## Basic information

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|---|---|
| **1994/0299(COD)**<br>COD - Ordinary legislative procedure (ex-codecision procedure)<br>Directive | Procedure completed |
| Lawyers: practice of the profession on a permanent basis<br>**Subject**<br>2.40.01 Right of establishment | |

## Key players

### European Parliament

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| JURI Legal Affairs, Citizens' Rights | FONTAINE Nicole (PPE) | 26/07/1994 |

| Former committee responsible | Former rapporteur | Appointed |
|---|---|---|
| JURI Legal Affairs, Citizens' Rights | FONTAINE Nicole (PPE) | 26/07/1994 |

### Council of the European Union

| Council configuration | Meetings | Date |
|---|---|---|
| Competitiveness (Internal Market, Industry, Research and Space) | 2007 | 1997-05-21 |
| Budget | 2026 | 1997-07-24 |
| Social Affairs | 2060 | 1997-12-15 |

## Key events

| Date | Event | Reference | Summary |
|---|---|---|---|
| 21/12/1994 | Legislative proposal published | COM(1994)0572 | Summary |
| 07/04/1995 | Committee referral announced in Parliament, 1st reading | | |
| 24/04/1996 | Vote in committee, 1st reading | | Summary |
| 24/04/1996 | Committee report tabled for plenary, 1st reading | A4-0146/1996 | |
| 18/06/1996 | Debate in Parliament | | Summary |
| 24/09/1996 | Modified legislative proposal published | COM(1996)0446 | Summary |
| 24/07/1997 | Council position published | 08423/1/1997 | Summary |
| 18/09/1997 | Committee referral announced in Parliament, 2nd reading | | |

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|---|---|---|---|
| 27/10/1997 | Vote in committee, 2nd reading | | Summary |
| 27/10/1997 | Committee recommendation tabled for plenary, 2nd reading | A4-0337/1997 | |
| 18/11/1997 | Debate in Parliament | | Summary |
| 15/12/1997 | Act approved by Council, 2nd reading | | |
| 16/02/1998 | Final act signed | | |
| 16/02/1998 | End of procedure in Parliament | | |
| 14/03/1998 | Final act published in Official Journal | | |

## Technical information

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| **Procedure reference** | 1994/0299(COD) |
| **Procedure type** | COD - Ordinary legislative procedure (ex-codecision procedure) |
| **Procedure subtype** | Legislation |
| **Legislative instrument** | Directive |
| **Legal basis** | EC Treaty (before Amsterdam) E 057-p1/2<br>EC Treaty (before Amsterdam) E 049 |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | JURI/4/09220 |

## Documentation gateway

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee report tabled for plenary, 1st reading/single reading | | A4-0146/1996<br>OJ C 152 27.05.1996, p. 0005 | 24/04/1996 | |
| Text adopted by Parliament, 1st reading/single reading | | T4-0338/1996<br>OJ C 198 08.07.1996, p. 0068-0085 | 19/06/1996 | Summary |
| Committee recommendation tabled for plenary, 2nd reading | | A4-0337/1997<br>OJ C 358 24.11.1997, p. 0004 | 27/10/1997 | |
| Text adopted by Parliament, 2nd reading | | T4-0548/1997<br>OJ C 371 08.12.1997, p. 0044-0059 | 19/11/1997 | Summary |

**Council of the EU**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Council position | 08423/1/1997<br>OJ C 297 29.09.1997, p. 0006 | 24/07/1997 | Summary |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| | COM(1994)0572 | | |

| | | | |
|---|---|---|---|
| Legislative proposal | OJ C 128 24.05.1995, p. 0006 | 21/12/1994 | Summary |
| Modified legislative proposal | COM(1996)0446<br>OJ C 355 25.11.1996, p. 0019 | 24/09/1996 | Summary |
| Commission communication on Council's position | SEC(1997)1206 | 03/09/1997 | Summary |

**Other institutions and bodies**

| Institution/body | Document type | Reference | Date | Summary |
|---|---|---|---|---|
| EESC | Economic and Social Committee: opinion, report | CES0799/1995<br>OJ C 256 02.10.1995, p. 0014 | 05/07/1995 | Summary |

**Additional information**

| Source | Document | Date |
|---|---|---|
| European Commission | EUR-Lex | |

**Final act**

Directive 1998/0005
OJ L 077 14.03.1998, p. 0036 Summary

# Lawyers: practice of the profession on a permanent basis

1994/0299(COD) - 24/07/1997

Following the political agreement reached by the Internal Market Ministers on 21 May of this year, the Council formally adopted, by a qualified majority with Luxembourg voting against, its common position on the Directive on the practice of the profession of lawyer in a Member State other that that in which the qualification was obtained.

# Lawyers: practice of the profession on a permanent basis

1994/0299(COD) - 19/11/1997 - Text adopted by Parliament, 2nd reading

In adopting the recommendation for second reading by Mrs Nicole FONTAINE (PPE, F), the European Parliament has approved the common position of the Council without amendments. The Council's point of view actually differs in only one respect, namely on how to treat lawyers who do not satisfy the 'maximum' requirements for exemption from the obligation to prove that they have 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. Parliament is of the opinion that the changes made to the text and the rejection of some of its amendments by the Council have very little influence on the main options and the general approach of the future directive. It welcomes the meeting of minds between the Commission, Parliament and Council throughout the examination of the proposal.

