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And

H.E. Prime Minister  
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Brussels, 12 July 2023

**Re: Legislative reform in Portugal affecting the lawyer's profession**

Your Excellencies,

I am writing to provide you with an important update since my recent letter of 19 June 2023.

During the CCBE Plenary Session meeting which took place in Chania on 30 June, the CCBE delegations had the opportunity to have an extensive discussion on the adopted new Law on Professional Public Associations (abbreviated in Portuguese, LAPP) in Portugal and the subsequent [draft law](#) with a view to amend the Statute of the Portuguese Bar Association in its version of 6 June 2023.

All CCBE delegations expressed their extreme concern regarding the legislative changes and in this respect the delegations emphasized their support for the position of the *Ordem dos Advogados* (Portuguese Bar Association).

The CCBE members recognize the serious implications which the legislative changes will have on the administration of justice and CCBE Bars specifically requested that a further letter be sent to reiterate our support for the *Ordem dos Advogados* and to highlight once again the serious implications as expressed in the CCBE letter of 19 June.

In this regard, the CCBE and all our member bars and law societies once again urges you to:

- suspend the implementation of the draft law affecting the lawyer's profession in Portugal insofar as the access to justice and rights of citizens are being concerned.

- conduct a proper and independent impact assessment of the effect of the intended reform in the provision of legal services and for the administration of justice in Portugal, and
- ensure the proper involvement of the main actors of the intended reform.

We thank you for recognizing the significance of this follow-up letter and we express our willingness to discuss or elaborate on any aspect. For your information, I attach a list of the Bars and Law Societies that were present in Chania – all of whom share the same concerns.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Panagiotis Perakis', with a long horizontal stroke extending to the right.

Panagiotis Perakis  
President

#### **Annexes**

- List of CCBE member bars and law societies who participated in the CCBE Plenary Session in Chania on 30 June.
- CCBE letter of 19 June

**List of CCBE member bars and law societies who participated  
in the CCBE Plenary Session in Chania on 30 June**

***Full members:***

Austria	Österreichischer Rechtsanwaltskammertag
Belgium	Ordre des barreaux francophones et germanophone
Belgium	Orde van Vlaamse Balies
Bulgaria	Висшият адвокатски съвет (Supreme Bar Council)
Croatia	Hrvatska odvjetnička komora
Cyprus	Cyprus Bar Association
Czech Republic	Ceská Advokátní Komora
Denmark	Det Danske Advokatsamfund
Finland	Suomen Asianajaliitto
France	Barreau de Paris
France	Conférence des Bâtonniers
France	Conseil National des Barreaux
Germany	Bundesrechtsanwaltskammer
Germany	Deutscher Anwaltverein e.V.
Greece	Δικηγορικός Σύλλογος Αθηνών (Athens Bar Association)
Hungary	Magyar Ügyvédi Kamara
Ireland	Bar Council of Ireland
Ireland	Law Society of Ireland
Italy	Consiglio Nazionale Forense
Liechtenstein	Liechtensteinische Rechtsanwaltskammer
Lithuania	Lithuanian Bar
Luxembourg	Ordre des Avocats du Barreau de Luxembourg
Norway	Den Norske Advokatforening
Poland	The Polish Bar Council
Poland	The National Bar of Attorneys-at-Law
Portugal	Ordem dos Advogados
Romania	Uniunea Națională a Barourilor din România
Slovak Republic	Slovenská Advokátska Komora
Slovenia	Odvetniška Zbornica Slovenije
Spain	Consejo General de la Abogacía Española
Sweden	Sveriges Advokatsamfund
Switzerland	Swiss Bar Association
The Netherlands	Nederlandse Orde van Advocaten

***Affiliate member:***

United Kingdom	England & Wales - General Council of the Bar
	England & Wales - The Law Society
	Northern Ireland - The Bar of Northern Ireland
	Northern Ireland - Law Society
	Scotland - Faculty of Advocates
	Scotland - The Law Society

***Associate member:***

Ukraine

Ukrainian National Bar Association

***Observer members:***

Andorra

Col.legi d'Advocats d'Andorra

Armenia

Chamber of Advocates of the Republic of Armenia

Azerbaijan

Azerbaijani Bar Association



*Le Président*  
The President

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Brussels, 19 June 2023

**Re: Legislative reform in Portugal affecting the lawyer's profession**

Your Excellencies,

I am writing in my capacity as President of the Council of Bars and Law Societies of Europe (CCBE), which represents the bars and law societies of 46 countries, and through them more than 1 million European lawyers. The CCBE represents European bars and law societies in their common interests before European and international institutions and regularly acts as a liaison between its members and the European institutions, international organizations, and other legal organizations.

