

DIRECTIVE 98/5/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 February 1998

to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 49, Article 57(1) and the first and third sentences of Article 57(2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the Opinion of the Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 189b of the Treaty ⁽³⁾,

- (1) Whereas, pursuant to Article 7a of the Treaty, the internal market is to comprise an area without internal frontiers; whereas, pursuant to Article 3(c) of the Treaty, the abolition, as between Member States, of obstacles to freedom of movement for persons and services constitutes one of the objectives of the Community; whereas, for nationals of the Member States, this means among other things the possibility of practising a profession, whether in a self-employed or a salaried capacity, in a Member State other than that in which they obtained their professional qualifications;
- (2) Whereas, pursuant to Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration ⁽⁴⁾, a lawyer who is fully qualified in one Member State may already ask to have his diploma recognised with a view to establishing himself in another Member State in order to practise the profession of lawyer there under the professional title used in that State; whereas the objective of Directive 89/48/EEC is to ensure that a lawyer is integrated into the profession in the host Member State, and the Directive seeks neither to modify the rules regulating the profession in that State nor to remove such a lawyer from the ambit of those rules;
- (3) Whereas while some lawyers may become quickly integrated into the profession in the host Member State, *inter alia* by passing an aptitude test as provided for in Directive 89/48/EEC, other fully

qualified lawyers should be able to achieve such integration after a certain period of professional practice in the host Member State under their home-country professional titles or else continue to practise under their home-country professional titles;

- (4) Whereas at the end of that period the lawyer should be able to integrate into the profession in the host Member States after verification that the possessor has professional experience in that Member State;
- (5) Whereas action along these lines is justified at Community level not only because, compared with the general system for the recognition of diplomas, it provides lawyers with an easier means whereby they can integrate into the profession in a host Member State, but also because, by enabling lawyers to practise under their home-country professional titles on a permanent basis in a host Member State, it meets the needs of consumers of legal services who, owing to the increasing trade flows resulting, in particular, from the internal market, seek advice when carrying out cross-border transactions in which international law, Community law and domestic laws often overlap;
- (6) Whereas action is also justified at Community level because only a few Member States already permit in their territory the pursuit of activities of lawyers, otherwise than by way of provision of services, by lawyers from other Member States practising under their home-country professional titles; whereas, however, in the Member States where this possibility exists, the practical details concerning, for example, the area of activity and the obligation to register with the competent authorities differ considerably; whereas such a diversity of situations leads to inequalities and distortions in competition between lawyers from the Member States and constitutes an obstacle to freedom of movement; whereas only a directive laying down the conditions governing practice of the profession, otherwise than by way of provision of services, by lawyers practising under their home-country professional titles is capable of resolving these difficulties and of affording the same opportunities to lawyers and consumers of legal services in all Member States;

⁽¹⁾ OJ C 128, 24. 5. 1995, p. 6 and OJ C 355, 25. 11. 1996, p. 19.

⁽²⁾ OJ C 256, 2. 10. 1995, p. 14.

⁽³⁾ Opinion of the European Parliament of 19 June 1996 (OJ C 198, 8. 7. 1996, p. 85), Council Common Position of 24 July 1997 (OJ C 297, 29. 9. 1997, p. 6), Decision of the European Parliament of 19 November 1997 (Council Decision of 15 December 1997).

⁽⁴⁾ OJ L 19, 24. 1. 1989, p. 16.

