



**BARREAU
DE
BRUXELLES**
ORDRE
FRANÇAIS

VADE-MECUM

ON THE ESTABLISHMENT IN BELGIUM
FOR EUROPEAN AND
NON-EUROPEAN LAWYERS

LAWYERS FROM WITHIN THE EUROPEAN COMMUNITY / FOREIGN LAWYERS - ASSOCIATED MEMBERS OF THE BRUSSELS BAR / OVERVIEW OF INSURANCE POLICIES AND SOCIAL PROTECTION COVERAGE FOR LAWYERS

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The *Ordre français des avocats du barreau de Bruxelles*
(hereinafter the “French Bar of Brussels”)
comprises more than 5,000 members, including 541 lawyers
of 22 European countries and 98 lawyers of other countries worldwide.

This probably results from the privileged situation Brussels enjoys,
thanks to the presence of the European Institutions, and our Bar’s long-standing policy
of openness and hospitality towards foreign lawyers.



LAWYERS FROM WITHIN THE EUROPEAN COMMUNITY ("EUROPEAN LAWYERS")



§1

ESTABLISHMENT IN BRUSSELS OF A LAWYER FROM A MEMBER STATE OF THE EUROPEAN UNION UNDER HIS HOME-COUNTRY PROFESSIONAL TITLE

1 / PRINCIPE

Pursuant to Article 477^{quinquies} of the Belgian Judicial Code, and subject to the provisions of Directive 98/5/EC of February 16, 1998, a national of a Member State of the European Union (EU) who in that Member State is authorized to use the title corresponding to the profession of a fully qualified lawyer in another Member State, may practice in Belgium on a permanent basis under his home-country professional title (hereinafter “a lawyer established under his home-country title”).

It should be noted that only European lawyers who are registered on the *tableau* (i.e., the list of lawyers fully qualified to practice as members of the French Bar of Brussels, hereinafter “fully qualified lawyers”) in their home Member State may benefit from the freedom of establishment as provided for in Directive 98/5/EC of February 16, 1998, implemented in Belgian law in Article 477^{quinquies} of the Judicial Code.

2 / REGISTRATION METHODS

A European lawyer established under his or her home-country title must register with a Belgian Bar on the list of European lawyers (“E-list”). To do so, he or she must provide the Belgian Bar council with a certificate attesting to his or her registration with the Bar of his or her home-country. The certificate must, where appropriate, mention any disciplinary proceedings which may have been instituted in the applicant’s home Member State. He or she should also provide evidence of a professional indemnity insurance.

He or she must remain registered with the Bar of his or her home-country during the full period of his or her membership of the relevant Belgian Bar.

European lawyers who are members of the Brussels Bar must pay a membership fee, calculated by reference to half of their professional income in Belgium and abroad, after deduction of bailiff expenses, legal expenses and costs of associated lawyers. This rule originates in the impossibility, in numerous cases, of determining the share of professional income received in Belgium and the share of professional income resulting from services rendered abroad. Membership fees to be paid by European lawyers are determined according to the same methods as those applied to lawyers registered on the list of fully qualified lawyers.

LAWYERS FROM WITHIN THE EUROPEAN COMMUNITY

Each year the Bar council establishes the membership fees.

For 2017, depending on the reference professional income, the membership fees amounts to :

- less than € 25,000	€ 1,604
- from € 25,000.01 up to € 37,500	€ 1,681
- from € 37,500.01 up to € 50,000	€ 1,753
- from € 50,000.01 up to € 75,000	€ 1,861
- from € 75,000.01 up to € 100,000	€ 2,044
- from € 100,000.01 up to € 150,000	€ 2,363
- from € 150,000.01 up to € 200,000	€ 2,780
- from € 200,000.01 up to € 300,000	€ 3,189
- from € 300,000.01 up to € 500,000	€ 3,234
- more than € 500,000.01	€ 3,459
- refusal to declare income	€ 3,459

It should also be noted that for the first year a registration fee of €200 will be charged, whereas the membership fee is a lump-sum amount :

- registration before July 1:	€ 1,330
- registration after June 30:	€ 665

FOR INFORMATION AND REGISTRATION

Ms. Bénédicte ESTIEVENART

Secrétariat de l'Ordre

In charge of registrations

Tel: + 32 2 508 63 74

or

inscriptions@barreaudebruxelles.be

Palais de Justice, place Poelaert, 1000 Brussels

3 / PRACTICE RULES - USE OF HOME-COUNTRY PROFESSIONAL TITLE

A lawyer established in Belgium under his or her home-country professional title must mention on any document and written instrument, including electronic mail, used within the framework of his or her professional activities :

- the Bar of his or her home-country with which he or she is registered ;
- his or her home-country professional title ;
- the professional body of which he or she is a member in his or her home Member State or the judicial authority before which he or she is entitled to practice pursuant to the laws of his or her home Member State.

This information must be expressed in the official language(s) of his or her home Member State and at least in the language(s) of the judicial district in which the Bar with which he or she is registered is located.

4 / AREAS OF ACTIVITY

A lawyer registered with a Belgian Bar under his or her home-country title may carry on the same professional activities in Belgium as fully qualified members of Belgian Bars.

He or she may, in particular, give legal advice on the law of his or her home Member State, on Community law, on international law, and on Belgian law.

He or she is not subject to mandatory pro bono assignments.

He or she may also carry on activities relating to the representation and defense of a client in court, subject to certain conditions: he or she must **work in conjunction** with a Belgian lawyer registered as a fully qualified lawyer, who will be accountable towards that authority.

In addition, when called upon to plead before a court, the European lawyer shall, prior to the hearing, be introduced to the President and judges comprising the court by a Belgian lawyer together with whom the European lawyer intervenes.

Like any Belgian lawyer registered on the list of fully qualified lawyers, a European lawyer may plead and file briefs of arguments before any court, except the Belgian Supreme Court (*Cour de Cassation*) for claims in matters for which the law requires the intervention of a Supreme Court lawyer or of a specially authorized lawyer.

The remuneration of the Belgian lawyer whose assistance is requested by the European lawyer will be agreed between them or will be established by the Belgian lawyer within reasonable limits. There are no official fee schedules.

5 / PRINCIPLE OF DOUBLE DEONTOLOGY

In the exercise of his or her professional activities, a lawyer practicing in Belgium under his or her home-country professional title shall be subject to the rules governing the legal profession. The lawyer shall also be subject to the rules of professional conduct of the Bar of his or her home-country. In addition, as concerns cross-border dealings with lawyers in other Member States of the European Union or of countries whose Bars are affiliated with the European Bar Council (CCBE) the Code of Conduct of the CCBE shall apply. This Code is available at www.ccbe.eu.

