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

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

of 16 February 1998

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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 modifiy 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;

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(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 possesses 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;

(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;

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(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 excercise by lawyers of freedom to provide services[(5)]; 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[(6)];

(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 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

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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
[F1Bulgaria	Адвокат**]**
[F2Czech Republic	Advokát**]**
Denmark	Advokat
Germany	Rechtsanwalt
[F2Estonia	Vandeadvokaat**]**
Greece	Δικηγόρος
Spain	Abogado/Advocat/Avogado/Abokatu
France	Avocat
[F3Croatia	Odvjetnik/Odvjetnica**]**
Ireland	Barrister/Solicitor
Italy	Avvocato
[F2Cyprus	Δικηγόρος
Latvia	Zvērināts advokāts
Lithuania	Advokatas**]**

Luxembourg	Avocat
[F2Hungary	Ügyvéd
Malta	Avukat/Prokuratur Legali]
Netherlands	Advocaat
Austria	Rechtsanwalt
[F2Poland	Adwokat/Radca prawny]
Portugal	Advogado
[F1Romania	Avocat]
[F2Slovenia	Odvetnik/Odvetnica
Slovakia	Advokát/Komerčný právnik]
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 salarial 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.

Textual Amendments

F1 Inserted by Council Directive 2006/100/EC of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania.

F2 Inserted by Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded.