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**Joint CCBE-FBE Conference**  
**Self-regulation and Quality in the Legal Profession**  
**Centro Cultural de Belém, Lisbon, 25 October 2019**

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**II<sup>nd</sup> panel - Challenges facing self-regulation: is self-regulation a guarantee for better quality?**

**Empowering lawyers in a competitive environment: a reflection on alternative business structures and advertising** - *Gaetano Viciconte*, PhD, Lawyer in Florence, Member of the permanent national Observatory on the exercising of Jurisdiction

Summary

The recent directive no. 2018/958 took a further step in the direction towards the need to comply with competition rules on this subject through the obligation of the carrying out of a proportionality test before adopting new professional regulations. This basically means that it is not possible to discipline the exercising of the professional activity without satisfying the following four specific conditions:

- compliance with the non-discrimination rule;
- justification on grounds of general interest;
- suitability for securing the attainment of the objective pursued;
- not exceeding what is necessary in order to attain that objective.

On the basis of the new directive, it will be necessary to tackle the controversial theme of Alternative Business Solutions (ABS) considering the absence of specific harmonization measures regarding the same meaning that member States cannot count on a common regulatory framework based on clearly defined concepts.

ABS structures can be used to offer different types of legal services, from the perspective that if the business models certified in the form of an ABS are successful there will be an interest in bringing those innovative models to other European States. Economic motives can create tensions within individual States between the supporters of the English model and those of the continental advocacy model. Naturally the Court of Justice will decide which of the two should prevail since it is clearly possible to hypothesize the certainty of litigation on the subject.

The proportionality test compulsorily introduced by the new directive will also influence the new regulations regarding the advertising of legal activities which constitute an important verification profile of the self-regulation tool.

On the subject of advertising, the activity of self-regulation by the legal profession has permitted this category in Italy to align itself with the new requirements that have emerged with the passing of time regarding advertising, demonstrating the efficacy of this tool.

However, the future of self-regulation lies in the prompt compliance with the proportionality test introduced by the new directive, to be carried out with effective instruments so as to avoid introducing rules that could cause market distortion.

Naturally it will be the task of the legal profession to valorize the principles of autonomy and independence of the advocacy that the EU Court of Justice has also highlighted in its pronouncements, affirming, in particular, beginning with the Wouters ruling, the specific nature of the role of the lawyer even with respect to other professional figures, to the point of establishing that restrictive effects on competition should be deemed to be justified in order to guarantee the correct and “good practice of the profession of lawyer”.