The rules of professional conduct of the French Bar of Brussels are laid down in the Digest of professional rules of conduct (*Recueil des règles professionnelles*) issued by the Bar and available at the secretariat of the Bar.

6 / DISCIPLINARY PROCEEDINGS

European lawyers are subject to the rules of the Belgian Bar with which they are registered. Before initiating disciplinary proceedings against a European lawyer, the *bâtonnier* shall inform the competent authority in the home Member State, furnishing it with all the relevant details, in particular with regard to the disciplinary file, the applicable rules of procedure, and the time limits for lodging appeals.

7 / FORMS OF PRACTICE OF THE LEGAL PROFESSION OF EUROPEAN LAWYERS

7.1 / THIS PARAGRAPH ONLY CONSIDERS THE CASE OF A EUROPEAN LAWYER WHO ESTABLISHES IN BRUSSELS TO PRACTICE THE LEGAL PROFESSION.

European lawyers may exercise their professional activities :

1.1 Individually.

1.2 Within a branch of an entity exercising the legal profession within a country of the European Union.

1.3 Within a grouping of lawyers who are nationals of a country of the European Union, including Belgian lawyers. In this framework, the lawyers essentially agree to share the costs as provided for in the agreement; such a grouping does not necessarily need to have a name. However, if a specific name is adopted, the members of the grouping should be aware of the increased risk they face of being treated as partners of a civil company (*société civile*), resulting in joint responsibility. Moreover, the grouping agreement (or association of costs) may provide for a series of more or less restrictive provisions at an internal level, such as the delegation of day-to-day management, the organization of accounting, the conditions for the withdrawal and admission of members, the procedure for the dissolution of the grouping, and conflict resolution methods.

1.4 Within a *société civile de droit commun*, also called “*association de fait*”. Such an association is not a legal entity but results in a much more important integration both with regard to fees and costs. It can be used to achieve a full integration, or a partial integration involving only certain cases or clients, or certain practice areas.

A civil company (*société civile*) generally operates under a specific name. This has, however, no practical consequences since this format results in joint responsibility of the partners vis-à-vis third parties. It may include natural persons or legal entities.

The articles of association, which must be approved by the Bar, must provide for the organization of management and for the rules on allocation of fees and costs between partners, it being understood that an internal regulation (*règlement d'ordre intérieur* - ROI) may be established, setting forth the precise accounting to be made between partners. It is equally important to organize the rules of admission and withdrawal of partners, as well as rules to be observed in case of dissolution or liquidation or conflicts among partners.

The articles of association may also contain provisions on mutual assistance in case of temporary or permanent incapacity or death, as well as provisions regarding the transmission of clients.

1.5 Limited liability entities must be either a limited liability cooperative company (*société coopérative à responsabilité limitée* - SCRL) or a private limited liability company (*société privée à responsabilité limitée* - SPRL).

In that case, the partners exercise their profession within the framework of a company with separate legal personality.

1.5.1. An SCRL is used most often when the entity consists of at least three partners since a minimum of three partners is a legal requirement. .

The incorporation before a notary is mandatory and the articles of association must first be approved by the Bar.

In most cases, the partners make contributions in cash. Contributions in kind are also allowed, provided that their economic value can be assessed by an auditor.

As is the case in a *société civile de droit commun*, an internal regulation (*règlement d'ordre intérieur* - ROI) may be established.

The partner in charge of a matter is jointly and severally liable towards the client for the liabilities of the company, it being understood that it is not ethically allowed to limit the professional responsibility of the lawyer towards the client without the client's express consent, which limitation cannot be lower than the amount for which the lawyer's professional liability is insured.

1.5.2. An SPRL is more often used in the context of a single-member company or a company composed of two or three partners. An SPRL is less flexible than an SCRL regarding the admission and withdrawal of partners. A forced withdrawal, for instance, is only possible by court order.

As is the case in a *société civile de droit commun* or in a SPRL, an internal regulation (*règlement d'ordre intérieur* - ROI) may be established.

In terms of liability, the rules for an SPRL are identical to those for an SCRL.

Contributions may be made in cash or in kind. In the latter case the auditor's valuation is required, as well as the establishment of a special report of the incorporator or manager, justifying the benefits of these contributions for the company.

LAWYERS FROM WITHIN THE EUROPEAN COMMUNITY

1.6 European lawyers may also exercise their professional activities within a *société en commandite simple* (limited partnership). In this type of company, the liability of the “*commanditaire*” partners does not exceed the amount invested in the company, whereas “*commandité*” partners are jointly and severally liable for all the liabilities of the company.

1.7 Within an unlimited partnership (*société en nom collectif*). This type of company, which is a separate legal entity, is rarely used, given the broad liability assumed by the partners. Indeed, the partners are jointly and severally liable for all the liabilities of the company, even in the case when a single partner has acted on behalf of the company, provided that the liabilities were assumed under the company’s name.

The articles of association of an unlimited partnership may be passed before a notary or by private agreement.

Notwithstanding the above, the Bar council of the Bar with which a European lawyer is registered may refuse to allow a lawyer to practice in Belgium in his or her capacity as member of a grouping in which some persons are not members of the profession. In this context, Article 477octies, §5, par. 2 of the Judicial Code provides that a grouping includes persons who are not members of the profession if at least one of the following conditions is satisfied :

- the capital of the grouping is held entirely or partly by persons who do not have the status of lawyer within the meaning of the provisions of the Judicial Code;
- the name under which it practices is used by persons referred to in a);
- the decision-making power in that grouping is exercised, de facto or de jure, by persons referred to in a).

In virtue of a regulation of 22 May 2017 of the *Ordre des barreaux francophones et germanophone* (“OBFG”), however, some specific non-lawyer persons may hence, under some specific conditions, own equity participation in the capital of law firms. These persons are :

- the former partners, for a maximum duration of five years;
- the spouses, legal cohabitants, relatives in the ascending line and relatives in the descending line of a partner;
- the legal successors of a deceased partner, for a maximum duration of five years;
- the members of the staff, for the time they hold such position within the firm.

The lawyer partners must own at least one half of the capital of the law firm and the third party partners may not, individually or collectively, own rights in the company that would allow them to oppose a decision supported by a majority of the lawyer partners.

