



RESEARCH NOTE

RESEARCH AND DOCUMENTATION DIRECTORATE

Representation of law firms before national courts

[...]

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[...]



SUMMARY

INTRODUCTION

1. The Research and Documentation Directorate (DRD) has been requested to prepare a research note on how law firms are represented before the national courts. This note aims to provide an overview of the rules in this area in the national systems. From that perspective, it examines in turn the general rules governing legal representation, in particular in so far as they apply to law firms (I), the status of the legal representative of a law firm (II), the scope of the requirement of independence of a lawyer appointed to represent a law firm in court (III) and the consequences of failure to comply with the requirement of independence when representing a law firm (IV).
2. The legal systems of 12 Member States are referred to in this study, namely **Austria, Denmark, Finland, France, Germany, Ireland, Italy, the Netherlands, Poland, Romania, Slovakia** and **Spain**.¹
3. As a preliminary point, it should be noted that none of the legal systems examined lays down specific rules concerning the legal representation of law firms, whether in administrative or civil proceedings.² Consequently, it is the general rules on legal representation that form the basis of the analysis carried out.
4. Moreover, in most of the legal systems referred to, the term 'law firm' is not, as such, the subject of a legal definition, but is rather covered by professional rules, in particular in the field of professional conduct. As a general rule, it is used as a common name to designate both a legal form used to support the individual practice of the profession and a group of lawyers within the same structure.³

¹ [...]

² It should be noted that legal representation in criminal law is excluded from the subject matter of this research note.

³ It should be noted, however, that, in the majority of the legal systems studied, that particular feature does not appear to have any consequences in respect of the way in which a law firm is represented before the national courts.

I. GENERAL RULES ON REPRESENTATION BEFORE NATIONAL COURTS AND THEIR APPLICATION TO LAW FIRMS

5. In all the legal systems examined, there are no special rules governing the representation of law firms in national court proceedings. The representation of a law firm before the national courts is therefore based on the general rules in that area, from which it is possible to infer those laying down certain conditions governing such representation.

A. GENERAL RULES ON LEGAL REPRESENTATION

6. In almost all the Member States covered by this note, the rules governing legal representation provide for **the possibility and/or the obligation for individuals to be represented by a lawyer**, so that the latter can carry out on their behalf the various steps in the course of an action and, where appropriate, assist them.
7. In accordance with that rule, where there is an obligation to be represented, a law firm must, in principle, be represented before a national court by a person who is a lawyer.⁴
8. All the Member States examined recognise, in addition and in parallel, the **possibility of self-representation**, with or without limitations, in respect of certain types of proceedings or the level of court before which the proceedings are brought.⁵ Therefore, in proceedings which are not subject to compulsory representation, lawyers, like any other litigant, may represent themselves before the national courts concerned.
9. Two Member States examined, **Finland** and **Denmark**, have extremely flexible systems of legal representation, allowing a choice as to whether to be represented or not to be made in all civil and administrative judicial proceedings. Therefore, in such cases, law firms are not, in

⁴ It should be noted, that for certain types of court proceedings, individuals may be represented by professionals who do not have the title of lawyer. Of the Member States analysed, all appear, at least in theory, to allow this, with the exception of **France** and **Ireland**. It cannot therefore be ruled out that a law firm may be represented by a non-professional. For further details, see the DRD's research note on the rules governing the representation of parties in national court proceedings No 24/001.

⁵ See, for a detailed discussion of self-representation, the DRD's research note on the rules governing the representation of parties in national court proceedings No 24/001.

principle, required to have recourse to a third-party lawyer and may therefore represent themselves.

10. For all other States, where the procedure does not provide for representation by a lawyer, self-representation by law firms will be permitted.

B. APPLICATION OF THE GENERAL RULES TO THE LEGAL REPRESENTATION OF A LAW FIRM

11. The two respective rules of representation by a lawyer and self-representation involve different approaches to the legal representation of law firms.

1. APPLICATION OF THE SELF-REPRESENTATION RULE TO ALL PROCEEDINGS

12. Where self-representation in legal proceedings is permitted, both natural and legal persons are given the freedom to choose whether or not to be represented by a lawyer. In such cases, law firms may therefore choose to be represented by one of their members.
13. Thus, in **Finland**, the basic principle is self-representation,⁶ and therefore representation by a third party is optional in all civil and administrative proceedings.⁷ In this case, a law firm may be represented by one of its members.
14. The same applies in **Denmark**, where self-representation is generally permitted,⁸ thus leaving the choice to a litigant, such as a law firm, to be represented by one of its members, whether a partner or an employee. The case-law tends to support that position.⁹

⁶ Paragraph 2(1) of Chapter 15 of the [Oikeudenkäymiskaari, rättegångsbalk](#) (Code of judicial procedure) of 1 January 1734, as amended by Law No 482/2023 of 23 March 2023.

⁷ Kuuliala, M., Linna, T., Saranpää, T., [Siviiliprosessi I: Riita-asian oikeudenkäynnin periaatteet ja toimet](#), Helsinki, Alma Talent 2022, p. 488.

⁸ Article 259 of the [Retsplejeloven](#) (Administration of Justice Act), consolidated act No 250 of 4 March 2024.

⁹ See, for example, Højesteret (Supreme Court, Denmark), order of 4 April 2017 in Case 213/2016 ([U.2017.2095H](#)), in which a law firm, acting as a party to a case and represented by a co-owner (partner) and a staff lawyer, was awarded the usual costs to cover legal costs, and Vestre Landsret (High Court of Western Denmark), judgment of 9 October 2015 in Case B-2381-13 ([U.2016.580V](#)), in which the law firm was considered to be self-represented when determining legal costs.

15. **Ireland** is also characterised by a high degree of freedom regarding self-representation, particularly for natural persons. By contrast, legal persons must have recourse to a lawyer to represent them before the courts. However, **Irish law** allows complete freedom in the choice of lawyer,¹⁰ thus allowing one of the members of the law firm to represent it in a case in which it is a party. Similarly, the **Netherlands** gives law firms the same freedom to be represented by one of their members. Thus, the application of the rules in those two States amounts to accepting in practice self-representation by law firms before their national courts.

2. APPLICATION OF THE RULE OF REPRESENTATION BY A LAWYER IN THE CASE OF PROCEEDINGS WITH MANDATORY REPRESENTATION BY A LAWYER

16. In the case of proceedings with mandatory representation by a lawyer, there are two solutions in the law of the Member States studied: either national law provides for an exemption from representation by a third party for the lawyer, and consequently for the law firm (a), or national law, in this case **French law**, maintains the obligation to be represented by a third party (b).

(a) EXEMPTION FROM REPRESENTATION BY A THIRD PARTY

17. In almost all the legal systems studied, where national procedural laws require individuals to be represented by a lawyer, they allow the law firm to be represented by one of its members.
18. The only exception is France, where the **French** system expressly states that the law firm must be represented by a lawyer from outside the firm.
19. Thus, in **Austria, Germany, Italy, Poland, Romania, Slovakia** and **Spain**, whose systems are based on the general rule of mandatory representation by a lawyer, with the exception of certain specific procedures, an exemption from representation where the lawyer is a party to the proceedings is expressly provided for. By analogy, that exemption also applies to the law firm of which the lawyer is a member: the latter therefore no longer needs to have recourse to a third party in order to defend his or her interests. That form of exemption may be

¹⁰ The only exception is where there is a potential conflict of interest.

expressly reserved for the legal profession or may also result from the application of other more specific conditions.

