Lawyers: practice of the profession on a permanent basis

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The rapporteur, Mrs Fontaine (EPP, F), said that the ultimate objective of the directive aimed at facilitating the practice of the profession of lawyer was to compensate for the inadequacies of the general directive adopted in 1989, since in the course of the four years in which this directive had been in force only one significant case had been recorded of non home-country lawyers being given freedom to practise, and this had been in Luxembourg. Mrs Fontaine referred to the two criteria on which the amended directive would be based: objective assessment by the profession, and respect for the spirit and the letter of the Treaty as clarified by the recent legal precedent set by the Gebhard ruling. Among the measures featuring in the proposal the rapporteur referred in particular to the withdrawal of the aptitude test for those wishing to join the Bar in the host country and the opportunity for non-national lawyers to practise for an unlimited period under their home-country professional title, subject to the same professional rules and code of ethics of the host country. Finally, Mrs Fontaine pointed out that the new freedom that the directive would give to the profession of lawyer was essential if European legal practices were to compete with the major law firms operating outside the Community. Commissioner Monti declared that the Commission could accept the main amendments, including Amendment No 10 on the abolition of the five years of experience required before being allowed to practise under the home-country professional title and Amendment No 24 on the aptitude test. This only left the secondary amendments that concerned matters of principle, namely Amendments Nos 7 and 9 (exclusion of lawyers holding ministerial office) and Amendments Nos 12 and 21 (obligation on the host country to allow exemption from the requirement to join the social security scheme). As regards the eight supplementary amendments, Mr Monti said that he could not accept them if they were incompatible with those that had been submitted by the Legal Affairs Committee: this was the case with Amendments Nos 29 to 33. In conclusion, the Commissioner cited some examples of the professional rules that had to be respected, namely the ban in certain Member States on operating two legal practices in their territory and the ban on certain activities that were detrimental to the independence of lawyers and to professional confidentiality; finally, he stressed the important links between market uniformity and the directive in question.