Moreover, whatever the form in which a European lawyer exercises his or her professional activities, he or she is subject to Belgian law relating to the performance of services of March 26, 2010, which entered into force on January 1, 2011, which partially implements Directive 2006/123 of the European Parliament and of the Council of December 12, 2006 on services in the internal market (called the Services Directive or Bolkestein Directive).

7.2 / SALARIED PRACTICE – THE POSSIBILITY FOR LAWYERS REGISTERED UNDER THEIR HOME-COUNTRY TITLE WITH A BELGIAN BAR TO PRACTICE AS EMPLOYEES.

The practice of the legal profession by a European lawyer is incompatible with remunerated employment and activities, whether in the public or private sector, unless they do not jeopardize the lawyer’s independence and the dignity of the Bar (Art. 477sixties, §4, of the Judicial Code).

8 / VAT SYSTEM APPLICABLE TO LAWYERS

All the services performed by lawyers in the context of their normal activities as a lawyer are, in principle, taxed at the standard rate (fixed at 21% in 2016).

A number of services are, however, exempt on the basis of Art. 44 of the VAT Code. Circular No. 47/2013 of November 20, 2013 (sections 31 through 36) provides that the following services are exempt: the services of a debt mediator, an interim administrator, a family mediator, a guardian and a guardian *ad hoc*, the services of a speaker or the services related to publishing contracts for literary or artistic works entered into by the authors, and provided that all the conditions for the application of these legal provisions are satisfied. In addition, the administrative decision No. ET 126.564 of July 18, 2014 (sections 52 and following) relates to standby for people with mental diseases.

9 / INSURANCE

9.1 / PROFESSIONAL INDEMNITY INSURANCE.

European lawyers must be covered by professional indemnity insurance taken out in Belgium. In this respect, the existence of insurance or a guarantee, taken out in the home Member State, may be taken into account, insofar as such insurance or guarantee is equivalent to one taken out in Belgium with the host Bar. Where the equivalence is only partial, the Belgian host Bar may require that additional insurance or, if the European lawyer so requires, an additional guarantee be taken out to cover those items which are not already covered by the insurance or guarantee taken out in the home Member State.

Part III of this vade-mecum contains a summary of the insurance policies subscribed by the French Bar of Brussels.

9.2 / SOCIAL SECURITY.

A lawyer established in Belgium under his or her home-country title is subject to the social security system of the place where he or she carries on his or her activities. The social security contributions collected by the social security institutions cover the three social status sectors: pension, family allowance, and sickness and invalidity insurance. Contributions are calculated on the basis of the income of the person in his or her self-employed capacity, for the last but one fiscal year preceding the year for which the contributions are due (see Part III chapter 2).

10 / CONTINUING LEGAL EDUCATION

A lawyer established in Belgium under his or her home-country title is subject to the same continuing legal education obligations as a lawyer registered on the list of fully qualified lawyers of a Belgian Bar.

The continuing legal education rules are set forth in the Digest of professional rules of conduct (*Recueil des règles professionnelles*) available at the secretariat of the Bar. It should be noted that lawyers freely compose their continuing legal education programs, but that they must prove having obtained an average of 20 credits per calendar year, calculated over a period of three years.

Attendance at one hour of legal education corresponds to one credit. Lecturing or the publication of scientific articles are also eligible for credits. A law firm's internal legal education program may be recognized.

Information on this subject is available from the director of professional education at the education department of the secretariat of the Bar.

11 / THIRD PARTY (CARPA) ACCOUNT

Like Belgian lawyers, European lawyers are subject to the professional rules applicable to the maintenance of funds of clients or third parties. The 'CARPA' account is a third party account. It is an account opened by a lawyer or an association of lawyers with a bank approved by the French and German Bars (*Ordre des barreaux francophones et germanophone*), to receive temporarily the funds belonging to clients or third parties. This account may only be used for this purpose.

§2

ACQUISITION OF THE TITLE OF BELGIAN LAWYER BY A LAWYER WHO IS A NATIONAL OF A MEMBER STATE

A European lawyer who wishes to practice the legal profession using the professional title of the Bar of the host country, i.e., in Belgium the title of “avocat”/“advocaat”, may address to the Bar council a request to be admitted as a fully qualified lawyer, provided that he or she meets the conditions to be granted the title of “avocat”/“advocaat”.

1 / CONDITIONS FOR THE ACQUISITION OF THE TITLE OF (BELGIAN) LAWYER

A European lawyer who wishes to obtain the professional title of “avocat”/“advocaat” has the choice between two procedures :

1.1 / PURSUANT TO THE PROCEDURE PROVIDED FOR IN ARTICLE 10 OF DIRECTIVE 98/05/EC,
FOLLOWING A PERIOD OF THREE YEARS DURING WHICH THE LAWYER HAS PURSUED HIS ACTIVITIES EFFECTIVELY
AND REGULARLY UNDER HIS HOME-COUNTRY PROFESSIONAL TITLE :

Conditions

Any lawyer established in Belgium under his or her home-country title and registered with a Belgian Bar, may acquire the title of Belgian lawyer (avocat) if he or she requests his or her registration on the list of fully qualified lawyers of the Bar of the host country, has effectively and regularly pursued a professional activity in Belgium, and has practiced Belgian law and/or Community law for a period of at least three years. He or she must take the oath (see Art. 477nonies of the Judicial Code).

Procedure

A request thereto must be addressed to the bâtonnier or the secretary of the Bar of the host country.

The European lawyer shall furnish any relevant information and documentation, notably on the number of Belgian or Community law matters the lawyer has handled, and their nature. The Bar council may verify the effective and regular nature of the activity pursued and may, if need be, request the lawyer to provide further details, orally or in writing.

Effective and regular pursuit means the actual exercise of the activity without any interruption, other than that resulting from the events of everyday life.

In addition, European lawyers who have effectively and regularly pursued a professional activity in Belgium for a period of at least three years but who have practiced Belgian law for a lesser period, may also request registration on the list of fully qualified lawyers and take the oath if they obtain a favorable assessment from the Bar council. Candidates are invited to direct their request, together with all evidencing documents, to the *bâtonnier* or the secretary of the Bar.

The lawyer's effective and regular activity pursued in Belgium, and his or her capacity to continue the activity he or she has pursued, will be assessed on the basis of an interview with the *bâtonnier* or his deputy, who will report to the Bar council.

The request must be drafted in French or accompanied by a certified translation in that language and the *bâtonnier* will submit it to the Bar council, which will decide upon the request.