# Lawyers: practice of the profession on a permanent basis

1994/0299(COD) - 21/12/1994 - Legislative proposal

1) OBJECTIVE: to facilitate the practice of the profession of self-employed or salaried lawyer on a permanent basis in a Member State other than that in which the qualification was obtained. 2) CONTENT: 1. Definitions of the following terms: "lawyer", "Member State of origin", "host Member State", "home-country professional title", "group". 2. This directive applies both to self-employed and salaried lawyers practising in the host Member State. 3. Lawyers wishing to practise in a Member State other than that in which the qualification was obtained must register with the competent authority in that

State. 4. Lawyers not yet fully integrated into the profession in the host Member State may practise in that state under their home-country professional title. After three years of effective and regular practice in the host Member State in the law of that Member State, including Community law, the lawyer is presumed to have acquired the skills needed to integrate fully into the legal profession in the host Member State and, as such, need not take the aptitude test. However, lawyers who have not practised in the law of the host Member State or in Community law must take an aptitude test on procedural law and the code of professional ethics in the host Member State. 5. Although there are exceptions (in the United Kingdom and Ireland, see article 5), lawyers practising under their home-country professional title will be engaged in the same professional activities as lawyers in the host Member State and, more importantly, may be consulted on the law of their Member State of origin, on Community law, on international law and on the law of the host Member State. 6. One or more lawyers practising under their home-country professional titles in a host Member State who are members of the same group in their Member State of origin may practise as a branch or agency of their group in the host Member State. 7. Lawyers practising under their home-country professional title may be subject to disciplinary proceedings in the host Member State. Source: European Commission - Info92 - 10/95

# Lawyers: practice of the profession on a permanent basis

1994/0299(COD) - 24/09/1996 - Modified legislative proposal

The Commission's amended proposal incorporates Parliament's main amendments, in particular those concerning the permanent character of establishment under the home-country professional title and the replacement of the aptitude test by a verification procedure for professional qualifications. Also taken over were amendments concerning the alignment of salaried practice on Council Directive 77/249/EEC on the free provision of services by lawyers and consolidation of the host Member State's powers to oppose groupings controlled by persons outside the profession. However, the Commission was unable to accept the amendments which provided for the inclusion of Dutch 'procureurs', the exclusion of lawyers who have responsibilities within a government department, proof of honourability, and the obligation for the host Member State to exempt migrant lawyers from the requirement to join its social security scheme.

# Lawyers: practice of the profession on a permanent basis

1994/0299(COD) - 05/07/1995 - Economic and Social Committee: opinion, report

The ESC endorsed these goals and agreed in principle with the proposal as a whole, subject to the reservations expressed below. It pointed out that the Commission’s proposal for a directive differed in essential points from the CCBE proposal in that it: a) set a time limit on the right of establishment under the home-country professional title, and b) generally dispensed with an aptitude test for lawyers wishing to be fully integrated in the host Member State (Article 10(1)). The ESC wholly shared the concerns expressed in the Sutherland Report regarding the whole system of justice in the EU.

# Lawyers: practice of the profession on a permanent basis

1994/0299(COD) - 03/09/1997 - Commission communication on Council's position

The common position does not differ greatly from Parliament's amendments, accepted by the Commission, except for those on salaried practice, although these play a minor role in the proposed directive as a whole. Consequently, the Commission approves the common position.

# Lawyers: practice of the profession on a permanent basis

1994/0299(COD) - 19/06/1996 - Text adopted by Parliament, 1st reading/single reading

Parliament adopted the report by Mrs Nicole FONTAINE (PPE, F) on the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained. With regard to integration into the profession in the host Member State, Parliament proposed replacing the aptitude test provided for by the Commission in order to accede to the professional title of the host Member State, with an objective assessment. The competent authority of the host Member State would take account of the migrant lawyers' professional experience in the host Member State and their attendance at lectures or seminars on the host Member States' law, including the rules regulating professional practice and conduct. Contrary to the Commission, which sought to limit the right to practise under the Home Country professional title to a period of five years, the EP wanted the right to practise to be on a permanent basis. The competent authority of the host Member State which registers the lawyer must ask the competent authority of the home Member State for an attestation certifying that the lawyer concerned fulfils the conditions of honour, honorability and probity pertaining to the duties of a lawyer. With regard to joint practice, Parliament considered that the host Member State could refuse to allow a lawyer to practise in its territory if the capital of the grouping is held, the name under which it practices is used or the decision-making power is exercised by persons who do not have the status of lawyer. Moreover, where the fundamental rules governing a grouping of such lawyers are incompatible with the rules in force in the host Member State, the host Member State may oppose the opening of a branch or agency within its territory. Parliament also wished to exclude lawyers holding a ministerial office from the scope of the directive. Finally, lawyers practising under their home-country titles should be able, at their request, to be exempted from the requirement to join the social security scheme for lawyers of the host Member State, provided they can prove they are members of an equivalent social security scheme for lawyers in their Member State of origin.

# 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.

# Lawyers: practice of the profession on a permanent basis

1994/0299(COD) - 24/07/1997 - Council position

The common position taken over Parliament's main amendments, accepted by the Commission in its amended proposal, particularly those concerning the permanent nature of establishment under the home-country professional title and the replacement of the aptitude test by a procedure for the verification of professional qualifications. The common position does not include the amendments which oblige the host Member State to allow salaried practice, except in matters where lawyers represented or defended in the administration of justice the enterprise that employed them. The Commission also rejected the amendments on the inclusion of Dutch 'procureurs', a proof of good repute and social security. The new provisions introduced by the Council related mainly to access to the supreme courts and to information on disciplinary procedures extended to the home Member State. The Commission also requested to present a report after an initial implementing period of ten years from the entry into force of the Directive. The amendments, which were confined to clarifying the rules already laid down, differ little from Parliament's opinion and relate to the acquisition of the professional title of the host Member State and joint practice. Some minor amendments were also taken to take account of developments in the profession in Italy, compliance with the procedural rules and the fact that certain Member States permit the participation of family members in groupings of lawyers.