Lawyers: practice of the profession on a permanent basis

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In adopting the report by Mrs Nicole FONTAINE, the Committee on Legal Affairs gave its opinion on the three main themes contained in the proposal for a directive: - integration into the profession in the host Member State (Article 10): it proposed replacing the aptitude test to be integrated into the profession in the host Member State with an objective assessment. The competent authority in the host Member State would take account of the lawyer's professional experience in the host Member State together with his attendance at lectures or seminars on the law of the host Member States, including the rules regulating professional practice and conduct; - practising under the home-country professional title (Article 2): practising as a lawyer in the host Member State under the home-country professional title would not be limited to a certain period of time. In this respect, the European Court of Justice stated in its "Gebhard" ruling of 30 November that practising as a lawyer under the home-country professional title did not contravene the Treaty. The Committee on Legal Affairs felt that the competent authority in the host Member State where the lawyer had registered to practise should ask the competent authority in the home Member State to provide a certificate stating that the lawyer concerned fulfilled the conditions of honour, honourability and probity pertaining to the duties of a lawyer. The European Commission and the European Parliament's Committee on Legal Affairs considered that a lawyer practising under his home-country professional title should be subject to the rules on professional practice and conduct of the host Member State in respect of all the activities he pursued in its territory; - practise within a grouping (Article 11(5)): in this respect, the rapporteur preferred to take over the proposal of the CCBE (adopted unanimously) which strengthened the Commission's proposal by adding "holding of capital" and "name" to decision-making power. Further, if the fundamental rules governing a grouping of lawyers in the home Member State were incompatible with the rules in force in the host Member State, the host Member State could oppose the opening of a branch or agency within its territory; - other provisions: the Committee on Legal Affairs wished to exclude lawyers holding a ministerial office from the scope of the directive (for example, in France, lawyers pleading cases before the Supreme Administrative Court or Court of Cassation).