The Bar council will consider the lawyer's effective and regular activity during the three-year period, as well as any knowledge and experience of Belgian law and any attendance to courses or seminars related to Belgian law, including professional rules and ethics.

1.2 / PURSUANT TO ARTICLES 13 AND 14 OF DIRECTIVE 2005/36/EC, BY MEANS OF THE RECOGNITION OF HIS OR HER PROFESSIONAL QUALIFICATIONS AND AN APTITUDE TEST :

Conditions

A lawyer who is a national of a Member State and who wishes to be established in Belgium directly under the title of Belgian lawyer (*avocat*), may do so by means of the recognition of the professional qualifications procedure.

The candidate must first have an attestation of competence or evidence of formal qualification¹ which shows that the holder has the professional qualifications required for the pursuit of the legal profession in a Member State of the European Union. Only a lawyer who is registered on the list of fully qualified lawyers in his or her home-country and who has finished his or her period of supervised practice (traineeship) may benefit from this possibility.

The candidate must also produce evidence that he or she is of good character and repute, has not been declared bankrupt, has not committed serious misconduct in the pursuit of the legal profession and has not committed a criminal offence that may lead to a suspension or prohibition to practice law.

The candidate must also provide the list of subjects covered by the exams to obtain the required law degree in his or her home-country.

The candidate must perform an aptitude test organized by either the French and German Bars (*Ordre des barreaux francophones et germanophone* - OBFG) or by the Flemish Bars (*Orde van Vlaamse Balies* - OVB), depending on the Bar to which he or she applies for registration. The purpose of this test is to verify whether the candidate is familiar with the specificities of the local legal system, and tests the lawyer's knowledge on the basis of a comparison between the qualifications acquired in his or her home-country and the qualifications required in the host Member State. Professional experience acquired by the candidate, in accordance with Article 13 of directive 2005/36/EC and the "Morgenbesser" case law of the European Court of Justice, may also be considered.

The candidate who meets all the conditions is authorized to take the oath. He or she shall be exempt from the obligations of the traineeship prescribed by Belgian law and may apply for his or her immediate registration as a fully qualified lawyer if the traineeship at the Bar of his or her home-country allows him or her to register as a fully qualified lawyer of that Bar. The candidate shall also be exempt from the obligations of the traineeship if such traineeship is not imposed by the Bar of his or her home-country. In all other cases, the candidate will first have to register on the list of trainees of the French Bar of Brussels.

Registration procedure

The request must be addressed to the French and German Bars (*Ordre des barreaux francophones et germanophone* - OBFG) :

Address :
Ordre des barreaux francophones et germanophone
Avenue de la Toison d'Or, 65 - 1060 Brussels
Tel. : 02 648 20 98
Fax : 02 648 11 67
E-mail : info@avocats.be

¹ Within the meaning of Directive 2005/36/EC of September 7, 2005 on the recognition of professional qualifications (OJ, L255/22 of September 30, 2005).

2 / PRACTICE CONDITIONS

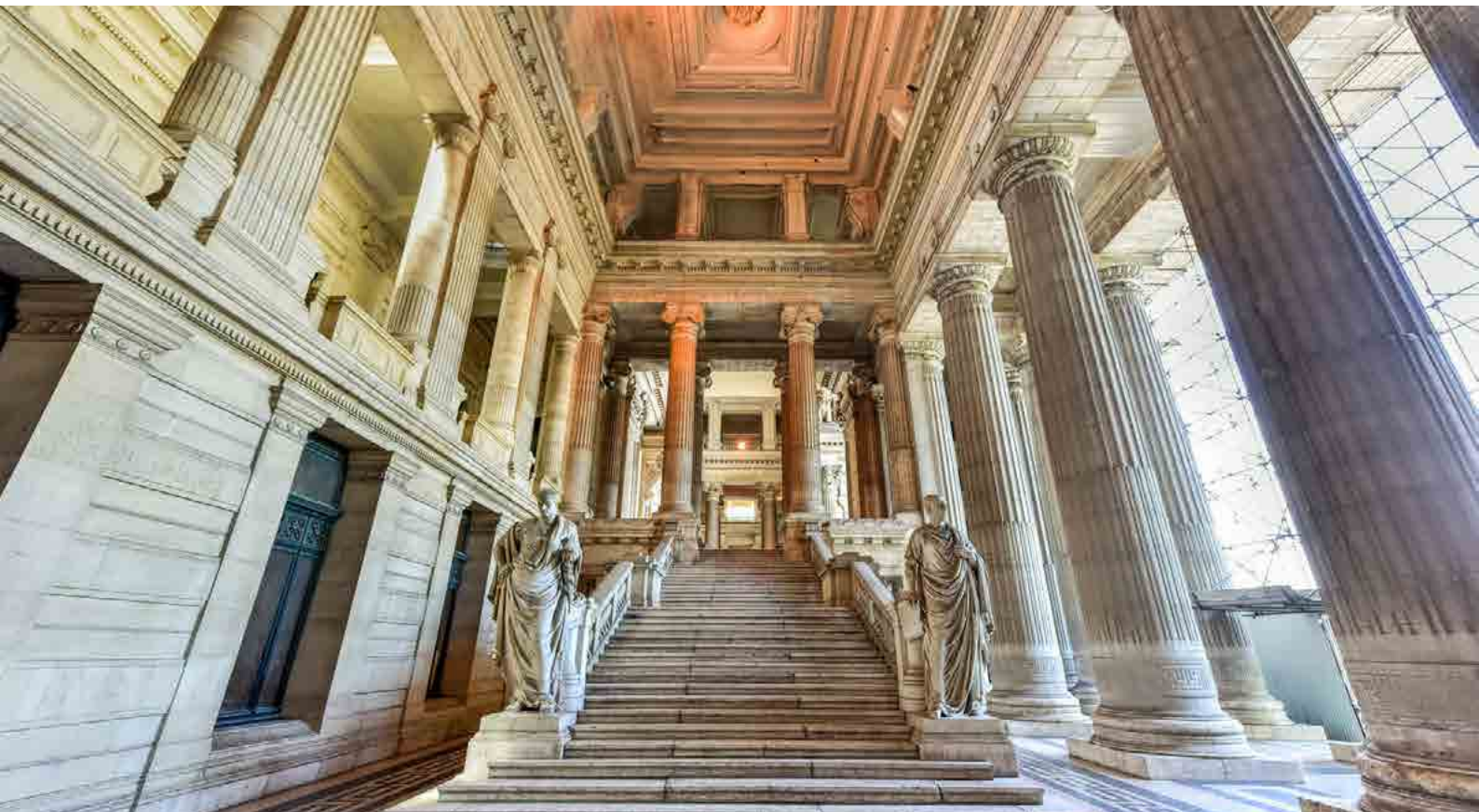
→ **Registration as a fully qualified lawyer**

→ Like any fully qualified lawyer, European lawyers shall be subject to the Belgian professional rules including those concerning ethics. These rules are set forth in the Digest of professional rules of conduct (*Recueil des règles professionnelles*) available at the secretariat of the Bar.