20. Thus, **German law** allows a lawyer to represent him or herself, even where the law provides for mandatory representation by a lawyer.¹¹ There are no restrictions in German law on the representation of a law firm by one of its members or on self-representation by a lawyer practising alone.¹²
21. The same applies to **Austrian law**, which lays down the same rules in both civil¹³ and administrative law.¹⁴ However, special rules on the representation of law firms in corporate form provide that any partner must be authorised to represent the partnership alone.¹⁵ In any event, a staff lawyer or an independent lawyer working with a law firm in corporate form may be instructed to represent that firm.
22. In **Spain**, although self-representation is permitted in several types of proceedings, the fact remains that representation by a lawyer is, in principle, mandatory. However, **Spanish law** authorises lawyers, in general, to represent themselves and, by extension, to represent their firm. This is clear from the law,¹⁶ in particular the General statute of the

¹¹ As regards civil law, Paragraph 78(4) of the [Zivilprozessordnung](#) (Code of Civil Procedure) of 5 December 2005 (BGBl. I, p. 3202; 2006, I, p. 431; 2007 I, p. 1781), as amended by Paragraph 8c of the Law of 19 July 2024 (BGBl. 2024 I, No 245); as regards administrative law, the eighth sentence of Paragraph 67(4) of the [Verwaltungsgerichtsordnung](#) (Administrative Court Rules) of 19 March 1991 (BGBl. I, p. 686), as amended by Paragraph 11 of the Law of 15 July 2024 (BGBl. 2024 I, No 237).

¹² Römermann., R., Schulte, M., *Die Selbstvertretung von Rechtsanwälten*, Anwaltsblatt (AnwBl), 2002, p. 198.

¹³ Paragraph 28(1) of the [Zivilprozessordnung](#) (Code of Civil Procedure). That provision also applies to non-contentious civil proceedings: see Paragraph 6(4) of the [Außerstreitgesetz](#) (Law on non-contentious proceedings) of 12 December 2003 (BGBl. I No 111/2003), in the version of 18 July 2024 (BGBl. I No 91/2024).

¹⁴ Paragraph 10 of the [Allgemeines Verwaltungsverfahrensgesetz](#) (General Law on Administrative Procedure) of 31 January 1991 (BGBl. No 51/1991) in the version of 29 July 2023 (BGBl. I No 88/2023). This is the general rule of self-representation of parties before the administrative courts.

¹⁵ Paragraph 21c(9) of the [Rechtsanwaltsordnung](#) (Lawyers' Code), with the exception of a lawyer who is a limited partner in a limited partnership where the only general partner is a limited liability company. Paragraph 170 of the [Unternehmensgesetzbuch](#) (Companies Code) (dRGBl. S 219/1897), in the version of 22 July 2024 (BGBl. I No 133/2024), excludes limited partners from representation.

¹⁶ [Real Decreto No 135/2021, por el que se aprueba el Estatuto General de la Abogacía Española](#) (Royal Decree No 135/2021 approving the general statute of the legal profession in Spain) of 2 March 2021 (BOE No 71 of 24 March 2021, p. 33597), ('the General statute of the legal profession').

legal profession,¹⁷ and from the case-law.¹⁸ More specifically, the General statute, by explicitly referring to lawyers who ‘collaborate with their defence counsel’, recognises that associate and staff lawyers in a law firm may defend that firm.¹⁹

23. It must be pointed out that, in any event, in **Austria**, even though at legislative level there is no obstacle to members representing the law firm to which they belong in court, it is common practice for law firms to have recourse to legal representation by an external lawyer or a third-party law firm. Similarly, the same practice is adopted in **Romania** and **Spain**, where law firms are represented by a third-party lawyer who is appointed for that purpose under a contract for legal assistance or for the provision of services respectively.
24. Similarly, in **Poland**, in civil or administrative proceedings, a lawyer or legal adviser has the right to represent him or herself in proceedings requiring mandatory representation before the national courts. The same applies to a partner of the company or another of its members who has the right to represent the firm. On that point, national case-law²⁰ has stated, in respect of an action before the Sąd Najwyższy (Supreme Court) requiring the involvement of a lawyer, that the latter may him or herself draft an appeal on a point of law in order to plead his or her own case. It was held that requiring that lawyer to have recourse to another lawyer would constitute a disproportionate restriction on the right to fair judicial proceedings enshrined in the Constitution.²¹
25. It should be noted that this dichotomy between proceedings with and without mandatory representation also exists in **Italy**. For proceedings involving mandatory recourse to a lawyer, the Italian Code of Civil

¹⁷ Article 56(3) of the General statute of the legal profession, concerning the occupation of judicial premises: ‘Professionals, lawyers, who are prosecuted or accused and who defend themselves or collaborate with their defence counsel shall wear a gown ...’.

¹⁸ See, for example, Tribunal Supremo (Supreme Court, Spain), judgment of 2 November 2004, No 1265/2004, [ECLI:ES:TS:2004:7001](#) (F.J.13°).

¹⁹ In the absence of clear wording, the following may be cited by way of illustration: Audiencia Provincial de Cádiz (Provincial Court, Cádiz, Spain), judgment of 11 September 2023, No 297/2023, [ECLI:ES:APCA:2023:1428](#), in which a Spanish law firm was represented by one of its partners, whose status can be corroborated by the information on the firm’s website.

²⁰ Trybunał Konstytucyjny (Constitutional Court, Poland), judgment of 21 June 2016, [SK 2/15](#). See, to the same effect, Sąd Najwyższy (Supreme Court, Poland), order of 10 March 2005, [III CZ 2/05](#).

²¹ Article 45(1) of the Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland) of 2 April 1997 ([Dz. U. 1997, No 78, item 483](#)).

Procedure provides that ‘in proceedings where professional legal representation is required, if the party or his or her representative is a qualified lawyer, they may defend themselves without it being necessary to appoint another lawyer’.²² That approach is confirmed by the case-law of the Supreme Court of Cassation in cases where the appeal must be signed before that court.²³ Moreover, the lawfulness of the representation of a law firm by one of its members appears to be established.²⁴

(b) OBLIGATION TO BE REPRESENTED BY A THIRD PARTY

26. Among the States studied, **France** constitutes an exception. The rules of ordinary law governing mandatory representation by a lawyer also apply to lawyers and de facto to law firms acting as parties to proceedings. The Code of Civil Procedure provides that legal representation is to take the form of a contract of agency,²⁵ the conditions of validity of which are laid down in the Civil Code.²⁶
27. **France** applies the agency theory strictly.²⁷ That theory has been interpreted by the courts to mean that the principal and the agent must be two distinct persons.²⁸ That means that a law firm cannot be represented by its legal representative or by a partner in proceedings with mandatory representation, whether civil or administrative.
28. The same applies to a staff lawyer, who is subject to a relationship of subordination to his or her employer (law firm or partner). **French law** does not allow a staff lawyer to represent the law firm of which he or she is a member because it does not allow confusion between principal and agent.

²² Article 86 of the Codice di procedura civile (Italian Code of Civil Procedure).

²³ Corte suprema di cassazione (Supreme Court of Cassation, Italy), judgments of 22 October 2009, No 22439, ECLI:IT:CASS:2009:22439CIV, and of 23 May 1997, No 4628, ECLI:IT:CASS:1997:4628CIV.

²⁴ See footnote 23.

²⁵ Article 411 et seq. of the Code de procédure civile (French Code of Civil Procedure).

²⁶ Articles 1984 to 2010 of the Code civil (French Civil Code).

²⁷ Article [1984, first paragraph](#), of the French Civil Code.

