate has caused confusion by not providing enough transparency on the criteria under which the applicant lawyer can provide their legal activities under their home professional title.

3. Directive 98/5 defines “lawyers” by reference to the person who is holding the “professional title” as issued by the member state of origin and listed in the Directive.
4. The previous CCBE Model of Certificate under Article 3 (issued in the CCBE Recommendations after the adoption of Directive 98/5) provided that the certificate from the competent Bars and Law Societies should certify that the applicant lawyer is authorised to practise under their home title:

“I[authorised person on behalf of the relevant competent authority in the home Member State] hereby certify that..... [name of applicant] of [name and address of applicant's firm] is registered as.....[professional title in home Member State] with..... [the relevant competent authority in the home Member State] and is authorised to practise as a [professional title] in home Member State.

5. The certificate from the Law Society of Ireland contains an additional sentence in the certificate which renders ineffective that authorisation to practise, i.e. a sentence indicating that the applicant, a registered lawyer/solicitor is entitled to practise “subject to the provisions of the Solicitors Acts 1954-2015”.
6. The competent Authority of the host Member State cannot know whether the applicant has satisfied “the provisions of the Solicitors Acts” and therefore does practise as a lawyer in Ireland. Therefore, it is reasonable for such Authority to request a supplementary certificate attesting to the registration, which includes practice, in Ireland.

7. Conclusion:

- The Law Society of Ireland is invited to provide clarity regarding their certificate of attestation.
- When receiving a request under Article 3 of Directive 98/5, the national or local Bars are recommended to request a certificate attesting to the registration, which includes the right to practise, in Ireland.

Second recommendation: In view of the above, it is proposed to include the following interpretation, to be further included into the CCBE guidelines for Bars & Law Societies on Free Movement of Lawyers within the European Union:

The lawyer’s certificate from the competent Bars and Law Societies should certify that the applicant lawyer is authorised to practise under their home title, including the capacity of representing clients in and out of court in line with the national rules and under the supervision of the home authority.

Background explanation

Point 11c) of the CCBE Interpretation issues in relation to free movement of lawyers

(extract) "c. where the EU Lawyers committee considers that the query raises new issues of interpretation,

i. these will be discussed at a general level to share learning and develop interpretations to the issue raised as set out at point 7; and

ii. if considered necessary in this context to provide a legal interpretation limited to the form and style which is suitable for inclusion in the FML Guide, such interpretation and inclusion to be subject to the approval of the Standing Committee;"

1. The main question which arises is whether a lawyer/solicitor enrolled in a Bar of a Member State but no longer holding their licence to practice as required by the rules of the State of their professional title ("practising certificate") can benefit from Directive 98/5.
2. Article 2 of Directive 98/5 refers to the type of "lawyers" to be covered by reference to the home country title as follows: "**Right to practise under the home-country professional title: Any lawyer shall be entitled to pursue on a permanent basis, in any other Member State under his home-country professional title, the activities specified in Article 5.**"
3. As referred above, Directive 98/5 also provides the list of the (national) professional titles covered by it. For Ireland, the titles are: "solicitors/barristers".
4. The use of the national professional title (as "solicitor"), as listed by the Directive, is at the same time a right (Article 2) and an obligation (Article 4) for the applicant lawyer. In the Case (C-168/98¹), the CJEU indicated that (point 34):

*"(...) Article 4² provides that a lawyer **practising under his home-country professional title is required to do so under that title**, so that consumers are informed that the professional to whom they entrust the defence of their interests has not obtained his qualification in the host Member State and that his initial training did not necessarily cover the host Member State's national law."*

5. The lawyer must therefore remain a member of the profession in their home country. This is both an obligation and a burden, as through this membership the authorisation to practise, which the lawyer holds by virtue of their home title, extends its effects to the host member State.
6. From a teleological point of view, our reading is the following: the Directive is based on the fundamental understanding that you can only transfer "your practice" from the home country to a host country if you are a fully accepted practising lawyer in your home country, **especially being at the same time under the continued supervision of the relevant national institution to guarantee that you are ongoing to fulfil the required standards of "practising lawyers" in the home country.** Otherwise, the transfer would result in a kind of "free flow" leaving (potential) clients without any necessary control mechanism.

¹ CJEU C-168/98, 7 November 2000, Grand Duchy of Luxembourg v European Parliament and Council of the European Union: <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-168/98>

² Article 4(1) provides that: A lawyer practising in a host Member State under his home-country professional title shall do so under that title, which must be expressed in the official language or one of the official languages of his home Member State, in an intelligible manner and in such a way as to avoid confusion with the professional title of the host Member State.

7. The disappearance of the authorisation to practise in their home country would mean that it is impossible for the lawyer to continue to benefit from the system of the Directive.
8. The system of the Directive also provides that after three years of practice under the home title, the lawyer can apply for admission to the profession of the host Bar. This arrangement is made possible under the assumption that the lawyer has been authorised to practise under their home professional title during this period of three years.
9. Based on the above-mentioned reasons, and as explicated by the CCBE model of certificate and established position within the CCBE membership of that time, the Committee would like to reiterate the opinion that:

10. Conclusion:

- The lawyer's certificate from the competent Bars and Law Societies should certify that the applicant lawyer is authorised to practise under their home title, including the capacity of representing clients in and out of court in line with the national rules and under the supervision of the home authority.

Annex: Background material

Link to the text of the Directive 98/5: "[Establishment Directive](#)"

- Article 1(2) provides that: "Definitions: (...)

(a) 'lawyer` means 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: (list of national professional titles of lawyers)

- Article 2 refers to lawyers practising under their home country professional title:

Article 2

Right to practise under the home-country professional title

Any lawyer shall be entitled to pursue on a permanent basis, in any other Member State under his home-country professional title, the activities specified in Article 5.

Integration into the profession of lawyer in the host Member State shall be subject to Article 10.

- Article 3(2) that the lawyer (as defined under Article 1(1)) should present a certificate from the competent authority (Bar / Law Society):

Article 3

Registration with the competent authority

- 1. A lawyer who wishes to practise in a Member State other than that in which he obtained his professional qualification shall register with the competent authority in that State.*
- 2. The competent authority in the host Member State shall register the lawyer upon presentation of a certificate attesting to his registration with the competent authority in the home Member State. It may require that, when presented by the competent authority of the home Member State, the certificate be not more than three months old. It shall inform the competent authority in the home Member State of the registration.*

- Article 4 stipulates the obligation to use the home country professional title:

Article 4 Practice under the home-country professional title

- 1. A lawyer practising in a host Member State under his home-country professional title shall do so under that title, which must be expressed in the official language or one of the official languages of his home Member State, in an intelligible manner and in such a way as to avoid confusion with the professional title of the host Member State.*
- 2. For the purpose of applying paragraph 1, a host Member State may require a lawyer practising under his home-country professional title to indicate the professional body of which he is a member in his home Member State or the judicial authority before*

which he is entitled to practise pursuant to the laws of his home Member State. A host Member State may also require a lawyer practising under his home-country professional title to include a reference to his registration with the competent authority in that State.

CCBE materials for reference:

- CCBE FML Interpretation issues -- in relation to free movement of lawyers [English](#) / [French](#)
- CCBE guidelines for Bars & Law Societies on Free Movement of Lawyers within the European Union (2021), including a model registration form for use by Bars and Law Societies: [English](#) / [French](#)
- CCBE guidelines on the implementation of the Directive (2001): [English](#) / [French](#)