→ **No obligation to remain registered with the Bar of the home-country**

Lawyers having acquired the title of Belgian lawyer (*avocat*) and who have been registered on the list of fully qualified lawyers of a Belgian Bar in accordance with one of the two procedures described in paragraphs 1 and 2 above, no longer need to remain registered with the Bar of their home-country. They may carry the title of “*avocat*”/“*advocaat*”.

However, if a European lawyer remains registered with the Bar of his or her home-country, he or she may also carry the title of the Bar of his or her home-country.



§ 3

ACCESS TO THE EDUCATION AND TRAINING OF A BELGIAN LAWYER FOR LAW GRADUATES WHO ARE NATIONALS OF A MEMBER STATE OF THE EUROPEAN UNION

1 / CONDITIONS OF ACCESS TO THE PROFESSIONAL EDUCATION AND TRAINING FOR BELGIAN LAWYERS

1.1 / LAW GRADUATES WHO ARE NOT PRACTICING LAWYERS

Only nationals of a Member State of the European Community who, in their home Member State, are authorized to carry the title of lawyer, may benefit from the freedom of establishment and registration with a Belgian Bar. Holders of a law degree who are not yet lawyers, and trainee lawyers who are subject to rules that are different from those for Belgian trainee lawyers, may have access to the professional education and training for Belgian lawyers if their degree is recognized as being equivalent to the law degree required in Belgium. Legal advisors or law graduates who are nationals of a Member State of the European Union may then request their registration on the list of trainee lawyers, leading to the acquisition of the title of lawyer (*avocat*) in Belgium.

1.1.1 General system applicable to law graduates who are not practicing lawyers

Conditions relating to the law degree

Legal advisors or law graduates who are nationals of a Member State of the European Union must give evidence of a professional qualification that is equivalent to the Belgian master in law, a degree delivered by a Belgian law school after five years of legal education.

Examination of equivalence of degrees

The Belgian law schools have authority to decide on the equivalence of law degrees. The applicant must submit the list of subjects for which he or she has taken an exam to acquire his or her law degree in the home Member State, in order to assess the subjects that may be recognized as equivalent. This equivalence may be supplemented by an assessment of the equivalence of the degrees by those law schools.

For the French speaking part of Belgium the equivalence exam is organized by the French Community. This Community has delegated the organization of the exam to the universities (*Université Libre de Bruxelles*, *Université Catholique de Louvain* (Louvain-la-Neuve) or *Université de Liège*). If the candidate passes the exam, his or her degree shall be considered equal to a Belgian law degree, and he or she may apply for registration on the list of trainee lawyers and take the oath.

Addresses :

www.ulb.ac.be

www.uclouvain.be

www.ulg.ac.be

1.1.2 System applicable to law graduates who are not practicing lawyers but have acquired professional experience

Exemption from the examination of equivalence of degrees / Aptitude test

In order to give effect to the decision rendered on November 13, 2003 by the Court of Justice of the European Community in the Morgenbesser case, the OBFG decided on June 28, 2004 to give access to the aptitude test organized by the Judicial Code pursuant to Directive 89/48/EEC, currently replaced by Directive 2005/36/EC (Art. 428^{quater} to Art. 428^{decies} of the Judicial Code) to each candidate satisfying the following two cumulative conditions :

- the candidate must **hold a law degree** either allowing immediate access to training for the legal profession, or allowing the candidate to take the exam providing access to education in his or her home Member State (e.g., in France, *la maîtrise de droit* which allows the candidate to take the entrance exam in a *Centre régional de formation professionnelle*, or CRFPA); and
- the candidate must **have acquired at least 18 months of professional experience** in a law firm, either in Belgium or in another Member State of the European Union, or within the framework of any other legal function which the Board of Directors of OBFG recognizes as equivalent to professional experience.

2 / PRACTICE CONDITIONS

2.1 / REGISTRATION ON THE LIST OF TRAINEE LAWYERS

After having passed the aptitude test (similar to the test applicable to lawyers who are nationals of a Member State who wish to establish themselves in Belgium directly under the title of Belgian lawyer (*avocat*)), the applicant may take the oath and be registered on the list of trainee lawyers of the Bar of his or her choice, where the lawyer will have to satisfy all obligations relating to traineeship before being admitted to the list of fully qualified lawyers of the Bar.

2.2 / VADE-MECUM FOR TRAINEE LAWYERS

Lawyers registered on the list of trainee lawyers must comply with certain conditions during a traineeship of three years with a Belgian Bar before being admitted to the list of fully qualified lawyers of that Bar. A Vade-Mecum for trainee lawyers has been prepared by the *Conférence du jeune Barreau de Bruxelles* and describes these obligations in detail (www.cjbb.be).

FOREIGN LAWYERS – ASSOCIATED MEMBERS OF THE BRUSSELS BAR



1 / DEFINITION

Lawyers pursuing their activities on a full-time basis who are not nationals of a Member State of the European Union, or who are nationals of the European Union but who are not authorized to exercise their profession in the European Union, may request registration on the list of associated members of the Brussels Bar (*liste des membres associés du barreau de Bruxelles*, also referred to as “B-List”).

2 / REGISTRATION PROCEDURE

Registration on the B-List is decided by the council of the Bar, which will verify :

- 1° the regular registration of the candidate with the Bar of his or her home-country ;
- 2° the fulfillment of training obligations, if any, at that Bar ;
- 3° the absence of any legal incompatibilities or sanctions or pending disciplinary proceedings ;
- 4° the compliance of the situation of the candidate with the provisions of the applicable Internal Regulation (*règlement d’Ordre intérieur*) of the Bar and with the laws and regulations governing the residence and activity of foreigners in Belgium.

3 / REGISTRATION, COMPULSORY OR OPTIONAL ?

The answer to this question is provided for in Art. 2.2.2 of the International Regulation (*règlement d’Ordre intérieur*) of the French Bar of Brussels.

