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The Proposal for a Directive on the Right of Establishment for Lawyers in the European Community

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Abstract

This Commentary concerns the initiative of the Council of the Bars and Law Societies of the European Community to codify the right of establishment for lawyers. I would first like to give a short summary of the historical background, without which it would be rather difficult to understand the meaning of the CCBE's Draft Directive on the Right of Establishment for Lawyers. Then, without going into the technicalities of the text, I would like to summarize the content of the draft. Finally, I would like to say a few words about the present situation concerning the Draft Directive.

THE PROPOSAL FOR A DIRECTIVE ON THE RIGHT OF ESTABLISHMENT FOR LAWYERS IN THE EUROPEAN COMMUNITY

*Heinz Weil**

INTRODUCTION

This Commentary concerns the initiative of the Council of the Bars and Law Societies of the European Community ("CCBE") to codify the right of establishment for lawyers. I would first like to give a short summary of the historical background, without which it would be rather difficult to understand the meaning of the CCBE's Draft Directive on the Right of Establishment for Lawyers (the "Draft Directive").¹ Then, without going into the technicalities of the text, I would like to summarize the content of the draft. Finally, I would like to say a few words about the present situation concerning the Draft Directive.

I. FREEDOM OF ESTABLISHMENT, AND LAWYERS' FREEDOM TO PROVIDE SERVICES

The legal and historical framework for the freedom of establishment for lawyers centers on the Treaty of Rome ("EEC Treaty" or "Treaty"), which created the European Economic Community ("EEC") in 1957.² The EEC Treaty contains two provisions that are of particular relevance for lawyers. First, Article 52 of the Treaty abolishes in progressive stages nationality-based restrictions on the freedom of establishment for

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1. Draft Directive on Right of Establishment for Lawyers (Apr. 1990) [hereinafter Draft Directive]. The Draft Directive is reproduced in the Appendix to this Commentary.

2. See Treaty Establishing the European Economic Community, Mar. 25, 1957, 1973 Gr. Brit. T.S. No. 1 (Cmd. 5179-II), 298 U.N.T.S. 3 (1958) [hereinafter EEC Treaty or Treaty].

Community nationals.³ According to Article 52, the nationals of one Member State have the right to "take up and pursue activities as self-employed persons" and to "manage undertakings" in another Member State (the "host state") under the same conditions that apply to nationals of the host state.⁴

Second, Article 59 concerns the rendering of occasional services.⁵ It abolishes restrictions on the right to provide services within the Community in progressive stages. Under Article 59, a Community national may travel to another Member State to provide services on a temporary basis.⁶

In addition to the Treaty itself, the jurisprudence of the Court of Justice of the European Communities and subsequent legislation help complete the legal framework for the freedom of establishment for lawyers. The transitional period to which both Article 52 and Article 59 refer expired on January 1, 1970.⁷ Contrary to what the drafters of the Treaty probably hoped or intended, by 1970 no directives or other legislation had implemented any freedoms to establish oneself or to render services as a lawyer in another Member State.⁸ The

3. *Id.* art. 52.

4. *Id.* Article 52 provides in part that restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period. . . . Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings . . . under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

Id.

For the purposes of this Commentary, "home state" refers to the Member State in which a lawyer is admitted to the legal profession, and "host state" refers to the Member State in which a lawyer exercises his right of establishment.

5. *Id.* art. 59. Article 59 provides in part that "restrictions on freedom to provide services within the Community shall be progressively abolished." *Id.* Article 60 adds that "the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals." *Id.* art. 60.

6. *Id.* art. 59.

7. *See id.* art. 8.

8. *But cf.* Council Directive No. 67/43, 10 J.O. 140 (1967), O.J. Eng. Spec. Ed. 1967, at 3 (concerning attainment of freedom of establishment and freedom to provide services for self-employed persons); General Programme for Abolition of Restrictions on Freedom of Establishment, 2 J.O. 36 (1962), O.J. Eng. Spec. Ed. 1974, IX, at 7; General Programme for the Abolition of Restrictions on Freedom to Provide Services, 2 J.O. 32 (1962), O.J. Eng. Spec. Ed. 1974, IX, at 3.

concerns at the time were the following: Are these provisions now directly applicable? Do they grant rights and freedoms to individuals?

The European Court of Justice was first called upon to address the issue of the free establishment of lawyers in 1974. The Court of Justice held that individual lawyers could rely on both Article 52, regarding establishment, and Article 59, regarding services, to protect their right to practice law in other Member States, even absent implementing legislation.⁹ In subsequent cases regarding lawyers, the Court never had to decide—or at least never wanted to decide—whether a right to establish under home title existed, although the Court tended toward a liberal interpretation of the right to establishment.¹⁰