²⁸ For example, see cour d’appel de Paris (Court of Appeal, Paris), judgment of 29 September 2015, No 13/15894; however, the judgments of the lower courts are numerous and are all based on the agency theory and ensuring that there is no confusion between principal and agent, like the cour d’appel de Paris (Court of Appeal, Paris), judgments of 30 September 2024, No 22/09276 and No 22/09277. The response is identical in administrative law: Conseil d’État (Council of State), judgment of 22 May 2009, *Manseau*, application No [301186](#).

29. In the case of an associate lawyer who is a member of a law firm, the absence of a relationship of subordination or confusion with the legal person would a priori allow him or her to defend the law firm to which he or she belongs, since that situation would be consistent with the agency theory. However, for the purposes of legal representation, **French law** requires that the legal representative *ad litem* is not only a third party (in relation to the legal representative), but is also independent of the latter.

II. STATUS OF THE LEGAL REPRESENTATIVE OF A LAW FIRM

30. As has been noted, in all the Member States examined, where the law firm is represented in legal proceedings by a lawyer chosen for that purpose, whether internal or external to the law firm, the general rules on legal representation apply.
31. One of the conditions governing representation before national courts is the status of the representative who may be chosen to defend the interests of the party.
32. In most of the States studied, there is no difference between partners, associates or staff lawyers as regards the authorisation to represent the party in legal proceedings and this also applies to law firms. The majority of the legal systems allow lawyers with any of those statuses to represent the law firms of which they are members before the national courts.
33. However, that finding calls for clarification with regard to the following legal systems.
34. Thus, in **Slovakia**, a procedural rule set out in both the Civil Code and the Administrative Code, which also applies to law firms, provides that a natural person may represent him or herself, including before the high courts, and that legal persons may be represented by one of their members, provided that they have completed a university course in law.²⁹

²⁹ Paragraph 90(1), second subparagraph, point (b), and Article 429(2)(b) of the [zákon č. 160/2015 Z. z. Civilný sporový poriadok](#) (Law No 160/2015 Rec. on the Code of Civil Procedure) of 21 May 2015 (čiasťka No 51/2015).

35. In addition, other Member States, in particular **Romania**,³⁰ lay down more specific conditions for appeals before their supreme courts. Thus, in **Romania**, in order to plead before the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) and before the Curtea Constituțională³¹ (Constitutional Court), it is necessary to have a certain length of service as a lawyer, namely five years from passing the bar exam.
36. In **Germany**, unlike the other legal systems, the partnership model whereby a lawyer works in a law firm on an independent basis without being a partner exists only in exceptional cases, which makes it unnecessary to distinguish between ‘associates’ and ‘staff lawyers’. In that State, the only restriction on staff lawyers representing their employer concerns Syndikusrechtsanwälte (salaried in-house counsel). Those lawyers do not have the right to represent their employer before civil or labour courts, where representation by a lawyer is mandatory.³²
37. In **Poland**, although the term ‘lawyer’ may mean both a lawyer (advocat) and a legal adviser (radca prawny), any person with one of those two statuses has the right to represent him or herself before the national courts and to represent the law firm of which he or she is a member.
38. In that regard, **Ireland**, where there are also two branches of the legal profession, namely solicitors and barristers, also has a unique feature. In the past, even if barristers acted independently and could not form partnerships, that system has evolved over time. Therefore, since 2019, barristers may be employed and have been authorised to represent their employer in court.³³ Moreover, since 2024, they have been authorised to form a legal partnership with other barristers or solicitors. Since this is a new form of partnership, the answer to the question

³⁰ Article 520(10) of the [Codul de procedura civila](#) (Code of Civil Procedure, adopted by Legea nr. 134/2010 privind codul de procedura civila (Law No 134/2010 on the Code of Civil Procedure) of 1 July 2010 (*Monitorul Oficial al României*, Part I, No 485 of 15 July 2010)); Article 30(5) of [Legea 47/1992 privind organizarea și funcționarea Curții Constituționale](#) (Law No 47/1992 on the organisation and functioning of the Constitutional Court) of 18 May 1992 (republished in *Monitorul Oficial al României* No 807 of 2 December 2010).

³¹ Article 22(3) of [legea nr. 51 pentru organizarea și exercitarea profesiei de avocat](#) (Law No 51 on the organisation and practice of the legal profession) of 7 June 1995, as amended (*Monitorul Oficial al României*, Part I, No 116 of 9 June 1995) (‘Law No 51/1995’).

³² Paragraph 46c(2) of the [Bundesrechtsanwaltsordnung](#) (Federal Lawyers’ Code) of 1 August 1959 (BGBl., III, No 303-8), as amended by Paragraph 1 of the Law of 17 January 2024 (BGBl. 2024, I No 12) (Federal Lawyers’ Act) (‘the BRAO’).

³³ [Section 212 of the Legal Services Regulation Act 2015](#).

whether a barrister with partner status may represent such an entity remains open.

39. It should also be noted that, in some of the States studied, there are exceptions for trainee lawyers who, as a general rule, may be authorised only by a lawyer who is a member of the law firm to act on its behalf. However, in **Poland**, where trainee lawyers are not considered to be members of the legal team, they are not able to represent the law firm to which they are affiliated.
40. By contrast, **France** stands out from the other Member States concerned, also from the point of view of the rules applicable to the representation of a law firm in corporate form before the courts before which representation by a lawyer is not mandatory. The conclusions drawn from the agency theory by the national courts, as set out above,³⁴ apply equally to proceedings in which representation by a lawyer is not mandatory. Consequently, even if a law firm in corporate form were to choose, by virtue of the option thus granted to it in such proceedings, to represent itself before the court concerned, the fact remains that only its legal representative, according to the legal form adopted by that law firm, would have standing to bring proceedings in that capacity.

III. REQUIREMENT OF INDEPENDENCE IN THE LEGAL REPRESENTATION OF A LAW FIRM

41. In all the Member States examined, irrespective of whether representation by a lawyer is mandatory or optional, the legal representation by a lawyer chosen for that purpose is subject to the general principles specific to the legal profession, which are intended to guarantee its independence and integrity in the interests of the sound administration of justice.
42. Without attempting to provide an exhaustive list, those principles include the freedom to practise the profession of lawyer, independence, the promotion of clients' legitimate interests (principle of loyalty), professional ethics, confidentiality and the prohibition of conflicts of interest.

³⁴ See above, paragraph 26 et seq.

43. As regards, more specifically, the **principle of independence**, it should be noted that it is recognised in all the legal systems examined, whether through procedural legislation or rules of professional conduct. In all those legal systems, that principle is deeply rooted as a fundamental principle of the legal profession.³⁵
44. However, such a principle does not mean (except in France) that a member of a law firm may not represent that firm in legal proceedings, since the existence of economic or employment ties is not generally considered sufficient, on its own, to characterise a situation of conflict of interest or, at least, a serious risk of a conflict of interest.
45. However, the scope of that principle is not always the same. It is apparent from the national contributions that the requirement of independence may be interpreted strictly, in the sense of interactions capable of calling into question the interests of the client, in particular by the existence of a conflict of interest or incompatibility with the duties of the representative (A), but may also extend to interactions within a law firm. That difference in scope will lead to a specific distinction being drawn in respect of **Spain** and especially **France**, which adopted the latter interpretation, and the other legal systems analysed (B).

A. INTERPRETATION *STRICTO SENSU* OF THE REQUIREMENT OF INDEPENDENCE

46. It should first be noted, as regards the application of the principle of independence, that the vast majority of the States analysed do not lay down specific rules for law firms³⁶ when one of their members represents them before the courts. That finding applies to **Austria, Denmark, Finland, Germany, Ireland, Italy, the Netherlands, Poland, Romania** and **Slovakia**. It is on the basis of the general rules on incompatibilities and conflicts of interest that possible infringements

³⁵ See also, on this aspect, [Code of conduct for European Lawyers](#) drawn up by the Council of Bars and Law Societies of Europe.