- (7) Whereas, in keeping with its objective, this Directive does not lay down any rules concerning purely domestic situations, and where it does affect national rules regulating the legal profession it does so no more than is necessary to achieve its purpose effectively; whereas it is without prejudice in particular to national legislation governing access to and practice of the profession of lawyer under the professional title used in the host Member State;
- (8) Whereas lawyers covered by the Directive should be required to register with the competent authority in the host Member State in order that that authority may ensure that they comply with the rules of professional conduct in force in that State; whereas the effect of such registration as regards the jurisdictions in which, and the levels and types of court before which, lawyers may practise is determined by the law applicable to lawyers in the host Member State;
- (9) Whereas lawyers who are not integrated into the profession in the host Member State should practise in that State under their home-country professional titles so as to ensure that consumers are properly informed and to distinguish between such lawyers and lawyers from the host Member State practising under the professional title used there;
- (10) Whereas lawyers covered by this Directive should be permitted to give legal advice in particular on the law of their home Member States, on Community law, on international law and on the law of the host Member State; whereas this is already allowed as regards the provision of services under Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services⁽¹⁾; whereas, however, provision should be made, as in Directive 77/249/EEC, for the option of excluding from the activities of lawyers practising under their home-country professional titles in the United Kingdom and Ireland the preparation of certain formal documents in the conveyancing and probate spheres; whereas this Directive in no way affects the provisions under which, in every Member State, certain activities are reserved for professions other than the legal profession; whereas the provision in Directive 77/249/EEC concerning the possibility of the host Member State to require a lawyer practising under his home-country professional title to work in conjunction with a local lawyer when representing or defending a client in legal proceedings should also be incorporated in this Directive; whereas that requirement must be interpreted in the light of the case law of the Court of Justice of the European Communities, in particular its judgment of 25 February 1988 in Case 427/85, *Commission v. Germany*⁽²⁾;
- (11) Whereas to ensure the smooth operation of the justice system Member States should be allowed, by means of specific rules, to reserve access to their highest courts to specialist lawyers, without hindering the integration of Member States' lawyers fulfilling the necessary requirements;
- (12) Whereas a lawyer registered under his home-country professional title in the host Member State must remain registered with the competent authority in his home Member State if he is to retain his status of lawyer and be covered by this Directive; whereas for that reason close collaboration between the competent authorities is indispensable, in particular in connection with any disciplinary proceedings;
- (13) Whereas lawyers covered by this Directive, whether salaried or self-employed in their home Member States, may practise as salaried lawyers in the host Member State, where that Member State offers that possibility to its own lawyers;
- (14) Whereas the purpose pursued by this Directive in enabling lawyers to practise in another Member State under their home-country professional titles is also to make it easier for them to obtain the professional title of that host Member State; whereas under Articles 48 and 52 of the Treaty as interpreted by the Court of Justice the host Member State must take into consideration any professional experience gained in its territory; whereas after effectively and regularly pursuing in the host Member State an activity in the law of that State including Community law for a period of three years, a lawyer may reasonably be assumed to have gained the aptitude necessary to become fully integrated into the legal profession there; whereas at the end of that period the lawyer who can, subject to verification, furnish evidence of his professional competence in the host Member State should be able to obtain the professional title of that Member State; whereas if the period of effective and regular professional activity of at least three years includes a shorter period of practice in

⁽¹⁾ OJ L 78, 26. 3. 1977, p. 17. Directive as last amended by the 1994 Act of Accession.

⁽²⁾ [1988] ECR 1123.

the law of the host Member State, the authority shall also take into consideration any other knowledge of that State's law, which it may verify during an interview; whereas if evidence of fulfilment of these conditions is not provided, the decision taken by the competent authority of the host State not to grant the State's professional title under the facilitation arrangements linked to those conditions must be substantiated and subject to appeal under national law;

- (15) Whereas, for economic and professional reasons, the growing tendency for lawyers in the Community to practise jointly, including in the form of associations, has become a reality; whereas the fact that lawyers belong to a grouping in their home Member State should not be used as a pretext to prevent or deter them from establishing themselves in the host Member State; whereas Member States should be allowed, however, to take appropriate measures with the legitimate aim of safeguarding the profession's independence; whereas certain guarantees should be provided in those Member States which permit joint practice,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Object, scope and definitions

1. The purpose of this Directive is to facilitate practice of the profession of lawyer on a permanent basis in a self-employed or salaried capacity in a Member State other than that in which the professional qualification was obtained.
2. For the purposes of this Directive:
 - (a) *'lawyer'* means any person who is a national of a Member State and who is authorised to pursue his professional activities under one of the following professional titles:

Belgium	Avocat/Advocaat/Rechtsanwalt
Denmark	Advokat
Germany	Rechtsanwalt
Greece	Δικηγόρος
Spain	Abogado/Advocat/Avogado/ Abokatu
France	Avocat
Ireland	Barrister/Solicitor
Italy	Avvocato
Luxembourg	Avocat
Netherlands	Advocaat
Austria	Rechtsanwalt

Portugal	Advogado
Finland	Asianajaja/Advokat
Sweden	Advokat
United Kingdom	Advocate/Barrister/Solicitor

- (b) *'home Member State'* means the Member State in which a lawyer acquired the right to use one of the professional titles referred to in (a) before practising the profession of lawyer in another Member State;
- (c) *'host Member State'* means the Member State in which a lawyer practises pursuant to this Directive;
- (d) *'home-country professional title'* means the professional title used in the Member State in which a lawyer acquired the right to use that title before practising the profession of lawyer in the host Member State;
- (e) *'grouping'* means any entity, with or without legal personality, formed under the law of a Member State, within which lawyers pursue their professional activities jointly under a joint name;
- (f) *'relevant professional title'* or *'relevant profession'* means the professional title or profession governed by the competent authority with whom a lawyer has registered under Article 3, and *'competent authority'* means that authority.