In 1977, the Council of Ministers finally issued the first

9. See *Johannes Henricus Maria van Binsbergen v. Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid*, Case 33/74, [1974] E.C.R. 1299, [1975] 1 C.M.L.R. 298; *Jean Reyners v. Belgium*, Case 2/74, [1974] E.C.R. 631, [1974] 2 C.M.L.R. 305. In *Reyners*, the Court of Justice determined that freedom of establishment was fully attained at the end of the transitional period, despite an absence of certain implementing legislation required by the Treaty. *Id.* at 649, [1974] 2 C.M.L.R. at 325. In particular, Article 52 in conjunction with Article 7 prohibits discrimination based on nationality in the area of establishment. *Id.*; see EEC Treaty, *supra* note 2, arts. 7 (prohibiting discrimination), 52. Moreover, the Court held that Article 55, which allows an exception to the right of establishment for activities involving “the exercise of official authority,” cannot be applied so broadly as to exclude establishment for the entire legal profession. *Reyners*, [1974] E.C.R. at 655, [1974] 2 C.M.L.R. at 329; see EEC Treaty, *supra* note 2, art. 55.

In *van Binsbergen*, decided a few months after *Reyners*, the Court of Justice determined that a requirement that lawyers be permanently established within the Member State where services are to be provided was incompatible with the Article 59 guarantee of the free exchange of services. *Van Binsbergen*, [1974] E.C.R. at 1310, [1975] 1 C.M.L.R. at 313. According to the Court, although specific requirements on lawyers’ qualifications justified by the “general good” did not conflict with Community law, a Member State could not apply such restrictions so broadly as to exclude the entire non-domestic legal profession from practice. *Id.* at 1309-10, [1975] 1 C.M.L.R. at 312-13. The Court stated that Articles 59 and 60

must be interpreted as meaning that the national law of a Member State cannot, by imposing a requirement as to habitual residence within that State, deny persons established in another Member State the right to provide services, where the provision of services is not subject to any special condition under the national law applicable.

Id. at 1312, [1975] 1 C.M.L.R. at 315.

10. See, e.g., *Ordre des Avocats au Barreau de Paris v. Onno Klopp*, Case 107/83, [1984] E.C.R. 2971, [1985] 1 C.M.L.R. 99 (finding French requirement that lawyer be established in single Member State incompatible with Community law); *Jean Thierry v. Conseil de l'ordre des avocats à la Cour de Paris*, Case 71/76, [1977] E.C.R. 765, [1977] 2 C.M.L.R. 373 (finding that national authorities must apply na-

directive concerning lawyers, the Council Directive to Facilitate the Effective Exercise by Lawyers of Freedom to Provide Services (the "Lawyers Directive").¹¹ This directive facilitated somewhat the effective exercise of the right of a lawyer to practice in a Member State other than his own.¹²

The Lawyers Directive addressed only the issue of the rendering of services in another Member State, not the right to establish.¹³ It was not until 1988 that the Council issued a directive on the recognition of higher education diplomas (the "Diploma Directive"),¹⁴ which applies to all liberal professions. It contains, however, one particular provision that concerns lawyers exclusively. This provision states that the host state has the right to impose either an adaptation period or an aptitude test on migrant lawyers coming from other Member States.¹⁵

tional rules in accordance with general Treaty objective of encouraging freedom of establishment).

See generally Julian Lonbay, *Picking Over the Bones*, 16 EUR. L. REV. 507 (1991) (discussing lawyers' right of establishment and Irene Vlassopoulou v. Ministerium für Justiz, Bundes- und Europaan-gelegenheiten Baden-Württemberg, Case C-340/89 (Eur. Ct. J. May 7, 1991) (not yet reported)).

11. Council Directive No. 77/249, O.J. L 78/17 (1977) [hereinafter *Lawyers Directive*].

12. *See infra* note 14. The need to implement a Lawyers Directive is surprising for European lawyers who generally believe that one either does or does not have a right to practice. Normally, a separate text is not needed to facilitate the effective exercise of an existing right. Consequently, the need for supplementary legislation implementing specific rights for specific professions shows the ambiguity of the situation in the Community.

The Court of Justice has held that a person who is a national of two Member States and has been admitted to the legal profession in one may rely on the Lawyers Directive in the other Member State, when the person satisfies the Lawyers Directive's conditions for application. *Claude Gullung v. Conseils de l'ordre des avocats du barreau de Colmar et de Saverne*, Case 292/86, [1988] E.C.R. 111, 136, [1988] 2 C.M.L.R. 57, 71-72.

13. *Lawyers Directive*, *supra* note 11, art. 1(1), O.J. L 78/17, at 17 (1977). Article 1(1) of the Directive states that "[t]his Directive shall apply, within the limits and under the conditions laid down herein, to the activities of lawyers pursued by way of provision of services." *Id.*

14. Council Directive No. 89/48, O.J. L 19/16 (1989) [hereinafter *Diploma Directive*].

15. *Id.* The directive states that

[w]hereas . . . the nature of certain professions is such that Member States must be allowed to prescribe, under certain conditions, either the adaptation period or the test; whereas, in particular, the differences between the legal systems of the Member States . . . warrant special provisions since, as a rule, the education or training attested by the diploma . . . in a field of law in

How did the legal profession react to this framework? The majority of the members of the legal professions is of rather a conservative nature, as is the base of the bars. It took some time until the bars realized that something completely new had happened in Europe, that perhaps these provisions were also applicable to lawyers, and that perhaps lawyers now had the right to move from one Member State to another in order to practice their profession.

II. THE ORIGINS AND CONTENTS OF THE DRAFT DIRECTIVE ON THE RIGHT OF ESTABLISHMENT FOR LAWYERS

In 1966, twelve years after the Treaty was signed, the bars of the original six Member States decided to create a common body. They created the CCBE, which at that time had the more modest name of "Consultative Committee." It took some time for this new body to become aware of the fact that the bars had to face the issue of the establishment of lawyers in another Member State. Finally, in the early 1980s, after many years of work, the CCBE wrote its first draft directive.¹⁶ It became known, after some amendments, as the "Athens Draft." This first draft was based on the following generally accepted principles of the time.

The profession at that time recognized, or accepted, that a lawyer could practice in another Member State in two ways. The first was for the lawyer to become a full member of the bar of the host state, as would a national of that state. This entailed that the lawyer attend a university in the host state and pass the bar examinations. The only assurance that this method offered to foreign lawyers, therefore, was that a host state would not prevent a national of another Member State from entering the legal profession in the host state.

the Member State of origin does not cover the legal knowledge required in the host Member State with respect to the corresponding legal field.

Id., pmb., at 17.

16. Draft Directive—Right of Establishment—Lawyers—Athinai (May 1982) [hereinafter Athens Draft]. For a more detailed analysis of the Athens Draft, see Roger J. Goebel, *Professional Qualification and Educational Requirements for Law Practice in a Foreign Country: Bridging the Cultural Gap*, 63 TUL. L. REV. 443, 499-503 (1989) and LINDA S. SPEDDING, *TRANSNATIONAL LEGAL PRACTICE IN THE EEC AND THE UNITED STATES* 156-68 (1987).

The second method facilitates what we call establishment under home title.¹⁷ This refers to individuals who establish themselves as members of the legal profession in their home state, and then travel to a host state. The primary discussion at the time revolved around a determination of the capacity of lawyers to follow this practice. Should a lawyer be allowed to give legal advice with respect to the law of the host state? Should a lawyer be allowed to go to court in the host state, or should a lawyer be permitted to engage in what we call “notarial activities,” such as the preparation of documents for the administration of estates or the transfer of land? Ultimately, because many lawyers expressed numerous reservations about the Athens Draft, the CCBE never voted on it.

Individual lawyers—and I must confess, I am one of these lawyers—did not wait until the bars of the Member States finally reached an agreement. They established themselves in other Member States, as I did in France. This created a practical problem that the bars of the various Member States needed to confront. More and more lawyers, many of whom were individual lawyers and not members of large firms, began to establish themselves in other Member States, particularly in large cities.

Despite these developments, the bars of the Member States continued to recognize the possibility of establishment only by two methods: either by following the same route as lawyers in the host state or by home title. In 1985, the French bar departed from this traditional concept and developed a radically different approach. The French bar suggested that all lawyers practicing at the same place should have the same rights, the same duties, and the same professional status, thus eliminating different categories of lawyers. This approach recommended that host lawyers should encourage the integration of migrant lawyers.

With both the new French concept and the traditional approach in mind, the CCBE again tried to reach a solution. Because of the complexity of the issues involved, four so-called experts were appointed. I was honored with the appointment as one of these experts, as was my good friend and present First Vice President of the CCBE, John Toulmin. First, we pre-

17. Athens Draft, *supra* note 16, art. 3.

pared two different draft directives for discussion. One reflected the British position, which suggested that the migrant lawyer remain under the control of the professional body of his home state because each Member State had distinct rules and requirements for the legal profession. The other reflected the French approach described above.

Eventually, we reached a compromise that resulted in the most recent Draft Directive.¹⁸ This Draft Directive is based on a number of general considerations and underlying motivations. First, in our view, the free movement of lawyers is an important part of the free movement of persons and undertakings in the Community in general, and will become even more important upon the integration of the European market in 1992.¹⁹ It would not be in the interest of the legal profession to remain behind this general movement.

We also considered that because of the Lawyers Directive adopted in 1977, lawyers qualified in one Member State should have the right to provide professional services in another Member State.²⁰ Moreover, there was no reason this right to provide services on a temporary basis should not extend to the right to establishment. This assertion was supported by the 1988 Diploma Directive, which said that Member States must recognize lawyers' qualifications to practice,²¹ and the progressive harmonization through the CCBE's Common Code of Conduct for Lawyers in the European Community, which facilitates free movement.²² Finally, we thought that it was in the interest of the profession to be as competitive as possible with other professions.²³

In addition to considering these factors, as well as the broad support for the right to establish under home title, we

18. See Draft Directive, *supra* note 1. The CCBE's unanimous adoption in 1988 of a Common Code of Conduct helped make this compromise possible. See CODE OF CONDUCT FOR LAWYERS IN THE EUROPEAN COMMUNITY (1988) [hereinafter CCBE CODE]. The CCBE Code is reproduced in John Toulmin, *A Worldwide Common Code of Professional Ethics?*, 15 FORDHAM INT'L L.J. 673 app. (1991-1992).