Registration is compulsory for all lawyers who wish to establish themselves in Brussels and wish :

- to enter into agreements for the joint exercise of the legal profession with lawyers registered on the list of fully qualified lawyers, European lawyers or trainee lawyers ;
- to enter into cooperation agreements with lawyers registered on the list of fully qualified lawyers, European lawyers or trainee lawyers; or
- to be authorized to practice Belgian law indirectly, subject to the conditions mentioned below.

Conversely, associated lawyers who do not wish to join or cooperate with lawyers registered on the list of fully qualified lawyers, on the list of European lawyers, or on the list of trainee lawyers, or who do not intend to directly or indirectly practice Belgian law under the conditions set forth in Art. 2.2.2 of the Internal Regulation (*règlement d’Ordre intérieur*), do not need specific authorizations or declarations.

Lawyers who are not national of a country of the European Union, and who wish to incorporate a civil company (*société civile*) taking the form of a single shareholder private limited liability company (*société civile empruntant la forme d’une société privée à responsabilité limitée unipersonnelle*) must be registered on the list of associated members of the Brussels Bar (*liste des membres associés du barreau de Bruxelles*). The draft articles of association of such a company are subject to prior approval of the Bar council. They must be in compliance with the provisions of Art. 4.3.1 of the Internal Regulation (*règlement d’Ordre intérieur*).

4 / PRACTICE OF BELGIAN LAW

The practice of Belgian law is subject to limitations for associated members of the Brussels Bar. Except for strictly incidental questions, those lawyers must solicit the advice of a Belgian lawyer registered on the list of fully qualified lawyers, or of a trainee lawyer with a seniority of at least one year and who has passed the professional education courses, or of a lawyer having the same qualifications and who is a member of another Belgian Bar.

The associated members must mention the name of the above-mentioned lawyer who has given the advice. As a rule, such lawyer shall jointly sign any legal advice or opinion on Belgian law that they have drafted together, or shall be identified as the person having given the legal advice.

Lawyers registered on the B-list are not authorized to plead before the Belgian courts, nor before the Council of State (*Conseil d'Etat*), and may not represent clients before the Council for Alien Law Litigation (*Conseil du Contentieux des étrangers*).

5 / EUROPEAN AND FOREIGN LAW PRACTICE

There are no restrictions to the professional activity of an associated member of the Brussels Bar with respect to practicing European or foreign law.

6 / SPECIFIC AGREEMENTS

It must be noted that the Brussels Bar has entered into agreements with several foreign Bars facilitating the practice of the legal profession in Belgium. The list of these agreements is available at the secretariat of the Bar.

The agreement entered into between the Brussels Bar and the American Bar Association on August 6, 1994 (Annex 9 to the *Recueil*) must be noted in particular. This agreement provides for specific rules that apply to American lawyers. For example, Article 1.1 of that agreement provides that an American lawyer is required to be registered with the French Bar of Brussels within six months of his or her establishment.

Other provisions (see Art. 4.2 and 4.3) provide for specific conditions, according to which an American lawyer may act as counsel or representative in matters governed by Belgian law.

See also the agreement of July 20, 1999 between Switzerland and the Member States of the European Union.

7 / RULES OF PROFESSIONAL CONDUCT

By registering on the list of associated members of the Brussels Bar, a foreign lawyer undertakes to comply, as far as the pursuit of his professional activity in Belgium is concerned, with the rules, regulations, and decisions of the Bar, subject to such amended procedures and rules which may be provided by any agreement that the Brussels Bar may have entered into with the Bar of his or her home-country.

8 / INSURANCE

A foreign lawyer who wishes to become an associated member of the Brussels Bar must provide evidence that, for the pursuit of his or her professional activities in Belgium, he or she has taken out professional indemnity insurance which is at least equivalent to the insurance required for Belgian lawyers registered on the list of fully qualified lawyers of the Bar (See part III of this vade-mecum).

9 / CONTINUING EDUCATION

A foreign lawyer registered on the B-list is not bound by the obligations of continuing education imposed on Belgian lawyers.

10 / PARTNERSHIPS

Associated members of the Brussels Bar may practice together with one or several lawyers registered on the list of fully qualified lawyers, whether European or foreign (non-European) (See par. 7.1 above).



OVERVIEW OF INSURANCE POLICIES AND SOCIAL PROTECTION COVERAGE FOR LAWYERS



As a result of their registration with the Bar, lawyers benefit from the cover offered by several insurance policies (Chapter 1). These are contracted by the Bar: the premium is included in the membership fee to be paid annually to the Bar under the heading “individual cost for the practice of the legal profession”.

The insurance policies have been taken out with SA Ethias.

The insurance policies include the professional indemnity insurance (1), the guaranteed income (2) and “health care-hospitalization” (3).

In addition, lawyers established in Belgium are subject to the Belgian social security system (Chapter 2).

Moreover, lawyers may benefit from the services of the solidarity fund for bailiffs and lawyers (Fonds de solidarité des huissiers et des avocats) (Chapter 3).

Any information may be obtained from the social service of the Bar.

Please contact Ms. Jacqueline Colot-Bivort (tel. +32.2.508.62.69 or by e-mail at jacqueline.bivrot-colot@barreaudebruxelles.be) and, for the guaranteed income and health care-hospitalization insurances, with the broker of the Bar: Marsh (Mr. Stéphane Herbauts, Tel. +32.2.674.98.40 or by e-mail at stephane.herbauts@marsh.com).

CHAPITRE 1 / GROUP INSURANCES CONTRACTED BY THE BAR

1.1 / THE PROFESSIONAL INDEMNITY INSURANCE

The professional indemnity insurance contracted by the Bar, policy No. 45.118.401.

This insurance covers the lawyers’ liability vis-à-vis third parties during the exercise of their professional activities in the broad sense of the term. The insurance covers the functions of arbitrator, mediator, judicial representative (subject to certain exceptions), etc.

The insurance covers lawyers registered on the list of fully qualified lawyers, on the list of trainee lawyers or on the list of European lawyers (E-list), partners of the insured lawyers, partnerships (with or without legal personality), law firms, and their employees if the insured is civilly responsible for their acts.

Lawyers are automatically insured when they are registered on the list of fully qualified lawyers, on the list of trainee lawyers or on the E-list, the annual premium being included in the membership fee paid to the Bar. However, European lawyers who can produce evidence of the fact that their insurance taken out with the Bar of their home-country is at least equivalent to the one taken out by the Bar, may benefit from a reduction of their membership fee for the amount of the Belgian insurance premium; in that case they are not qualified as insured within the meaning of the Belgian policy.