3. This Directive shall apply both to lawyers practising in a self-employed capacity and to lawyers practising in a salaried capacity in the home Member State and, subject to Article 8, in the host Member State.

4. Practice of the profession of lawyer within the meaning of this Directive shall not include the provision of services, which is covered by Directive 77/249/EEC.

Article 2

Right to practise under the home-country professional title

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

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

Article 3

Registration with the competent authority

1. A lawyer who wishes to practise in a Member State other than that in which he obtained his professional qualification shall register with the competent authority in that State.

2. The competent authority in the host Member State shall register the lawyer upon presentation of a certificate attesting to his registration with the competent authority in the home Member State. It may require that, when presented by the competent authority of the home Member State, the certificate be not more than three months old. It shall inform the competent authority in the home Member State of the registration.

3. For the purpose of applying paragraph 1:

- in the United Kingdom and Ireland, lawyers practising under a professional title other than those used in the United Kingdom or Ireland shall register either with the authority responsible for the profession of barrister or advocate or with the authority responsible for the profession of solicitor,
- in the United Kingdom, the authority responsible for a barrister from Ireland shall be that responsible for the profession of barrister or advocate, and the authority responsible for a solicitor from Ireland shall be that responsible for the profession of solicitor,
- in Ireland, the authority responsible for a barrister or an advocate from the United Kingdom shall be that responsible for the profession of barrister, and the authority responsible for a solicitor from the United Kingdom shall be that responsible for the profession of solicitor.

4. Where the relevant competent authority in a host Member State publishes the names of lawyers registered with it, it shall also publish the names of lawyers registered pursuant to this Directive.

Article 4

Practice under the home-country professional title

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

2. For the purpose of applying paragraph 1, a host Member State may require a lawyer practising under his home-country professional title to indicate the professional body of which he is a member in his home Member State or the judicial authority before which he is entitled to practise pursuant to the laws of his home Member State. A host Member State may also require a lawyer practising under his home-country professional

title to include a reference to his registration with the competent authority in that State.

Article 5

Area of activity

1. Subject to paragraphs 2 and 3, a lawyer practising under his home-country professional title carries on the same professional activities as a lawyer practising under the relevant professional title used in the host Member State and may, *inter alia*, give advice on the law of his home Member State, on Community law, on international law and on the law of the host Member State. He shall in any event comply with the rules of procedure applicable in the national courts.

2. Member States which authorise in their territory a prescribed category of lawyers to prepare deeds for obtaining title to administer estates of deceased persons and for creating or transferring interests in land which, in other Member States, are reserved for professions other than that of lawyer may exclude from such activities lawyers practising under a home-country professional title conferred in one of the latter Member States.

3. For the pursuit of activities relating to the representation or defence of a client in legal proceedings and insofar as the law of the host Member State reserves such activities to lawyers practising under the professional title of that State, the latter may require lawyers practising under their home-country professional titles to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary, be answerable to that authority or with an 'avoué' practising before it.

Nevertheless, in order to ensure the smooth operation of the justice system, Member States may lay down specific rules for access to supreme courts, such as the use of specialist lawyers.

Article 6

Rules of professional conduct applicable

1. Irrespective of the rules of professional conduct to which he is subject in his home Member State, a lawyer practising under his home-country professional title shall be subject to the same rules of professional conduct as lawyers practising under the relevant professional title of the host Member State in respect of all the activities he pursues in its territory.

2. Lawyers practising under their home-country professional titles shall be granted appropriate representation in the professional associations of the host Member State.

Such representation shall involve at least the right to vote in elections to those associations' governing bodies.

3. The host Member State may require a lawyer practising under his home-country professional title either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that State lays down for professional activities pursued in its territory. Nevertheless, a lawyer practising under his home-country professional title shall be exempted from that requirement if he can prove that he is covered by insurance taken out or a guarantee provided in accordance with the rules of his home Member State, insofar as such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the competent authority in the host Member State may require that additional insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the home Member State.

Article 7

Disciplinary proceedings

1. In the event of failure by a lawyer practising under his home-country professional title to fulfil the obligations in force in the host Member State, the rules of procedure, penalties and remedies provided for in the host Member State shall apply.

2. Before initiating disciplinary proceedings against a lawyer practising under his home-country professional title, the competent authority in the host Member State shall inform the competent authority in the home Member State as soon as possible, furnishing it with all the relevant details.

The first subparagraph shall apply *mutatis mutandis* where disciplinary proceedings are initiated by the competent authority of the home Member State, which shall inform the competent authority of the host Member State(s) accordingly.

3. Without prejudice to the decision-making power of the competent authority in the host Member State, that authority shall cooperate throughout the disciplinary proceedings with the competent authority in the home Member State. In particular, the host Member State shall take the measures necessary to ensure that the competent authority in the home Member State can make submissions to the bodies responsible for hearing any appeal.

4. The competent authority in the home Member State shall decide what action to take, under its own procedural and substantive rules, in the light of a decision of the competent authority in the host Member State concerning a lawyer practising under his home-country professional title.

5. Although it is not a prerequisite for the decision of the competent authority in the host Member State, the temporary or permanent withdrawal by the competent authority in the home Member State of the authorisation to practise the profession shall automatically lead to the lawyer concerned being temporarily or permanently prohibited from practising under his home-country professional title in the host Member State.

Article 8

Salaried practice

A lawyer registered in a host Member State under his home-country professional title may practise as a salaried lawyer in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise to the extent that the host Member State so permits for lawyers registered under the professional title used in that State.

Article 9

Statement of reasons and remedies

Decisions not to effect the registration referred to in Article 3 or to cancel such registration and decisions imposing disciplinary measures shall state the reasons on which they are based.

A remedy shall be available against such decisions before a court or tribunal in accordance with the provisions of domestic law.

Article 10

Like treatment as a lawyer of the host Member State

1. A lawyer practising under his home-country professional title who has effectively and regularly pursued for a period of at least three years an activity in the host Member State in the law of that State including Community law shall, with a view to gaining admission to the profession of lawyer in the host Member State, be exempted from the conditions set out in Article 4(1)(b) of Directive 89/48/EEC, 'Effective and regular pursuit' means actual exercise of the activity without any interruption other than that resulting from the events of everyday life.

It shall be for the lawyer concerned to furnish the competent authority in the host Member State with proof of such effective regular pursuit for a period of at least three years of an activity in the law of the host Member State. To that end:

- (a) the lawyer shall provide the competent authority in the host Member State with any relevant information and documentation, notably on the number of matters he has dealt with and their nature;
- (b) the competent authority of the host Member State may verify the effective and regular nature of the activity pursued and may, if need be, request the lawyer to provide, orally or in writing, clarification of or further details on the information and documentation mentioned in point (a).

Reasons shall be given for a decision by the competent authority in the host Member State not to grant an exemption where proof is not provided that the requirements laid down in the first subparagraph have been fulfilled, and the decision shall be subject to appeal under domestic law.

2. A lawyer practising under his home-country professional title in a host Member State may, at any time, apply to have his diploma recognised in accordance with Directive 89/48/EEC with a view to gaining admission to the profession of lawyer in the host Member State and practising it under the professional title corresponding to the profession in that Member State.

3. A lawyer practising under his home-country professional title who has effectively and regularly pursued a professional activity in the host Member State for a period of at least three years but for a lesser period in the law of that Member State may obtain from the competent authority of that State admission to the profession of lawyer in the host Member State and the right to practise it under the professional title corresponding to the profession in that Member State, without having to meet the conditions referred to in Article 4(1)(b) of Directive 89/48/EEC, under the conditions and in accordance with the procedures set out below:

- (a) The competent authority of the host Member State shall take into account the effective and regular professional activity pursued during the abovementioned period and any knowledge and professional experience of the law of the host Member State, and any attendance at lectures or seminars on the law of the host Member State, including the rules regulating professional practice and conduct.
- (b) The lawyer shall provide the competent authority of the host Member State with any relevant information and documentation, in particular on the matters he has dealt with. Assessment of the lawyer's effective and regular activity in the host Member State and assessment of his capacity to continue the activity he

has pursued there shall be carried out by means of an interview with the competent authority of the host Member State in order to verify the regular and effective nature of the activity pursued.

Reasons shall be given for a decision by the competent authority in the host Member State not to grant authorisation where proof is not provided that the requirements laid down in the first subparagraph have been fulfilled, and the decision shall be subject to appeal under domestic law.