19. See generally Single European Act, O.J. L 169/1 (1987), [1987] 2 C.M.L.R. 741 (amending EEC Treaty, *supra* note 2).

20. See generally Lawyers Directive, *supra* note 11, O.J. L 78/17 (1977).

21. See generally Diploma Directive, *supra* note 14, O.J. L 19/16 (1989).

22. See generally CCBE CODE, *supra* note 18.

23. For example, accountants play an important role in providing legal advice in certain European states.

recognized as a basic principle of our self-regulated profession that all lawyers practicing at the same place should be subject to the same professional obligations, rules, incapacities, and incompatibilities. We decided that host state bars should exercise disciplinary control because we believed that only an authority in the place where the lawyer has his professional practice could exercise effective control.

On the other hand, we were very well aware of the fact that Member States can use professional rules as a means of protectionism. That is why we thought that the freedom of establishment and services provided for in Community law supports the Draft Directive's purpose.²⁴

These are the underlying considerations of the Draft Directive. Although I will not go into all the details of the Draft Directive, several provisions deserve comment. One important provision establishes two categories of lawyers. Article 1 provides that the "integrated lawyer" is a fully qualified member of the profession of the host state and has acceded to this profession normally, by virtue of his education or having taken a bar examination, or under the Diploma Directive.²⁵ Article 1 also provides that a "registered lawyer" chooses to establish himself under home title.²⁶ The Draft Directive specifies that no other category of lawyers other than these two shall exist.²⁷ More of the provisions in the Draft Directive apply to registered lawyers than to integrated lawyers because the integrated lawyer is a full member of the profession of the host Member State.²⁸

Articles 2 through 4 contain general provisions applicable to integrated and regulated lawyers.²⁹ Under the Draft Directive, any lawyer can establish himself as an integrated or regis-

24. See EEC Treaty, *supra* note 2, arts. 52, 59; see also *supra* notes 7-15 and accompanying text (discussing Community legislation and case law regarding freedom of establishment and services).

25. See Draft Directive, *supra* note 1, art. 1(2)(e) (providing for lawyer to establish oneself as lawyer of host Member State in accordance with provisions of Diploma Directive); see also Diploma Directive, *supra* note 14, O.J. L 19/16 (1989).

26. See Draft Directive, *supra* note 1, art. 1(2)(f) (providing that lawyer may remain lawyer of his home Member State, and establish himself in host Member State without becoming lawyer of host Member State).

27. *Id.* art. 2.

28. *Id.* art. 1(2)(e).

29. *Id.* arts. 2-4.

tered lawyer.³⁰ In addition to conferring these basic rights, the Draft Directive imposes requirements concerning the notification and registration in the host state of all registered lawyers.³¹ Article 5 provides that a lawyer going from one Member State to another has the duty to register with the bar of the host state.³² The lawyer may do so subject to one exception, a quite natural one, which proscribes such registration when a lawyer displays a "lack of dignity, honour and integrity."³³ The right to be registered includes the right to be mentioned in an official list or roll where such a list or roll exists.³⁴ It also implies a right of appeal against a refusal to be permitted to register.³⁵

This system can only function properly with extensive cooperation between the bar of the home state and the bar of the host state. The text of the Draft Directive provides for such cooperation, particularly regarding issuance of certificates of standing.³⁶

The next provision, article 6, concerns activities reserved to lawyers of the host state,³⁷ which in previous years had sparked much discussion. We attempted to bring an end to this long debate, considering that there is no reason that an established lawyer should have fewer rights than a lawyer rendering services under the Lawyers Directive. We considered that a lawyer established in a host state has even closer links with the state in which he is working than the lawyer coming only occasionally to the host state. A major principle we considered in drafting article 6 also appears in our Common Code of Conduct.³⁸ The principle states: "A lawyer shall not handle a matter which he knows or ought to know he is not competent to handle, without co-operating with a lawyer who is competent to handle it."³⁹ Applying this rule, we saw no reason to prevent a lawyer from giving advice in the law of the host state.

30. *Id.* arts. 3-4.

31. *Id.* art. 5.

32. *Id.* art. 5(1).

33. *Id.*

34. *Id.* art. 5(2).

35. *Id.* art. 5(1).

36. *Id.*

37. *Id.* art. 6.