The cover relates to professional indemnity and extra-contractual indemnity and, in addition, to damages caused to goods in custody, reconstitution expenses and repair costs and, subject to certain limits, damages caused by fire, explosion, smoke, water or environmental damages.

The cover amounts to €1,250,000.00 per claim, for all damages, for professional indemnity, subject to a deductible of €2,500.00 per claim and per *dominus litis* (reduced to €250.00 for legal aid cases where the compensation received by the lawyer does not exceed €500.00). Specific maximum amounts and deductibles have been established for all other aspects of the cover.

However, the policy provides for several exclusions from the cover provided by the insurance policy, including damages resulting from matters in which the insured person has acted as management agent (except in case of legal mandates), manager, guarantor, trustee in bankruptcy, administrator, receiver, executor of a succession, liquidator or corporate officer (director) of a company or non-profit organization (ASBL). These activities must be covered by a personal insurance taken out by the lawyer; reference may be made to the professional indemnity insurance policy of the judicial representative and of the liquidator, the conditions of which O.B.F.G. has negotiated with Ethias.

The insurance cover relates to claims arising worldwide to the extent that they result from an insured activity habitually conducted from offices situated in Belgium, except for claims brought before courts and/or under the laws of the United States of America or Canada.

Any declaration of an incident shall be directly notified to the insurance company Ethias, as soon as the insured is informed of the incident, and in any event within thirty days.

1.2 / HEALTHCARE-HOSPITALIZATION INSURANCE

(Ethias policy No. 85.499.070)

The healthcare-hospitalization insurance covers the reimbursement of the healthcare costs listed in the insurance policy in case of hospitalization, but also in case of pre- and post-hospitalization or serious diseases (the list of which is included in the insurance policy), and childbirth at home or at hospital.

The insurance company will reimburse costs in excess of any payments provided by law and otherwise of which the insured may benefit, subject to a deductible of €261.77. In hospitals equipped with a compatible terminal, payment may be effected via the third-party paying system and use of the Assur-Card issued to each lawyer.

The cover is, in principle, unlimited, subject to certain specific maximum amounts (for palliative care expenses, homeopathy, chiropractic, osteopathic, acupuncture, etc. treatments).

The insurance covers lawyers registered on the list of fully qualified lawyers, on the list of trainee lawyers and on the E-list as a result of their registration with the Bar, the annual premium being included in the membership fee paid to the Bar. They may take out an insurance, subject to the same conditions, for their close family members (spouse, cohabitant and children), but the insurance premiums for such cover are directly charged by the insurance company to the lawyer.

It should be noted that the insurance coverage terminates when the insured attorney leaves the « *Tableau* », except if he requests to be and is admitted as « *avocat honoraire* ». For those attorneys who appear on the E-list, the insurance subscribed via the Bar shall definitively terminate.

1.3 / THE GUARANTEED INCOME INSURANCE

(Ethias policy No. 45.344.643)

The guaranteed income insurance provides for indemnification of lawyers in case of disability equal to or exceeding 66% as a result of illness or an accident.

The indemnity will be granted after an elimination period of 30 calendar days. It amounts to €1,200.00 per month but will be reduced to €750.00 per month for lawyers registered on the list of trainee lawyers.

Disability as a result of maternity leave is covered for five weeks (it being understood that the Belgian *mutuelles* grant a maternity allowance during a period of eight weeks). In addition, childbirth entitles to a flat-rate birth allowance of €1,000.00.

The insurance covers lawyers registered on the list of fully qualified lawyers, on the list of trainee lawyers, on the E-list and on the B-list until the age of 75 on the condition that they remain registered with the Bar, it being understood that for lawyers older than 65, payment by the insurance company is limited to a total cumulative or non-cumulative period of 12 months. They are covered as a result of their registration with the Bar, the annual premium being included in the membership fee paid to the Bar.

Extension of cover may be subscribed individually through Marsh, broker.

CHAPITRE 2 / SOCIAL SECURITY

Lawyers established in Belgium under their home-country title are subject to the social security system of the place where they carry on their main professional activity.

Several obligations must be fulfilled: registration with the Crossroads Bank for Enterprises created within FPS Economy, the grant of a VAT number, registration with a *mutuelle* with a view to exercise, if applicable, one's right in case of illness and disability, and registration with one of the below listed social security institutions for the self-employed (*caisse d'assurances sociales pour travailleurs indépendants*).

The social security contributions paid each quarter by the self-employed to his or her social security institution cover the three social status sectors: pension (or Belgian pension), family allowance (childbirth allocation, monthly family allowance, service vouchers paid to the self-employed ...) and sickness and invalidity insurance.

Social security contributions are calculated on the basis of the income of the person.

OVERVIEW OF INSURANCE POLICIES AND SOCIAL PROTECTION COVERAGE FOR LAWYERS

Below is a list of the social security institutions for the self-employed :

Groupe S - Caisse d'assurances sociales pour travailleurs indépendants

1000 BRUSSELS, Rue des Ursulines, 2
Tel. : 02 555 15 20 - Fax : 02 555 15 45
E-mail : infocas@groupe.be

Xérius

2000 ANTWERPEN, Brouwersvliet 4
Tel. : 078 15 00 15 - Fax : 078 15 54 25
E-mail : info@xerius.be

Zénito

1000 BRUSSELS, quai de Willebroek, 37
Tel. : 02 212 22 30
E-mail : caissedassurancessociales@zenito.be

Partena-Assurances sociales pour indépendants

1000 BRUSSELS, rue des Chartreux, 45
Tel. : 02 549 73 00 - Fax : 02 223 73 79
E-mail : mkt.asti@start.partena.be ou www.partena.be/fr/independants/aspx

Acerta

1020 BRUSSELS, Esplanade du Heysel, BP65
Tel. : 02 333 27 25 - Fax : 02 333 27 26
E-mail : independants@acerta.be

ARENBERG- caisse d'assurances sociales pour indépendants

2000 ANTWERP, Arenbergstraat, 24
Tel. : 03 221 02 11- Fax :03 221 02 56
E-mail : sociaalverzekeringsfonds@arenberggroup.be

SECUREX-INTEGRITY

1040 BRUSSELS, avenue de Tervueren, 43
Tel. : 02 729 92 11 - Fax : 02 729 92 20
E-mail : brussel@securex.be ou bruxelles@securex.be

