

Lawyers: practice of the profession on a permanent basis

1994/0299(COD) - 16/02/1998 - Final act

OBJECTIVE: to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained. **COMMUNITY MEASURE:** European Parliament and Council Directive 98/5/EC. **SUBSTANCE:** the main elements in the Directive are as follows: 1) The right to practise under the home-country professional title: the Directive lays down the principle that any lawyer shall be entitled to practise on a permanent basis, in any Member State, under his home-country professional title. In particular, he may 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. However, 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 title to work in conjunction with a lawyer who practises before the judicial authority in question. 2) Compulsory registration: a lawyer who wishes to practise in a Member State other than that in which he obtained his professional qualification is required to register with the competent authority in that State. 3) Professional title: a lawyer practising in a host Member State under his home-country professional title must do so under that title. The title must be expressed in the official language of his home Member State, in such a way as to avoid confusion with the professional title of the host Member State. A lawyer practising under his home-country professional title is subject to the same rules of professional practice and conduct as lawyers practising under the professional title of the host Member State. 4) 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. 5) Like treatment as a lawyer of the host Member State: a lawyer practising under his home-country professional title who has effectively and regularly pursued for at least three years an activity in the host Member State in the law of that State, including Community law, is exempted from the conditions set out in Article 4 of Directive 89/48/EEC for admission to the profession of lawyer in the host Member State. It is laid down that a lawyer who can prove that he has pursued a professional activity in the host Member State for at least three years but for a lesser period in the law of that Member State may obtain 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 under the following conditions: - the competent authority of the host Member State must take into account the effective and regular professional activity pursued during the above-mentioned 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 relating to professional practice and conduct; - the lawyer must provide the competent authority of the host Member State with any relevant information and documentation, in particular on the matters he has dealt with. The competent authority of the host Member State will then verify the regular and effective nature of the activity pursued by means of an interview with the applicant. 6) Joint practice: the Directive provides for the possibility, under certain conditions, that a group of lawyers may carry on a joint practice. It lays down the conditions for this, where such practice is permitted in the host Member State. The Commission will report to the European Parliament and the Council on the state of application of the Directive not more than ten years after its entry into force. **ENTRY INTO FORCE:** 14/03/1998 **DEADLINE FOR TRANSPOSITION:** 14/03/2000.