³⁶ See the DRD's research note on the scope of the requirement of independence of lawyers No 19/005. That note examined exhaustively the main aspects relating to the independence of lawyers in national law. For the purposes of consistency and legibility, the main elements which may relate to the subject matter of this note, namely the independence of the lawyer within the law firm in which he or she is a member, will be reproduced here.

of the requirement of independence should be examined, which appear, in reality, to be rare, if not theoretical.

47. In **Finland**, although the legislation on lawyers and the rules of professional conduct, laid down in both the Code of professional conduct³⁷ and the Rules of Procedure of the Bar,³⁸ contain provisions on the independence of lawyers and the absence of conflicts of interest, those provisions do not mention the situation of the representation of a law firm by one of its members.
48. Similarly, **Denmark** also refers to respect for the independence of lawyers and the prevention of conflicts of interest between lawyers and their clients both from a strictly legal³⁹ and ethical⁴⁰ point of view, without however laying down any special rules on the requirement of the independence of a lawyer within the law firm of which he or she is a member.
49. In **Germany**, although Paragraph 1 of the BRAO⁴¹ lays down the general obligation for lawyers to be independent, academic writers nevertheless consider that parallelism between the economic interests of the lawyer and those of the law firm which he or she represents in legal proceedings is not sufficient to undermine his or her independence.⁴² A possible conflict of economic interests in the event of representation of the law firm by a partner does not, however, justify a restriction on the freedom to pursue a trade or profession which is

³⁷ [Hyvää asianajajatapaa koskevat ohjeet / Vägledande regler om god advokatsed](#) (Code of Conduct for Lawyers) (15 January 2009, amended on 26 January 2023), see in particular paragraphs 3.2, 3.3 and Section 6.

³⁸ [Suomen Asianajajaliiton säännöt](#) (Rules of Procedure of the Bar), Article 33.

³⁹ Article 126 of the Danish [Administration of Justice Act](#) provides that a lawyer must behave in a manner consistent with 'good practice' in the exercise of the profession. Furthermore, he or she must not behave in a manner unworthy of the profession in the context of economic activities outside his or her profession.

⁴⁰ Paragraph 8 of the [Advokatetiske regler](#) (Ethical rules for lawyers) adopted by the Danish Bar and Law Society clarifies the concept of 'good practice' provided for in the Administration of Justice Act, in particular by providing that a lawyer must not represent a client in situations where there is a conflict of interest or an imminent risk of a conflict of interest.

⁴¹ Paragraph 1 of the [BRAO](#).

⁴² Römermann, R., Schulte, M., see footnote 12. The authors even consider that a restriction on the possibility for a lawyer to represent the firm of which he or she is a member would be contrary to the fundamental right guaranteed by Article 12(1) of the [Basic Law](#) (GG), since such a restriction would not be justified.

constitutionally guaranteed.⁴³ This also applies to staff lawyers,⁴⁴ even though the BRAO⁴⁵ takes account of the risk of potential interference with the lawyer's independence by requiring reasonable working conditions to reconcile the necessary independence of the associate lawyer, on the one hand, and the power of the employer (law firm or partner) to give him or her instructions on the performance of his or her work.

50. As regards **Slovakia**, the law reiterates the general requirement for lawyers to be independent⁴⁶ but does not specify the scope of that independence, which is defined in the rules of professional conduct. The internal regulations of the Slovak Bar state that lawyers must refrain from any act which could lead to financial or other dependence on their clients⁴⁷ and that they must act before the courts and other public authorities in such a way as not to jeopardise their independence.⁴⁸ That approach has been confirmed by the case-law of the Najvyšší súd (Supreme Court), which considers that principle to be absolute in nature, meaning that the lawyer must refuse any position, occupation, profession or role which might impair his or her independence.⁴⁹ The Najvyšší správny súd (Supreme Administrative Court) also noted that the essence of the principle of a lawyer's independence is the existence of a space in which he or she is independent of political, economic or other interests that would prevent him or her from defending the client's interests.⁵⁰ However, the implications of such an interpretation for lawyers representing the law firm to which they belong are not expressly stated in the legislation, case-law or legal literature.

⁴³ Article 12(1) of the [Basic Law](#) (GG); Römermann, R., /Schulte, M., see footnote 12.

⁴⁴ With the exception of lawyers in the context of Syndikusrechtsanwälte (salaried in-house counsel), see above, footnote 36 of this note.

⁴⁵ Paragraph 46(1) of the [BRAO](#).

⁴⁶ Article 2(2) of the [zákon o advokácii](#) (Law No 586/2003 Rec. on the legal profession) of 4 December 2003.

⁴⁷ Article 5(5) of the [Advokátsky poriadok Slovenskej advokátskej komory](#) (Code on the profession of lawyer, adopted by the General Meeting of the Slovak Bar Association on 11 June 2021).

⁴⁸ Article 38 of that code (see footnote 47).

⁴⁹ Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic), [judgment of 15 February 2007](#), No 3 Sž 36/2006.

⁵⁰ Najvyšší správny súd Slovenskej republiky (Supreme Administrative Court of the Slovak Republic), [judgment of 25 April 2024](#), No 8 Svk 15/2023, paragraph 60.

51. In the **Netherlands**, the law requires lawyers to adhere to five fundamental values,⁵¹ the first of which concerns their independence from clients, third parties and the cases in which they act. That means that the lawyer must be able to exercise some distance, avoiding any conflict of interest. Lawyers are not permitted to practise their profession, whether on an employed or self-employed basis, in such a way as to compromise their freedom and independence in the exercise of their profession.⁵² In particular, the Verordening op de advocatuur (Regulation on the profession of lawyer)⁵³ provides that lawyers are not authorised to enter into or maintain legal relationships which may compromise the freedom and independence in the exercise of their profession or the resulting relationship of trust between lawyer and client.⁵⁴ In addition, among the rules of professional conduct (Gedragsregels advocatuur),⁵⁵ reference should be made to the rule of conduct⁵⁶ which states that lawyers act as *dominus litis* and must withdraw when their independence may be called into question. However, also in **Netherlands law**, no internal rule or practice infers from those rules consequences for the members of a firm representing that law firm in court.
52. In **Italy**, the lawyer must, according to the Code of professional conduct of the Bar Association,⁵⁷ refrain from any professional activity which could lead to a conflict of interest or interfere with the performance of other tasks, even non-professional ones. According to the case-law, a conflict of interest affects the validity of the authority to act not only if such a conflict is proven, but also if one could potentially arise, that is to say if there is a conflict of interest connected, by definition, to the nature

⁵¹ Article 10a of the [Advocatenwet](#) (Law on the legal profession) (consolidated version).

⁵² Article 5.1 of the [Verordening op de advocatuur](#) (Regulation on the profession of lawyer) ('the Netherlands regulation on the profession of lawyer'). That regulation is issued by the Nederlandse orde van advocaten (Netherlands Bar), which brings together lawyers in the Netherlands.

⁵³ Article 5.2 of the Netherlands regulation on the profession of lawyer.

⁵⁴ See footnote 52.

⁵⁵ The court hearing the disciplinary matter often refers to the rules of conduct or the explanation thereof in its case-law and, conversely, its decisions are regularly taken into account when updating the rules of conduct. See, to that effect, Brauw, E., De Meijer, M. E., Westerveld, M., De Wolff, D.J.B., *Togadragers in de rechtsstaat. De juridische professies en de toegang tot het recht*, Vierde druk, Boomjuridisch, Den Haag, 2022, p. 135 and 136.