4. The competent authority of the host Member State may, by reasoned decision subject to appeal under domestic law, refuse to allow the lawyer the benefit of the provisions of this Article if it considers that this would be against public policy, in a particular because of disciplinary proceedings, complaints or incidents of any kind.

5. The representatives of the competent authority entrusted with consideration of the application shall preserve the confidentiality of any information received.

6. A lawyer who gains admission to the profession of lawyer in the host Member State in accordance with paragraphs 1, 2 and 3 shall be entitled to use his home-country professional title, expressed in the official language or one of the official languages of his home Member State, alongside the professional title corresponding to the profession of lawyer in the host Member State.

Article 11

Joint practice

Where joint practise is authorised in respect of lawyers carrying on their activities under the relevant professional title in the host Member State, the following provisions shall apply in respect of lawyers wishing to carry on activities under that title or registering with the competent authority:

- (1) One or more lawyers who belong to the same grouping in their home Member State and who practise under their home-country professional title in a host Member State may pursue their professional activities in a branch or agency of their grouping in the host Member State. However, where the fundamental rules governing that grouping in the home Member State are incompatible with the fundamental rules laid down by law, regulation or administrative action in the host Member State, the latter rules shall prevail insofar as compliance therewith is justified by the public interest in protecting clients and third parties.

(2) Each Member State shall afford two or more lawyers from the same grouping or the same home Member State who practise in its territory under their home-country professional titles access to a form of joint practice. If the host Member State gives its lawyers a choice between several forms of joint practice, those same forms shall also be made available to the aforementioned lawyers. The manner in which such lawyers practise jointly in the host Member State shall be governed by the laws, regulations and administrative provisions of that State.

(3) The host Member State shall take the measures necessary to permit joint practice also between:

- (a) several lawyers from different Member States practising under their home-country professional titles;
- (b) one or more lawyers covered by point (a) and one or more lawyers from the host Member State.

The manner in which such lawyers practice jointly in the host Member State shall be governed by the laws, regulations and administrative provisions of that State.

(4) A lawyer who wishes to practise under his home-country professional title shall inform the competent authority in the host Member State of the fact that he is a member of a grouping in his home Member State and furnish any relevant information on that grouping.

(5) Notwithstanding points 1 to 4, a host Member State, insofar as it prohibits lawyers practising under its own relevant professional title from practising the profession of lawyer within a grouping in which some persons are not members of the profession, may refuse to allow a lawyer registered under his home-country professional title to practice in its territory in his capacity as a member of his grouping. The grouping is deemed to include persons who are not members of the profession if

- the capital of the grouping is held entirely or partly, or
- the name under which it practises is used, or
- the decision-making power in that grouping is exercised, *de facto* or *de jure*,

by persons who do not have the status of lawyer within the meaning of Article 1(2).

Where the fundamental rules governing a grouping of lawyers in the home Member State are incompatible with the rules in force in the host Member State or with the provisions of the first subparagraph, the host Member State may oppose the opening of a branch or agency within its territory without the restrictions laid down in point (1).

Article 12

Name of the grouping

Whatever the manner in which lawyers practise under their home-country professional titles in the host Member

State, they may employ the name of any grouping to which they belong in their home Member State.

The host Member State may require that, in addition to the name referred to in the first subparagraph, mention be made of the legal form of the grouping in the home Member State and/or of the names of any members of the grouping practising in the host Member State.

Article 13

Cooperation between the competent authorities in the home and host Member States and confidentiality

In order to facilitate the application of this Directive and to prevent its provisions from being misapplied for the sole purpose of circumventing the rules applicable in the host Member State, the competent authority in the host Member State and the competent authority in the home Member State shall collaborate closely and afford each other mutual assistance.

They shall preserve the confidentiality of the information they exchange.

Article 14

Designation of the competent authorities

Member States shall designate the competent authorities empowered to receive the applications and to take the decisions referred to in this Directive by 14 March 2000. They shall communicate this information to the other Member States and to the Commission.

Article 15

Report by the Commission

Ten years at the latest from the entry into force of this Directive, the Commission shall report to the European Parliament and to the Council on progress in the implementation of the Directive.

After having held all the necessary consultations, it shall on that occasion present its conclusions and any amendments which could be made to the existing system.

Article 16

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 March 2000. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official

publication. The methods of making such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the texts of the main provisions of domestic law which they adopt in the field covered by this Directive.

Article 17

This Directive shall enter into force on the date of its publication in the *Official Journal of the European Communities*.

Article 18

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 16 February 1998.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

J. CUNNINGHAM