INCOZINA caisse d'assurances sociales asbl

8200 BRUGES, Torhoutsesteenweg 384
Tel. : 050 40 65 65 - Fax : 050 40 65 99
E-mail : info@incozina.be

MULTIPEN

2800 MECHELEN, Zeutestraat, 2B
Tel. : 015 45 12 60 - Fax : 015 45 12 68
E-mail : info@multipen.be

L'entraide

1140 BRUSSELS, rue Colonel Bourg, 113
Tel. : 02 743 05 10 - Fax : 02 743 04 79
E-mail : clasti@entraidegroupe.be

Caisse d'assurances sociales de l'UCM

5100 NAMUR (Wierde), chaussée de Marche, 637 (N 4) BP 38 Namur
Tel. : 081 32 06 11 - Fax : 081 30 74 09
E-mail : cas@namur.ucm.be ou www.ucm.be

Caisse nationale auxiliaire d'assurances sociales pour travailleurs indépendants

1000 BRUSSELS, quai de Willebroek, 35
Tel. : 02 546 42 11 - Fax : 02 511 21 63
E-mail : cnh@rsvz-inasti.fgov.be

(The services of *Caisse nationale* are decentralized and available in each regional office of INASTI)

3 / SOLIDARITY FUND FOR LAWYERS AND BAILIFFS (FONDS DE SOLIDARITÉ DES AVOCATS ET DES HUISSIERS DE JUSTICE ASBL)

The “solidarity” division of the former *Caisse de prévoyance des avocats et des huissiers de justice* is henceforth being managed by a non-profit organization (*asbl*) named *Fonds de solidarité des avocats et des huissiers de justice* (solidarity fund for lawyers and bailiffs). The purpose of this fund is to grant allowances to lawyers and bailiffs and to their surviving orphans, spouse or cohabitant.

In addition to a gross annuity of €3,500 (during university studies increased to €5,000) to each orphan of a beneficiary of the Fund, until the age of 25 and a gross one-time allowance of €3,500 upon the death of the beneficiary of the Fund, to be granted to the spouse or cohabitant (or, if none, to the minor children), several financial contributions may be granted by the Fund after inquiry into financial resources.

One-time allowances may exceptionally be granted by the Management Committee of the Fund to beneficiaries faced with unforeseen or temporary difficulties.

3.1 / CONTACT

Fonds de solidarité des avocats et des huissiers de justice

Avenue de la Toison d’Or 64 à 1060 Brussels

Tel. 02 534 42 42

Fax. 02 534 43 43

or

The Bar’s social service

through Ms. Jacqueline Colot-Bivort

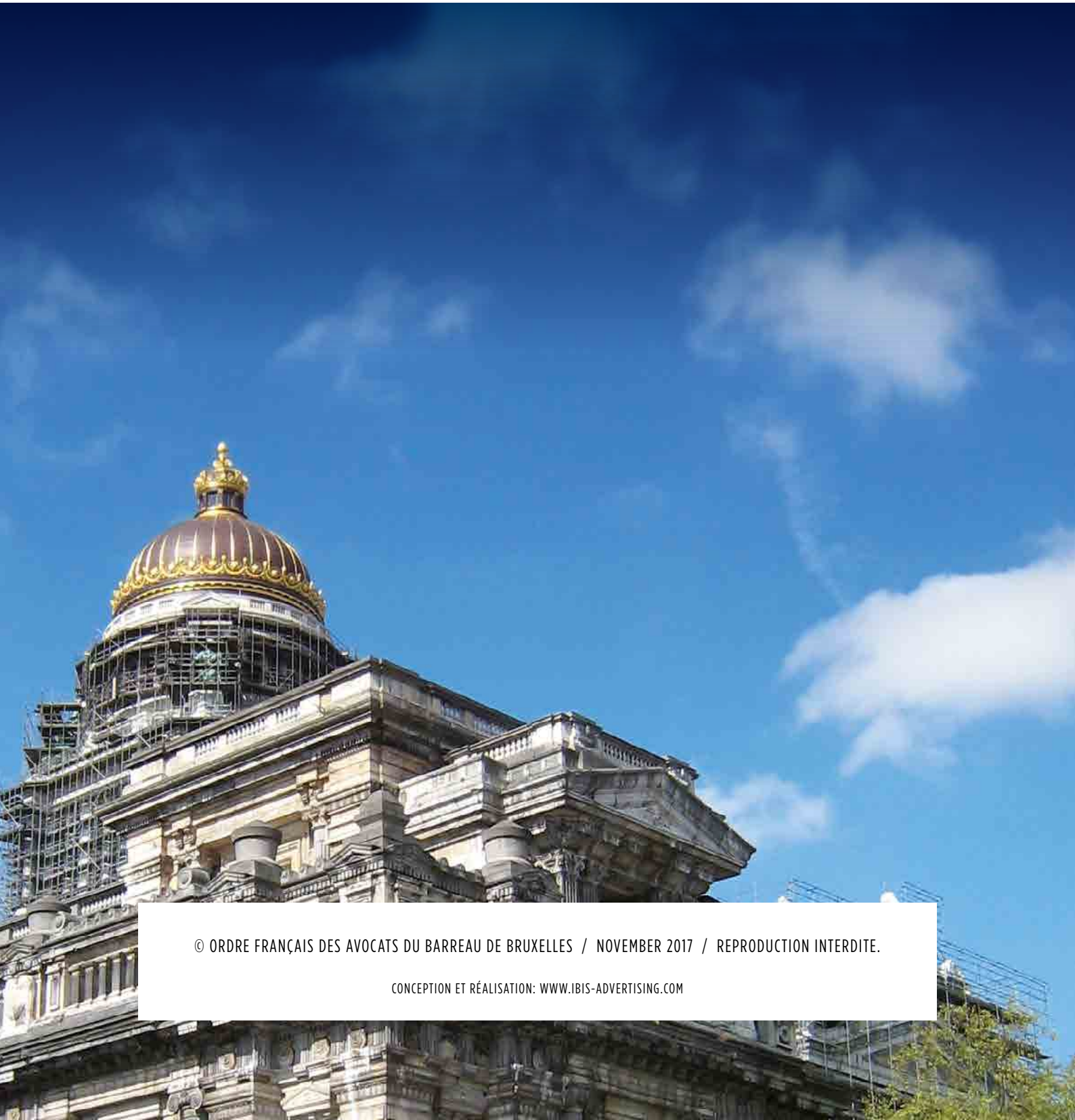
Tel. 02 508 62 69

or by fax at the same number, on Wednesdays, Thursdays and Fridays)

or by e-mail : jacqueline.bivort-colot@barreaudebruxelles.be



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