⁵⁶ Rule No 14 of the [Gedragsregels advocatuur](#) (Rules of Professional Conduct for Lawyers).

⁵⁷ Article 24(1) of the codice deontologico Forense ([Lawyers' code of professional conduct](#)).

of the relationship and the subject matter of the dispute.⁵⁸ The conflict may be 'direct' if the lawyer pursues his or her own interests which are incompatible with those of the legal representative or 'indirect' if he or she pursues the interests of others which are irreconcilable with those of his or her client.⁵⁹ In that regard, some disciplinary decisions have emphasised that the lawyer must not have an economic or commercial relationship⁶⁰ with the client and must not use the relationship of trust with the client to obtain economic advantages for his or her benefit.⁶¹ Moreover, it has also been highlighted in legal literature that it is essential, in order to ensure a valid technical defence, that the lawyer has no connection with the interests of the party being defended and, more generally, with the interests at stake in the dispute.⁶²

53. **Italian law** does not contain any specific rules on the application of the requirement of independence within law firms. However, it should be borne in mind that, where the lawyer's interests coincide with those of his or her client, a problem as to the validity of the authority to act is not likely to arise, since that situation appears to fall outside the very concept of conflict of interest. Therefore, a conflict of interest, which could have undermined the principle of independence, cannot be characterised by the mere fact that a lawyer represents his or her own law firm before the courts.

54. In **Poland**, while the principle of the independence of lawyers is not set out in law, it is enshrined in the rules of professional conduct. It follows from those rules, both for lawyers⁶³ and for legal advisers,⁶⁴ that those

⁵⁸ Corte suprema di cassazione (Supreme Court of Cassation), judgments of 11 October 2023, No 28427, ECLI:IT:CASS:2023:28427CIV; of 14 July 2015, No 14634, ECLI:IT:CASS:2015:14634CIV; of 4 April 2011, No 7619, ECLI:IT:CASS:2011:7619CIV, and of 19 July 2005, No 15183, ECLI:IT:CASS:2005:15183CIV.

⁵⁹ Messineo, F., *Manuale di diritto civile e commerciale*, I, Milano, 1959, 553

⁶⁰ The Consiglio Nazionale Forense (National Council of the Bar) affirmed that principle in a case where the lawyer had assumed the client's obligations by signing personal cheques: see National Council of the Bar, decision of 20 September 2000, No 94.

⁶¹ National Council of the Bar, decision of 9 January 1998.

⁶² This can be seen in particular by the prohibition on contingency fees (*pactum de quota litis*). See Crotti, L., *Il conflitto di interessi nell'attività dell'avvocato*, in *Rivista trimestrale di diritto e procedura civile*, 2021, 1, p. 218.

⁶³ Article 7 of the [Zbiór Zasad Etyki i Godności Zawodu \(Kodeks Etyki Adwokackiej\)](#) (Compendium of the Rules of professional conduct and dignity of the profession (Code of professional ethics for lawyers)), adopted by the Naczelna Rada Adwokacka (Supreme Bar Council) ('the Code of Conduct for Polish Lawyers').

⁶⁴ Article 7(1) and (2) of the [Kodeks etyki radcy prawnego](#) (Code of Conduct for Legal Advisers), adopted by the Krajowa Izba Radców Prawnych (National Council of Legal Advisers).

professionals enjoy full freedom and independence and must ensure that they do not exceed the limits of proper representation of the client's interests. In addition to being incompatible with the practice of the profession of lawyer,⁶⁵ it is also stipulated that a lawyer must not commit to a case the outcome of which may affect his or her person or property, with the exception of a dispute concerning a member of his or her family or which is common to him or her and a party.⁶⁶ In other words, conflicts of interest are covered. Furthermore, for the same reasons, a lawyer is prohibited from taking on a case in which he or she has already assisted an opposing party in the same case or in a related case or if the person against whom he or she is to act is his or her client, even if this is in a different case.⁶⁷

55. **Irish** legislation refers to the principle of the independence of lawyers,⁶⁸ and that principle is also referred to in the codes of conduct of the respective legal professions.⁶⁹ It is stipulated that lawyers must be free from any influence, especially such as may arise from their personal interests or external pressures, in breach of their professional duties.⁷⁰ However, the rules in the codes of conduct are only of an ethical nature and applied by the respective disciplinary authorities. They cannot be directly applied by the courts.⁷¹
56. In **Austria**, there is no requirement for lawyers to be independent from their law firms. However, certain rules governing the organisation of the practice of the profession of lawyer in the form of a company, in particular the representation of law firms, are intended precisely to reconcile the operation of such firms with the general requirement of

⁶⁵ Article 9 of the Code of Conduct for Polish Lawyers.

⁶⁶ Article 21 of the Code of Conduct for Polish Lawyers.

⁶⁷ Article 22 of the Code of Conduct for Polish Lawyers.

⁶⁸ Section 13(5)(a)(i) and (b) of the [Legal Services Regulation Act 2015](#).

⁶⁹ For barristers, see Rule 2.1 of the du [Code of Conduct for the Bar of Ireland](#); for solicitors, see [Solicitors Guide to Professional Conduct](#), 4th ed., 2002, Law Society, p. 16.

⁷⁰ Rule 2.1 of the Code of Conduct of the Bar of Ireland.

⁷¹ Supreme Court, Ireland, [judgment in McMullen v Clancy](#) (No 2) [2005] IESC 10, [2005] 2 IR 445. The Supreme Court recognised inter alia that: *'[...] the Code of Conduct of the Bar of Ireland ... and its provisions are not justiciable. The rules in the Code are enforceable by the disciplinary authorities of the barristers' profession. They do not bind the Courts. Put otherwise, the profession cannot make laws which it is the duty of the Courts to enforce. This does not at all mean that, as a matter of law, there are no parallel obligations ... which the courts will enforce in an appropriate case.'*

the lawyer's independence.⁷² As in other States, representation may be precluded in the event of a conflict of interest and the Guidelines on practising as a lawyer enshrine the principle of the independence of lawyers in the exercise of their profession⁷³ and the prevention of conflicts of interest.⁷⁴

57. Lastly, in **Romania**, the independence of lawyers is a principle enshrined by law⁷⁵ and by the rules of professional conduct laid down in the Statute of the Profession of Lawyer.⁷⁶ Those rules concern the prevention of all cases of conflicts of interest and failure to comply with them is sanctioned by disciplinary measures.⁷⁷ However, it should be emphasised that, in the event of a conflict of interest between the legal representative and the represented party, or in any other case that threatens the right to a fair trial, the judge may appoint a representative from among the lawyers registered with the bar associations.⁷⁸ However, **Romanian law** makes no mention of the requirement for a lawyer to be independent within his or her firm.

B. REQUIREMENT OF INDEPENDENCE AND INTERACTIONS WITHIN THE LAW FIRM

58. Unlike the other legal systems studied, **Spain** and **France** lay down specific provisions on the requirement of independence of lawyers in their relationship with the law firm to which they belong. While **Spanish law** is more concerned with professional conduct and the legal consequences of failure to comply with that requirement, in **France**, the

⁷² The guarantee of independence when practising the profession of lawyer is, moreover, the reason why a public limited company has been excluded from the permissible legal forms. See explanations relating to the [draft](#) of the *Berufsrechts-Änderungsgesetz 2020* (Law of 2020 amending the Law on the exercise of legal professions), p. 1 and 3, see Ruffler, F. / Müller, C., *Österreichisches Anwaltsblatt* 2016/10, p. 517 et seq.

⁷³ Article 1(1) of the [Richtlinien für die Ausübung des Rechtsanwaltsberufes 2015](#) (2015 Guidelines for practising the profession of lawyer) ('the RL-BA').