38. See CCBE CODE, *supra* note 18, Rule 3.1.3.

39. *Id.*

If he knows the law of the host state sufficiently well, he can give advice in the host state. If he does not have sufficient knowledge, he has to work with a colleague who has this knowledge. This principle is common to all Member States, so all Community lawyers should be familiar with it.⁴⁰

The result of such deliberation is that the Draft Directive does not prohibit the giving of advice on local law. It allows the lawyer from one Member State to participate in proceedings before a court in the host state in conjunction with a fully qualified lawyer of that host state.⁴¹ The Draft Directive, however, continues to exclude notarial activities.⁴²

Articles 8 through 10 address the rules of conduct and disciplinary proceedings.⁴³ As I have already said, the rules of conduct applicable to the registered lawyer are the same as the rules applicable to the integrated lawyer.⁴⁴ These rules must be consistent with our Common Code of Conduct and with the EEC Treaty.⁴⁵ Moreover, they have to be objectively justified in the interest of public policy so that they do not become a disguised form of protection for the domestic legal profession.⁴⁶ The Draft Directive also includes provisions to eliminate both the lawyer's obligation to subscribe to double insurance for professional liability and the need to adhere to two separate protection schemes for clients' funds.⁴⁷

The Draft Directive grants to the host state bar competence to conduct disciplinary proceedings, but the home state bar can require that a case be brought before a mixed panel consisting of three representatives of the host state bar and two representatives of the home state bar.⁴⁸ However, the decision of the host state bar affects only the practice in the host

40. In the area of services, a national legislature may lay down a general framework for cooperation between a lawyer providing services and a local lawyer, but the obligations it imposes on the local lawyer "must not be disproportionate in relation to the objectives of the duty to work in conjunction." *Commission v. Germany*, Case 427/85, [1988] E.C.R. 1123, 1161, [1989] 2 C.M.L.R. 677, 706.

41. See Draft Directive, *supra* note 1, art. 6(2).

42. *Id.* art. 6(1)(b), (c).

43. *Id.* arts. 8-10.

44. *Id.* art. 8(1).

45. *Id.* art. 8(1), (2).

46. *Id.* art. 8(2).

47. *Id.* art. 8(3).

48. *Id.* arts. 9(1), 10(2).

state.⁴⁹ This system, again, requires a great amount of cooperation between the two bars.

The last important provision in the Draft Directive concerns practice in association, or firm practice.⁵⁰ The Draft Directive provides for the freedom to open branch offices, as is already granted under Article 52 of the EEC Treaty.⁵¹ The lawyer who is a member of a firm in the home state and wishes to establish in another Member State must choose to establish either as a member of his firm or individually in the host state.⁵² Thus, for example, a French *avocat* cannot act as a member of his firm in Hamburg while acting as an individual in Stuttgart.

The Draft Directive provides that the establishment of a firm in a Member State implies the right to use the name of the firm.⁵³ The firm may be structured in the form required by the host state, regardless of whether lawyers coming from the home state or from other Member States work within this office.⁵⁴ The Draft Directive imposes a duty to inform the host state of the membership of the firm, the name of the firm, the place of business, and its legal form.⁵⁵ Finally, the Draft Directive grants the host state the right to refuse the establishment of an office of the firm if the lawyers do not control the firm's decision-making power.⁵⁶

What is the present status of the Draft Directive within the CCBE? According to the by-laws of the CCBE, a majority of ten out of twelve delegations is necessary to adopt a proposal. In May 1991, eight delegations voted in favor of the Draft Directive, three voted against it (France, Luxembourg, and Spain), and one abstained (Greece). Delegations opposed to the Draft Directive had difficulty accepting the provision that allows for two types of lawyers, the integrated lawyer and the registered lawyer, to practice at the same firm. Prior to this vote, the CCBE informally contacted the European Commis-

49. *Id.* art. 10(6).

50. *Id.* art. 11.

51. *Id.* art. 11(1); see EEC Treaty, *supra* note 2, art. 52.

52. Draft Directive, *supra* note 1, art. 11(1).

53. *Id.* art. 11(5).

54. *Id.* art. 11(3).

55. *Id.* art. 11(4).

56. *Id.* art. 11(6).

sion. The Commission's reaction to the Draft Directive was favorable then, and continues to be favorable now.

Most recently, the French delegation made a new proposal in order to reach a compromise. The delegation would accept a lawyer's establishment under home title, but limited to a period of three years. Commencing with the fourth year, the lawyer automatically would become, without passing an aptitude test, a fully integrated member of the local profession.

CONCLUSION

The CCBE's Draft Directive marks a major step within the European Community to set uniform rules to further enable lawyers to effectively provide legal services. One of its underlying motivations is the furtherance of the integration of the European market. To accomplish this end, the Draft Directive seeks to apply the principles of the freedom of establishment and services to the legal profession.

Since the issuance of the Lawyers Directive in 1977, the Community has debated various principles and rules concerning the legal profession. The need to implement the right of establishment for lawyers continues to gain importance as the Community's integration draws near. The Draft Directive attempts to further the ability of lawyers to serve their clients effectively, and also to adhere to common principles that would assist lawyers in establishing themselves as professionals throughout the European Community.

APPENDIX

CCBE DRAFT DIRECTIVE ON RIGHT OF
ESTABLISHMENT FOR LAWYERS*Article 1**Sphere of Application—Definitions*

1. This Directive shall apply, within the limits and under the conditions laid down herein, to the activities of lawyers pursued in the exercise of their right of establishment.