The defense of the rule of law, human rights and democratic values are the most important missions of the CCBE. The ongoing and future challenges regarding the regulation of the legal profession, free movement of lawyers, and quality of legal services have since long been areas of distinct focus for the CCBE.

One of our members, the "*Ordem dos Advogados*" (Portuguese Bar Association), has brought to our attention the adopted new Law on Professional Public Associations (abbreviated in Portuguese, LAPP) in Portugal and the subsequent [draft law](#) with a view to amend the Statute of the Portuguese Bar Association in its version of 06 June 2023. It is our understanding that the adopted reform has, among other things, the intention of :

- Opening-up the scope of almost all legal services/legal acts to non-lawyers, including those without a law degree, allowing them to draw all kinds of legal contracts and the negotiation of debt recovery as well;
- Scrutinising the activities of the Bar by creating a new supervisory body with the involvement of a majority of non- lawyers with exclusive competence to rule about the training of lawyers and the amount of legal fees charged by the Bar;
- Allowing non-lawyers to be part of the Bar disciplinary boards;

- Reducing the period of training for young lawyers to 12 months, allowing trainees to be able to receive their entire training online;
- Law firms and multidisciplinary firms are no longer required to be registered in the Bar.

The CCBE is concerned that the current legislative reform and proposed changes to the Statutes of the Bar Association – which will have direct implications for citizens – are being taken without sufficient consideration for the role of Bars and lawyers in the administration of justice – such a role being essential in any democratic society.

According to our assessment, the new law would introduce important changes in the way legal services can be delivered which would have a negative impact on citizens. It is important to recognise that registered lawyers are bound by strong professional and ethical rules, including the observance of professional secrecy in the relationship with the client. In addition, registered lawyers must possess professional indemnity insurance. These requirements offer important guarantees to the recipients of legal services. By allowing non-qualified lawyers, and even people with no law degree, to perform legal acts, the intended reform would not provide citizens with the necessary guarantees in relation to integrity, experience, and ensure the good administration of justice.

Furthermore, a number of the proposed measures are also directly interfering with the organization and supervision of the Bar which raises some fundamental questions regarding the preservation of its independence and rule of law principles. In this regard, we make reference in the attached annex to some recognized International and European standards on the role of bars and lawyers in protecting the rule of law and fundamental rights.

The CCBE also notes a number of problematic issues regarding proportionality. While there are circumstances when changes to aspects of the legal profession and legal services may be necessary and justified, it is questionable whether the proposed reform in the present case meets the requirement of proportionality with regard to the intended objectives. In this context, the public interest objective regarding the protection of consumers of legal services and safeguarding of the proper administration of justice is of fundamental importance.

The CCBE notes that the legislative reform was documented by reference to some policy recommendations issued by the OECD/“*Autoridade da Concorrença*” (the Portuguese Competition Authority), and by the European Commission in the field of legal services, in particular in the course of the adoption of the Proportionality Test Directive in 2018 (*Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions*).

However, it is particularly alarming for the CCBE to note that the findings of the Portuguese Competition Authority rely on general information provided by the Commission’s “*Communication on reform recommendations for regulation in professional services*” addressed to all Member States (of 2017 and updated in 2021) but actually fail to demonstrate why such changes would bring a positive effect in Portugal. This is an important point.

In this context, the CCBE would like to recall that, comparison with other Member States’ practices, even if more advanced or more efficient in achieving the same public policy objective, is not a conclusive argument in the proportionality test (see [CCBE position on proportionality test](#)). As also indicated in the Directive, it is for the Member States to determine the level of protection which they wish to afford to the public interest objectives and the appropriate level of regulation, within the limits of proportionality. The fact that one Member State imposes less strict rules than another Member State does not mean that the latter Member State’s rules are disproportionate and therefore incompatible with Union law.

However, as regards the burden of proof, it is the Member state's duty to provide sufficient evidence of the proportionality test in an objective and independent manner. In particular, Member States should carry out an objective analysis, taking into account the specific circumstances of that Member State, that demonstrates that there are genuine risks for the achievement of public interest objectives (see Recital 13 and Article 4 of the Directive).

The CCBE notes that such objective analysis appears to be lacking in the actual reform as, based on the information provided by the Portuguese Bar Association, the main ground of the reform appears to be solely evidenced by the views put forward by the Competition Authority.

One can therefore raise the question whether the political and economic aspects of this reform provides sufficient consideration of the important consequences for access to justice and citizens' rights.

The CCBE would like to underline, as the European Parliament in its [Resolution](#) on the legal professions and the general interest in the functioning of legal systems of 23 March 2006, that any reform of the legal professions may have far-reaching consequences going beyond competition law into the field of freedom, security and justice and, more broadly, into the protection of the rule of law in the European Union. Therefore, the CCBE fears that such reform could create an unprecedented case in the European Union, and the proportionality of the proposed measures is highly questionable. This is the case if the detrimental effects of such reform are not properly evidenced, or if the views of the Bar Association are being disregarded, which would raise questions about the partiality of this reform.

The CCBE also highlights the need for proper consultation with the Portuguese Bar Association with respect to the current draft amending its Statute. We understand that a very limited period of time was provided for the Bar to respond to the draft amending their Statute, after the adoption of the new LAPP. This creates the impression that the draft has been developed in a time period which has not accounted for a proper analysis of its impact on the administration of justice.

Due to the fundamental importance of a well-functioning justice system in a democratic society, it is our belief, which we hope you will share, that Bar Associations should be guaranteed a proper consultation in a timely and effective manner on any proposals that will impact on the professional activities of lawyers and the regulation of the profession.

The CCBE regrets that a governmental proposal with such an impact on the access to justice would disregard, in such an extended way, the proper involvement of the Portuguese Bar Association which is also entrusted with the mission to protect citizens.

In light of the above, the CCBE would urge you to :

- suspend the implementation of the draft law affecting the lawyer's profession in Portugal insofar as the access to justice and rights of citizens are being concerned.
- conduct a proper and independent impact assessment of the effect of the intended reform in the provision of legal services and for the administration of justice in Portugal, and
- ensure the proper involvement of the main actors of the intended reform.
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We thank you for considering the content of this letter and we are happy to discuss or elaborate on any aspect.

Yours sincerely,



Panagiotis Perakis  
President

- **Recognised International and European standards on the role of bars and lawyers in protecting the rule of law and fundamental rights :**

The CCBE would like to recall that lawyers and their professional associations play a fundamental role in strengthening the rule of law and ensuring the protection of fundamental rights, including the right to a fair trial. This has recently been emphasized again by the European Commission in its [2022 Rule of law Report](#) and [2023 EU Justice Scoreboard](#)

The CCBE believes that the proposed changes affecting the justice area and legal profession in Portugal raise fundamental questions in light of European and international professional standards which recognise the fundamental role of lawyers in society, including the Council of Europe Recommendation Nr. R (2000) 21 on the freedom of exercise of the profession of lawyer of 25 October 2000 and the United Nations Basic Principles on the Role of Lawyers of 14 December 1990. These standards **provide for an independent legal profession as a critical component of a well-functioning judiciary and cornerstone of a democratic society based on the rule of law.**

The CCBE is convinced that only a strong element of self-regulation can guarantee lawyers' professional independence vis-à-vis the state, and without a guarantee of independence it is impossible for lawyers to fulfil their professional and legal role (See [CCBE Charter](#) of core principles of the European Legal Profession, Principle (j)).

- **The special position of lawyers in view of the core values of the profession :**

The CCBE would like to recall that the [special position of the lawyer](#), in view of the core values of the legal profession, can justify specific limitations on the freedom to provide services and the freedom of establishment, limitations that do not apply to other service providers.

In most Member States, the Bar authorities are entrusted with the responsibility of adopting regulations designed to ensure the proper practice of the profession. Some of the essential rules adopted for that purpose are, in particular, the duty to act for clients in complete independence and in their sole interest, the duty to avoid all risk of conflict of interest, and the duty to observe strict professional secrecy. Thus, they require of members of the Bar that they should be in a situation of independence vis-à-vis the public authorities, other operators and third parties, by whom they must never be influenced. They must furnish, in that respect, guarantees that all steps taken in a case are taken in the sole interest of the client.

Despite the inherent restrictive effects that these rules may have, the necessity and justification of these rules have been recognized (see in this regard, [CCBE statement](#) "National Action Plans and Proportionality in Regulation" (2016) and [CCBE statement](#) on the occasion of the 25th anniversary of the Lawyer's Establishment Directive and the 30th anniversary of the Single Market (2023).