⁷⁴ Article 10 of the RL-BA. In the event of such a conflict of interest, either between mandates or a lack of independence with regard to a client, the lawyer must terminate his or her mandate with the clients concerned if the management of those clients' interests is affected. This also applies to a lawyer acting as a representative of a company in the exercise of his or her profession.

⁷⁵ Articles 1, 2 and 15, of [Law No 51/1995](#) (*Monitorul Oficial al României* No 440, 24 May 2018).

⁷⁶ Article 7(3) and (4) and Article 109 of the [Statutul profesiei de avocat](#) (Statute of the Profession of Lawyer) ('the Statute of the Profession of Lawyer') of 3 December 2011 (*Monitorul Oficial al României* No 898, 19 December 2011).

⁷⁷ Article 242 of the [Statute of the Profession of Lawyer](#).

⁷⁸ In particular in the case of the limitation relating to seniority to plead before the High Court of Cassation and Justice and the Constitutional Court.

requirement of independence is given considerable weight, to the point of calling into question the validity of the representation of a law firm not only by a partner, but also by an associate lawyer.

59. In **Spain**, the rules relating to the independence of lawyers are laid down in both the law ⁷⁹ and the rules of professional conduct. ⁸⁰ Those rules also provide for a system of incompatibility and prevention of any conflict of interest between lawyers and their clients.
60. Although **Spanish law** does not preclude the representation of a law firm by one of its members, legal writers point out that certain circumstances may nevertheless limit the action of those lawyers, specifically with regard to the requirement of independence. ⁸¹
61. More specifically, the scope of the requirement of independence in **Spain** relates in particular to possible interference by associates and other members of the same law firm. Although the General Statute of the Profession of Lawyer ⁸² merely sets out the obligation to respect the independence of associate and staff lawyers, the code of professional conduct provides more detail regarding compliance with that requirement in relation to the other members of the firm. First of all, it provides that independence must be preserved in the face of pressure or demands that limit or are likely to limit it, particularly from associates or members of the firm. ⁸³ Secondly, in order to preserve his or her independence, a lawyer may not accept an assignment or refuse instructions that are contrary to his or her own professional standards,

⁷⁹ The [General Statute of the Profession of Lawyer](#) refers to this in particular in Article 1(3) (relating to the guiding principles of the profession), Article 10(1) (relating to the taking of the oath), Article 31 (relating to the performance of the duties of lawyers), Article 36 (in relation to associate lawyers), Article 39 (in relation to staff lawyers), Article 47 (on the independence and professional freedom of lawyers) and Article 58 (in relation to the judicial authorities). The independence of lawyers is thus recognised as a right of members of the Bar (Article 86) protected by the Bar Association in which the lawyer practises (Article 14(3)).

⁸⁰ [Código deontológico de la Abogacía Española](#), (Code of professional conduct of the profession of lawyer in Spain) of 6 March 2019 ('the Code of professional conduct of Spanish lawyers'), Article 2 (relating to independence in general), Article 10 (in relation to relations with judges and courts), Article 11 (in relation to other lawyers) and Article 12 (in relation to relations with clients).

⁸¹ Sánchez Stewart, N., *Manual de Deontología para Abogados. Los principios inspiradores de la deontología: la independencia*, La Ley, 3rd ed., Madrid, 2021.

⁸² Articles 36 and 39 of the [General Statute of the Profession of Lawyer](#).

⁸³ Article 2(3) of the Code of professional conduct of Spanish lawyers: 'Independence must be preserved in the face of pressures or requirements which limit it or may limit it, whether from public, economic or de facto authorities, the courts, the client, associates or members of the firm'.

which the client, members of the firm, other professionals with whom he or she works, or any other person, entity or school of thought may seek to impose on him or her. He or she may therefore cease to advise or defend a client in a case where he or she considers that he or she cannot act with complete independence, while avoiding, in any event, leaving the client without a defence.⁸⁴ This also applies to lawyers employed by a law firm.⁸⁵ Furthermore, if their independence is undermined, lawyers may also seek assistance from the bar association in the territory in which they practise by means of the 'amparo colegial' mechanism.⁸⁶

62. However, it should be noted that failure to comply with those rules is punishable only on disciplinary grounds.
63. In **France**, in civil and administrative law, the rules on the independence of lawyers are identical.⁸⁷ Those rules are also found in law,⁸⁸ in regulations (decree)⁸⁹ and in codes of professional conduct.
64. In addition, the Rules of Procedure of the Bar (RIN)⁹⁰ provide that, in the performance of their duties, lawyers remain, in all circumstances, subject to essential principles and must ensure their independence and

⁸⁴ Article 2(4) of the Code of professional conduct of Spanish lawyers.

⁸⁵ Article 6(2) of [Real Decreto 1331/2006, por el que se regula la relación laboral de carácter especial de los abogados que prestan servicios en despachos de abogados, individuales o colectivos](#) (Royal Decree No 1331/2006 on the special relationship of lawyers who provide services in individual or collective law firms) of 17 November 2006 (BOE No 276 of 18 November 2006, p. 40550): 'The heads of law firms must exercise their management powers in any event having due regard for the principles and values inherent in the professional practice of lawyers [...] In particular, the heads of law firms must respect the freedom and professional independence of lawyers in the exercise of their profession'.

⁸⁶ Sánchez Stewart, N., see footnote 81. Although the 'amparo colegial' mechanism was created in particular for interference with the independence of lawyers by judges, magistrates and public authorities, in practice it is applicable to any type of interference from other subjects, such as, for example, the client or the opposing party.

⁸⁷ The latter are attached to the status of that judicial officer. Moreover, the French lawyer's oath requires the lawyer to swear as follows: 'I swear as a lawyer to perform my duties with dignity, conscience, independence, integrity and humanity'.

⁸⁸ [Loi No 71-1130 du 31 décembre 1971](#) portant réforme de certaines professions judiciaires et juridiques (Law No 71/1130 of 31 December 1971 reforming certain judicial and legal professions) (consolidated version).

⁸⁹ [Décret No 91-1197 du 27 novembre 1991](#) organisant la profession d'avocat (Decree No 91-1197 of 27 November 1991 organising the legal profession).

⁹⁰ Article 6.1 of the [Règlement Intérieur National de la profession d'avocat](#) (National Rules of Procedure for the Legal Profession) (RIN).

the application of rules relating to professional secrecy and conflicts of interest.

65. In general terms, the requirement for lawyers to be independent applies first and foremost to their clients, which requires them to maintain not only moral and intellectual independence, but also full control over their arguments. Thus, where his or her independence may be called into question, the lawyer must step aside,⁹¹ without there necessarily being a conflict of interest. More specifically, in the case of an associate lawyer working with a partner, he or she must return the file to the lawyer with whom he or she is working.⁹² In addition, independence must be maintained from any other person with whom he or she might be subject to any kind of dependency (financial,⁹³ psychological, friendship, contractual, etc.).
66. Thus, in the context of a lawyer working independently with a firm or work carried out by a staff lawyer, that requirement, which is reiterated by the law and the Bar Council, is aimed at not only providing a framework, but also supervising contracts relating to these two statuses.⁹⁴
67. Specifically, in the case of a partner,⁹⁵ it should be noted that his or her independence from the law firm is limited, in so far as he or she holds the position of both a managing director and a shareholder/member in all the legal forms which a law firm may adopt. Therefore, in the light of the requirements of **French law**, his or her independence may easily be called into question by the opposing party or by the court.⁹⁶

⁹¹ Second paragraph of Article 7 of [décret No 2023-552 du 30 juin 2023 portant code de déontologie des avocats](#) (Decree No 2023-552 of 30 June 2023 on the Code of professional conduct for lawyers) (JORF of 2 July 2023, text No 2).