2. For the purposes of this Directive the following definitions shall apply:

a: "Lawyer" means a national of a Member State who has the right to carry on his professional activities in a Member State ("the home Member State"), that right being certified by the competent authority of this Member State, under one of the following professional titles (hereinafter called "home titles"):

in Belgium:	Avocat/Advocaat/Rechtsanwalt
in Denmark:	Advokat
in France:	Avocat
in Germany:	Rechtsanwalt
in Greece:	Dikigoros
in Ireland:	Barrister, Solicitor
in Italy:	Avvocato
in Luxembourg:	Avocat—Avoué/Rechtsanwalt
in the Netherlands:	Advocaat
in Portugal:	Advogado
in Spain:	Abogado
in the United Kingdom:	Advocate, Barrister, Solicitor

b: "Home Member State" means the Member State in which a lawyer was admitted to the profession under one of the designations listed in paragraph (a).

c: "Host Member State" means the Member State in which a lawyer exercises his right of establishment in accordance with the provisions of Article 3 or 4.

d: "Established lawyer" means a lawyer of a home Member State who is already established or who establishes himself in the territory of another Member State ("the host Member State") whether as an integrated lawyer or as a registered lawyer.

e: "Integrated lawyer" means an established lawyer who has established himself as a lawyer of a host Member State in accordance with the provisions of Directive 89/48/EEC on the Mutual Recognition of Diplomas or otherwise, whether he established himself before or after the coming into effect of this Directive.

f: "Registered lawyer" means an established lawyer who, while remaining a lawyer of his home Member State, has established himself in a host Member State without becoming a lawyer of the host Member State, in accordance with Article 4 hereof, whether he established himself before or after the coming into effect of this Directive.

g: "Competent authority" means, according to the context, the professional organisation(s) or authority(ies) of the Member State concerned responsible for laying down, in that State, the conditions for admission to the profession of lawyer, the conditions for the pursuit of that profession, the conditions for education and training of lawyers, the maintenance of the Roll, the laying down of rules of professional conduct and the administration of discipline of lawyers.

h: For the purpose of this Directive the term "practice in association" refers to any situation, whatever its legal form, in which two or more lawyers (hereinafter "associates") practise law jointly on a permanent basis, presenting themselves to the public as practising in association (hereinafter "the association").

i: "Rules of the Common Code of Conduct" mean the rules of professional conduct governing cross border activities of lawyers of different Member States within the EEC, contained in a Common Code of Conduct, to be adopted from time to time by the CCBE.

Article 2

Established Lawyers

Each Member State recognizes as a lawyer any lawyer established on its territory in accordance with this Directive either as an integrated lawyer or as a registered lawyer. A lawyer shall only establish himself in another Member State either as an integrated lawyer or as a registered lawyer.

*Article 3**Integrated Lawyers*

Any lawyer has the right to establish himself as an integrated lawyer in one or more host Member States.

The competent authority of the host Member State shall inform the competent authority of the home Member State of the fact of establishment of any integrated lawyer of the home Member State within its jurisdiction.

*Article 4**Registered Lawyers*

Any lawyer has the right to establish himself as a registered lawyer in one or more host Member States in accordance with the provisions of this Directive.

*Article 5**Notification and Registration of Registered Lawyers*

1. A lawyer whether already established or wishing to establish himself as a registered lawyer in another Member State shall notify the competent authority in that State and also the competent authority of the home Member State. He shall give evidence to the competent authority of the host Member State of his enrolment [sic], of his right to practise the profession of lawyer in the home Member State, and that there is no known impediment to his right to practise by reason of lack of dignity, honour and integrity, in the form of a certificate by the competent authority of the home Member State. A lawyer practicing in association shall also notify the competent authorities about the information required by Article 11 of this Directive.

The competent authority of the home Member State shall assist the competent authority of the host Member State in checking and in verifying from time to time the accuracy of such information.

The competent authority of the host Member State shall register the lawyer upon receipt of the evidence referred to above.

The Member States shall take or maintain the necessary measures to ensure that legal recourse is open to the lawyer

concerned against any refusal to register by the competent authority.

2. The competent authorities of the Member States shall maintain a list of registered lawyers established within their jurisdiction. Where an authority draws up and/or publishes an official list of lawyers, it shall include in it the names of registered lawyers.

3. The competent authority of the host Member State shall inform the competent authority of the home Member State concerned of the fact of establishment of any registered lawyer of the home Member State within its jurisdiction.

4. Where in a Member State the competent authority is limited to a special territory, level of Court, or membership of a distinct branch of the legal profession, the lawyer who wishes to establish himself in a host Member State must choose in accordance with the professional rules of that State the competent authority with which he wishes to register.

5. In the application of the previous paragraph in the United Kingdom, an Irish barrister must, in every case, notify his choice to the competent authority for the profession of barrister or advocate; an Irish solicitor must, in every case, notify his choice to the competent authority for the profession of solicitor. In the application of the previous paragraph in Ireland, a barrister or advocate of the United Kingdom must, in every case, notify his choice to the competent authority for the profession of barrister; a solicitor of the United Kingdom must, in every case, notify his choice to the competent authority for the profession of solicitor.

Article 6

Activities Reserved to Lawyers of a Host Member State

1. The Member States may exclude registered lawyers from the following activities, only:

a. save to the extent permitted in Article 6.2 representation and/or defence of a client in legal proceedings or before national public authorities to the extent that such activities are reserved to lawyers of the host Member State;

b. the preparation of formal documents for obtaining title to administer estates of deceased persons;

c. the drafting of formal documents creating or transferring interests in land.

2. To the extent that in the Member State concerned the activities of representation and/or defence of a client in legal proceedings are reserved for lawyers of that State, a host Member State shall permit a registered lawyer to carry on such activities to the extent permitted in the case of lawyers performing occasional services in the host Member State by Council Directive No. 249 of 22 March 1977 provided such a lawyer works in conjunction with a lawyer of that State who practises before the judicial authority in question and who would, where necessary, be answerable to that authority, or with an "avoué", "procuratore" (or procureur) practising before it.

Article 7

Professional Title

1. An integrated lawyer shall be obliged to carry on his professional activities under his proper professional titles of his home Member State and of the Member State(s) in which he is established as an integrated lawyer.

2. A registered lawyer shall be obliged to carry on his professional activities under his proper professional title of his home Member State, expressed in the language or one of the languages of that State, with an indication of the professional organisation by which he is authorised to practise or the court of law before which he is entitled to practise pursuant to the laws of that State. He shall also avoid any possibility of confusion with the lawyers of the host Member State.

Article 8

Rules of Conduct, applicable to Registered Lawyers

1. Without prejudice to the obligations incumbent upon him in his home Member State the registered lawyer shall, subject to the provisions of this directive, for all his activities in the host Member State, be subject to the same obligations, professional rules, incapacities and incompatibilities as the lawyers of the host Member State, to the extent that they are not inconsistent with the Common Code of Conduct.

2. The competent authority shall ensure that the obliga-

tions, professional rules, incapacities and incompatibilities mentioned in the previous paragraph are applied in accordance with the rules of the Common Code of Conduct and in accordance with the objective defined by the provisions of the Treaty relating to freedom of establishment and to the extent that compliance with them is objectively justified by the public interest.

3. Where the registered lawyer is bound by the rules of the home Member State to make or contribute to arrangements for the safeguarding of clients' interests by way of professional indemnity insurance, safeguarding clients' money or otherwise the competent authority of the host Member State shall ensure that appropriate derogations are made from equivalent arrangements under the rules governing lawyers of the host Member State for the purpose of avoiding duplication.

4. To the extent to which a registered lawyer is performing professional activities in connection with institutions of the European Economic Communities or the Council of Europe such lawyer shall only be subject to the obligations, professional rules, incapacities, incompatibilities and disciplinary control of his home Member State.

5. When the activities referred to in paragraph 1 are pursued in the United Kingdom, "rules of professional conduct of the host Member State" means the rules of professional conduct applicable to solicitors, where such activities are not reserved for barristers and advocates. Otherwise the rules of professional conduct applicable to the latter shall apply. However, barristers from Ireland shall always be subject to the rules of professional conduct applicable in the United Kingdom to barristers and advocates.

When these activities are pursued in Ireland, "rules of professional conduct of the host Member State" means, in so far as they govern the oral presentation of a case in court, the rules of professional conduct applicable to barristers. In all other cases the rules of professional conduct applicable to solicitors shall apply. However, barristers and advocates from the United Kingdom shall always be subject to the rules of professional conduct applicable in Ireland to barristers.

*Article 9**Disciplinary Proceedings*

1. In the event of non-compliance with the obligations imposed on a lawyer established in the host Member State, the competent authority of that State shall, subject to the provisions of this article, article 8,4 [sic], 8,5 [sic] and article 10, determine in accordance with its own rules and procedures the consequences of such non-compliance. However, that authority must permit the presence in the proceedings of a representative of the competent authority of the home Member State of the lawyer concerned. At his request, that representative shall be permitted to present his observations at the hearing.

2. In the event of a complaint against an established lawyer being accepted for adjudication by the competent authorities of the host Member State, those authorities shall immediately bring that fact to the notice of the competent authorities of the home Member State and shall inform them of the institution of any disciplinary proceedings and of any decision taken.

3. The competent authorities of the home Member State shall likewise inform the competent authorities of the host Member State of any decision taken concerning an established lawyer.

4. There shall be a right of appeal from the decision of the competent authority of the host Member State.

5. The provisions of this article are without prejudice to the right of competent authority of the home Member State to take any disciplinary measures in respect of any activities of a lawyer of a home Member State carried out in the host Member State.

6. An authority which is competent to impose disciplinary sanctions under art. 9 and 10 (including the panel to be set up under art. 10) shall be set up in such a way as to constitute a "court or tribunal" within the meaning of Article 177 of the Treaty.