⁹² Article 14.2.1 of the RIN.

⁹³ Cour de cassation (Court of Cassation), 2nd Civil Division, of 9 December 2021, No [20-10096](#), (ECLI:FR:CCASS:2021:C201157), in which economic dependence was recognised.

⁹⁴ See footnote 89, Article 133(4) and Article 139(4).

⁹⁵ It should be recalled that the partner cannot already represent the firm on the basis of the agency theory as he or she is not a third party to the law firm, which is a party to the proceedings. See paragraph 45 above.

⁹⁶ For further details, see III. A. 'Interpretation *stricto sensu* of the requirement of independence'.

68. In the case of an associate lawyer, that independent practice is governed by various legal,⁹⁷ regulatory,⁹⁸ contractual⁹⁹ and ethical¹⁰⁰ texts. In addition to the contributions concerning the status of the lawyer, those texts also deal with the question of the independence of lawyers. It follows that, even if the rules on independence apply in relations with the other members of the law firm, where the associate's freedom of writing is compromised. This broad approach to independence can also be found at disciplinary level.¹⁰¹ For example, it has been held that, while there is no formal incompatibility for a lawyer to plead on behalf of a company in which he or she holds an interest, the existing proximity is such as to compromise his or her independence.¹⁰²
69. Those factors make it possible to understand how the requirement of independence is interpreted in **French law**. Thus, in view of the broad interpretation of the principle of independence, which includes any possible link (conflicts of interest, economic relations, pressures that may exist) and the obligation to withdraw, an associate lawyer cannot represent his or her own firm. This is particularly the case since the same rule which provides for the independence of the associate lawyer provides that 'the law firm and the independent associate shall determine the legal approach to cases entrusted to the associate'.
70. Consequently, although, from the perspective of the agency theory, the power of representation granted to an associate lawyer would be valid, that conclusion is called into question by the requirement of independence. It should also be noted that, in practice, law firms ask a colleague to represent them in order to avoid the difficulties described

⁹⁷ See footnote 88.

⁹⁸ See footnote 89.

⁹⁹ [Règlement Intérieur National de la profession d'avocat](#) (National Rules of Procedure for the Legal Profession).

¹⁰⁰ [Décret No 2023-552 du 30 juin 2023 portant code de déontologie des avocats](#) (Decree No 2023-552 of 30 June 2023 on the Code of professional conduct for lawyers) (JORF of 2 July 2023, text No 2).

¹⁰¹ Examples include the opinions of the Ethics Committee of the Paris Bar, which is the largest French Bar in terms of the number of lawyers. A disciplinary body has ruled that, while there is no incompatibility between being a lawyer and being the secretary of an association, the principle of independence nevertheless prohibits a lawyer who holds both titles from acting as counsel for the association of which he or she is also the secretary (Commission de déontologie de Paris, Avis déontologique, Incompatibilités et conflits d'intérêts, No 131/20.7569, 22 September 2010).

¹⁰² Commission de déontologie de Paris, Avis déontologique, Incompatibilités et conflits d'intérêts, No 131/22.4690, 28 March 2012.

above. The fact remains that failure to comply with the requirement of independence, as understood in **French law**, is liable to undermine the legal effectiveness of the mandate and, therefore, the lawfulness of the acts carried out in that capacity.

IV. CONSEQUENCES OF FAILURE TO COMPLY WITH THE REQUIREMENT OF INDEPENDENCE WHEN REPRESENTING A LAW FIRM

71. In all the Member States examined, lawyers are required to assess whether or not there is an incompatibility or conflict of interest threatening their independence. In the event of a conflict of interest, they must refrain from dealing with the case or withdraw from it.
72. In the event of a breach of the principle of independence, the lawyer may be subject to disciplinary proceedings or proceedings for damages.¹⁰³
73. With regard to the proceedings in which the conflict was established, the majority of the legal systems examined provide for the validity of procedural acts carried out in breach of the rules relating to the requirement of independence, such validity not being open to challenge.
74. Only the **French** legal system provides that such a failure to comply with the rules on representation and/or with the requirement of independence of lawyers is capable of leading to the inadmissibility of the acts carried out or even the document initiating the proceedings, in both civil and administrative proceedings¹⁰⁴ [A]. That inadmissibility may, however, be remedied under certain arrangements provided for by law [B].

A. FAILURE TO COMPLY THAT MAY LEAD TO INADMISSIBILITY

75. Under **French law**, a failure to comply with the rules of representation may result in the lawyer's procedural acts being irregular, leading to the

¹⁰³ For further details, see the DRD's research note on the scope of the requirement of independence of lawyers No 19/005.

¹⁰⁴ That does not mean that other Member States do not have, in their national law, rules on regularisation in the event of a lack of representation, however they do not apply to the case in point of the representation of a law firm by one of its members before the national courts.

inadmissibility of the application if the matter is not remedied. However, the rules differ depending on whether the proceedings are before a civil or administrative court.

1. CIVIL LAW

76. Under the Code of Civil Procedure ('the CPC'), a failure to comply with the rules of representation linked to failure to comply with the requirement of independence of lawyers takes the form of a failure to fulfil obligations for lack of capacity or authority of a person representing a party before the courts. That constitutes an irregularity that may lead to the nullity of a procedural act of the lawyer on account of a substantive defect.¹⁰⁵
77. Such a failure to comply may be invoked, at any stage of the proceedings,¹⁰⁶ by one of the parties without having to demonstrate any grievance.¹⁰⁷ Two particular points should be mentioned: first, where an irregularity has not been pleaded at first instance, it may be raised on appeal,¹⁰⁸ secondly, if used for dilatory purposes, the court may order the party in question to pay damages.¹⁰⁹
78. Thus, where a party raises such a plea, inadmissibility is not automatic. The court will ask the defaulting party to remedy the situation before ruling that the case is inadmissible. However, the court is neither obliged to raise that irregularity of its own motion, since such a failure is not a matter of public policy,¹¹⁰ nor is it entitled to do so.¹¹¹ Therefore, a plea of nullity based on the substantive irregularity of the act is of benefit only to the person who has raised it, that is to say one of the parties to the dispute.

¹⁰⁵ [Article 117](#) of the CPC.

¹⁰⁶ Unless the procedure provides for a pre-trial phase by a judge or adviser.

¹⁰⁷ [Article 119](#) of the CPC.

¹⁰⁸ Cour de cassation (Court of Cassation) (3rd Civil Division), judgment of 29 October 2008, No [07-14242](#).

¹⁰⁹ [Article 118](#) of the CPC.

¹¹⁰ Cour de cassation (Court of Cassation) (1st Civil Division), judgment of 19 September 2007, No [06-17408](#).

¹¹¹ [Second paragraph of Article 120](#) of the CPC. Only irregularities due to lack of capacity to bring legal proceedings are concerned.

2. ADMINISTRATIVE LAW

79. In the same way as under civil law, failure to fulfil obligations resulting from an infringement of the rules of representation and, in particular, those relating to the independence of lawyers, also constitutes a substantive irregularity which may lead to the inadmissibility of the application. Similarly, that objection may be raised by the parties to the proceedings.
80. It should also be noted that such a failure may also be remedied in the course of the proceedings.¹¹² On this point, the Conseil d'État (Council of State) has ruled that an application can be declared inadmissible only after the court has invited its author to remedy it.¹¹³ However, unlike under civil law, administrative procedure allows the court, depending on the situation, to raise inadmissibility of its own motion, provided that it invites the party to remedy the situation.¹¹⁴ In the absence of such an invitation, its decision may be set aside, both on appeal¹¹⁵ and in an appeal on a point of law. Moreover, because of the possibility of regularisation, the court cannot establish or penalise it by order,¹¹⁶ made by the President of the court or a panel.¹¹⁷ In some cases, the obligation to issue an invitation has merely become an option for the court.¹¹⁸

¹¹² Article [R. 612-1](#) of the code de justice administrative (Code of Administrative Justice) (CJA).