*Article 10**Disciplinary Proceedings—Special Provisions for Registered Lawyers*

Supplementary to the provisions of article 9, for registered lawyers the following rules of procedure shall apply:

1. If the competent authorities of the host Member State are considering the institution of disciplinary proceedings against a registered lawyer, they shall first bring that fact to the notice of the competent authorities of the home Member State and provide full information on the specific breaches of obligations, which are alleged, and the nature of the case.

2. Within two months from the receipt of such notification the competent authority of the home Member State shall be entitled to require the competent authority of the host Member State to set up a mixed panel of representatives of the host Member State and the home Member State to hear and determine the case. Such panel shall consist of three representatives from the host Member State and two representatives from the home Member State.

3. The panel shall apply the rules of procedure and the sanctions of the host Member State, except that

a: the panel must permit a representative of the competent authority of the home Member State to be present and to make his observations at the hearing.

b: the panel shall endeavour to reach a unanimous decision, but in the event it is unable to do so the decision will be taken by majority, and if so members of the panel shall be entitled to give dissenting opinions and to require these to be recorded in the findings and the sentence.

4. The panel shall be convened, shall hear and decide upon the case within a reasonable time. The registered lawyer and the competent authority of the home Member State shall be given sufficient time to reply to the charge.

5. Pending a hearing before the panel the competent authority of the host Member State may take interim measures in urgent cases in accordance with the rules and procedures of the host Member State.

6. A decision of the competent authority of the host Member State can affect professional practice only within the jurisdiction of that authority. The competent authority of the

home Member State shall determine in accordance with its own rules and procedures the consequences of such decision.

7. If for any reason a registered lawyer is deprived temporarily or permanently of the right to carry on the profession in the home Member State such prohibition shall automatically carry with it, for that lawyer, the prohibition, temporary or permanent, against carrying on his profession as a registered lawyer in the host Member State.

Article 11

Practice in Association

1. Any lawyer practising in association in a home Member State in accordance with the rules of that Member State has the right to establish himself in a host Member State either as an individual lawyer or as a member of that association. He can establish himself only in one of these capacities.

One or more associates have the right to establish themselves as such in a host Member State, even if the law of the host Member State does not allow national lawyers of that state to practise in association with other lawyers provided that those who wish to practise in partnership in Ireland or the United Kingdom may only do so by qualifying as Solicitors pursuant to Article 3 or by notifying the relevant competent authority for the profession of Solicitor pursuant to Article 5 thereof. Otherwise the relevant provisions of this Directive shall apply.

2. Whenever in accordance with paragraph 1 a lawyer has established himself in a host Member State as an associate, he shall not cause or permit work to be done by his associates in the home Member State for the purpose of avoiding rules and principles of the host Member State.

3. Associations in the host Member State between registered lawyers from one or more different home Member States and between registered lawyers and lawyers of the host Member State shall be permitted by the host Member State under such terms as to form and substance as may be prescribed by the host Member State provided that this paragraph shall not apply where Ireland or the United Kingdom is the host Member State to Advocates, Barristers or those established lawyers registered with the Competent Authority for those professions.

The rules applicable to any such association created in a host Member State shall be determined by the law of that host Member State.

4. Any lawyer, practising in association in his home Member State, who establishes himself in a host Member State, shall, even if he intends to establish himself as a lawyer practising individually, notify the competent authority of the host Member State of the fact that in his home Member State he is practising law in association with other lawyers.

Any lawyer, practising in association in his home Member State and establishing himself as an associate in a host Member State, whether as an integrated or as a registered lawyer, must provide the competent authority of the host Member State with all information on the business name, the address and the legal nature of his association, and must notify in due time any subsequent changes to that information.

The competent authority of the host Member State may require the competent authority of the home Member State to verify such information.

5. Any lawyer practising in association in his home Member State and establishing himself as an associate in a host Member State, whether as an integrated or as a registered lawyer, may in the host Member State practise by using any business name, used by him and his associates as their business name in his home Member State. The competent authority of the host Member State may require the established lawyer to use that business name only when accompanied or followed by the name or the names of the lawyer or lawyers representing the association in that Member State.

6. The competent authority of a host Member State may decline to allow a lawyer practising in association to benefit from the provisions of this article, if the power to make decisions in the association is controlled by physical or legal persons, who are not lawyers, provided that according to national law of that host Member State the profession of lawyer may not be carried out by non-lawyers.

Article 12

Conventions

Conventions made between competent authorities may

define, organise and facilitate the exercise of the rights recognised by this Directive; provided that such conventions shall not have the effect of restricting such rights.

Article 13

The Member States shall designate, within the period provided for in Article 14, the competent authorities empowered to perform the functions and take the decisions referred to in this Directive. They shall communicate this information to the other Member States and to the commission [sic].

Article 14

Member States shall take the measures necessary to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

Member States shall communicate to the Commission the texts of the main provisions of national law in the field governed by this Directive.

Article 15

This Directive is addressed to the Member States.