¹¹³ By way of exception, the court of appeal or the court of cassation may rule that the application is inadmissible without having invited the applicant to remedy it in cases where the obligation to be represented by a lawyer has been 'mentioned in the notification of the contested decision'.

¹¹⁴ Obligation to invite the applicant to appoint a lawyer when representation by a lawyer is mandatory and the application or written pleadings are signed by the party itself (Conseil d'État (Council of State), Section, judgment of 27 January 1989, *Chrun*, No [68448](#), Recueil Lebon, p. 37).

¹¹⁵ Conseil d'État (Council of State), judgment of 21 September 1990, *Société de concours techniques*, No [46103](#).

¹¹⁶ In accordance with the procedures set out in Article [R. 222-1](#) of the CJA.

¹¹⁷ Conseil d'État (Council of State), opinion of 28 July 1995, *Tourteaux*, No [167629](#). Moreover, the administrative court refers, in that judgment, to the distinction between irregularities which may be covered and those which may not.

¹¹⁸ This applies in particular to cases where the defendant has raised the inadmissibility in a written submission (Conseil d'État (Council of State), judgment of 28 April 1997, *Association des commerçants non sédentaires de Corbeil-Essonnes*, No [164820](#)) or where the obligation to be represented by a lawyer was mentioned in the notification of the decision (Conseil d'État (Council of State), judgment of 15 February 1989, *Sté immobilière de La Roche-Posay*, No [94127](#)).

B. PROCEDURES FOR REMEDYING A FAILURE BASED ON LACK OF REPRESENTATION

81. With regard to the form of remedy, it should be noted that it is flexible.
82. Under **civil law**, the situation is remedied by granting a mandate to a representative who is authorised to represent before the courts, in accordance with the rules on the representation of the parties. What is important is to maintain adversarial proceedings. In practice, this will mainly involve updating the submissions of the defaulting party, served on the opposing lawyer and the court.
83. Under **administrative law**, such a remedy may take various forms: regularisation either by the signature of a lawyer on the application or pleadings, or by the subsequent production of written pleadings signed by a lawyer who thus takes over the application or the previous pleadings, or by a simple letter from a member of the Bar stating that the applicant has instructed him or her to defend his or her interests.¹¹⁹
84. **As regards the limitation period for remedies**, no details are given in the CPC¹²⁰ and therefore the case-law had made up for this shortcoming by having recourse, by analogy, to a procedural defect, by making the various time limits influencing the right to bring proceedings enforceable.¹²¹ However, since the reform of limitation,¹²² the institution of legal proceedings, even for interim measures, interrupts the limitation period and the time limit,¹²³ until the proceedings have come to an end.¹²⁴
85. Moreover, several judgments of the 2nd Civil Division of the Cour de cassation (Court of Cassation), which specialises in civil disputes,

¹¹⁹ Conseil d'État (Council of State), judgment of 25 July 2008, *M^{me} Lydia A*, No [295437](#).

¹²⁰ Article [121](#) of the CPC.

¹²¹ For example, the failure to remedy the matter before the expiry of a period for bringing an appeal (Cour de cassation (Court of Cassation) (Commercial Division), judgment of 10 December 2003, No [00-19.230](#)) or with regard to a remedy after the expiry of a limitation period for bringing proceedings (Cour de cassation (Court of Cassation) (3rd Civil Division), judgment of 27 January 1988, No [86-13451](#)).

¹²² [Loi No 2008-561 du 17 juin 2008 portant réforme de la prescription en matière civile](#) (Law No 2008-561 of 17 June 2008 reforming the limitation period in civil matters) (JORF of 18 June 2008, text No 1).

¹²³ The same applies where that application is submitted to a court which does not have jurisdiction or when the act of bringing the matter before the court is annulled by the effect of a procedural defect ([Article 2241](#) of the Civil Code).

¹²⁴ [Article 2242](#) of the Civil Code.

suggest that substantive defects should be subject to the same rules as formal defects in terms of the period for rectifying them.¹²⁵ Thus, it would seem possible to remedy a matter both within and beyond the time limit for taking action on the ground of a failure to fulfil obligations for lack of authority on the part of the representative.

86. **The time limit for remedying non-conformities** will be determined by the court in both sets of proceedings. Under civil law, the hearing will be adjourned with a date to allow the defaulting party to remedy the situation. Under administrative law, the Code of Administrative Justice provides that the court may set a time limit ‘which, save in cases of emergency, shall not be less than fifteen days’ for the situation to be remedied.¹²⁶ Moreover, the situation must be remedied before the court before which the irregular application or pleadings were lodged and may no longer take place on appeal, even with the production of supporting documents.

CONCLUSIONS

87. In almost all of the national legal systems studied, having regard to the national proceedings in which representation by a lawyer is mandatory, no restriction prevents a member of a law firm from representing the latter before the courts in both civil and administrative proceedings. Moreover, there is no difference between partners, associates or staff lawyers as regards the authorisation to represent in legal proceedings.
88. The notable exception among the legal systems studied is the **French legal system**, which prohibits, in such proceedings, on the basis of the agency theory, partners in a law firm from being able to represent that firm, thus requiring representation by a lawyer from outside the firm.
89. As regards the requirement of independence of the lawyer representing the firm to which he or she belongs, the States analysed adopt an interpretation *stricto sensu* of that requirement. They simply require the lawyer to have no incompatibility or conflict of interest in the case which

¹²⁵ Cour de cassation (Court of Cassation) (2nd Civil Division), judgments of 16 October 2014, No 13-22088, ([ECLI:FR:CCASS:2014:C201614](#)); of 1 June 2017, No 16-15568 ([ECLI:FR:CCASS:2017:C200761](#)); of 7 September 2017, No 16-19202, ([ECLI:FR:CCASS:2017:C201122](#)); of 1 March 2018, No 17-20447, ([ECLI:FR:CCASS:2018:C200901](#)) and of 26 June 2019, No 18-16859 ([ECLI:FR:CCASS:2019:CO00550](#)).

¹²⁶ Third paragraph of Article [R. 612-1](#) of the CJA.

he or she is called upon to deal with. However, it should be noted that, in those different national legal systems, the fact that the legal representative belongs to the firm which he or she represents is not considered to conflict with the requirement of independence. It may be inferred from this that such a requirement may entail limitations only in relation to breaches concerning specific cases involving a conflict of interest.

90. Only **France** and **Spain** have provisions in their codes of professional conduct relating to the independence of lawyers within the law firm. However, **France** appears to be the only legal system that, in the light of the requirement of the principle of independence, precludes an associate lawyer or other partner, who is not the legal representative, from representing the firm in which he or she practises.
91. In addition, in all the States studied, where there is a breach of the principle of independence, the legal representative may be subject to disciplinary proceedings or proceedings for damages. However, such a breach has no effect on the validity of the acts performed in the course of the proceedings.
92. Only the French model provides for a procedural penalty in the event of failure to comply with the rules on representation due to a breach of the requirement of independence of lawyers. It does, however, in both civil and administrative law, allow the defaulting party to remedy the situation within a specified period. If the situation is not remedied, the claims of the party concerned may be declared inadmissible.

[...]