

## COUNCIL DIRECTIVE

of 22 March 1977

to facilitate the effective exercise by lawyers of freedom to provide services

(77/249/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 and 66 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Whereas, pursuant to the Treaty, any restriction on the provision of services which is based on nationality or on conditions of residence has been prohibited since the end of the transitional period;

Whereas this Directive deals only with measures to facilitate the effective pursuit of the activities of lawyers by way of provision of services; whereas more detailed measures will be necessary to facilitate the effective exercise of the right of establishment;

Whereas if lawyers are to exercise effectively the freedom to provide services host Member States must recognize as lawyers those persons practising the profession in the various Member States;

Whereas, since this Directive solely concerns provision of services and does not contain provisions on the mutual recognition of diplomas, a person to whom the Directive applies must adopt the professional title used in the Member State in which he is established, hereinafter referred to as 'the Member State from which he comes',

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

1. This 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.

Notwithstanding anything contained in this Directive, Member States may reserve to prescribed categories of lawyers the preparation of formal documents for

<sup>(1)</sup> OJ No C 103, 5. 10. 1972, p. 19 and OJ No C 53, 8. 3. 1976, p. 33.

<sup>(2)</sup> OJ No C 36, 28. 3. 1970, p. 37 and OJ No C 50, 4. 3. 1976, p. 17.

obtaining title to administer estates of deceased persons, and the drafting of formal documents creating or transferring interests in land.

2. 'Lawyer' means any person entitled to pursue his professional activities under one of the following designations:

<i>Belgium:</i>	Avocat — Advocaat
<i>Denmark:</i>	Advokat
<i>Germany:</i>	Rechtsanwalt
<i>France:</i>	Avocat
<i>Ireland:</i>	Barrister Solicitor
<i>Italy:</i>	Avvocato
<i>Luxembourg:</i>	Avocat-avoué
<i>Netherlands:</i>	Advocaat
<i>United Kingdom:</i>	Advocate Barrister Solicitor.

*Article 2*

Each Member State shall recognize as a lawyer for the purpose of pursuing the activities specified in Article 1 (1) any person listed in paragraph 2 of that Article.

*Article 3*

A person referred to in Article 1 shall adopt the professional title used in the Member State from which he comes, expressed in the language or one of the languages, of that State, with an indication of the professional organization by which he is authorized to practise or the court of law before which he is entitled to practise pursuant to the laws of that State.

*Article 4*

1. Activities relating to the representation of a client in legal proceedings or before public authorities shall be pursued in each host Member State under the conditions laid down for lawyers established in that State, with the exception of any conditions requiring residence, or registration with a professional organization, in that State.

2. A lawyer pursuing these activities shall observe the rules of professional conduct of the host Member State, without prejudice to his obligations in the Member State from which he comes.

3. When these activities 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.

4. A lawyer pursuing activities other than those referred to in paragraph 1 shall remain subject to the conditions and rules of professional conduct of the Member State from which he comes without prejudice to respect for the rules, whatever their source, which govern the profession in the host Member State, especially those concerning the incompatibility of the exercise of the activities of a lawyer with the exercise of other activities in that State, professional secrecy, relations with other lawyers, the prohibition on the same lawyer acting for parties with mutually conflicting interests, and publicity. The latter rules are applicable only if they are capable of being observed by a lawyer who is not established in the host Member State and to the extent to which their observance is objectively justified to ensure, in that State, the proper exercise of a lawyer's activities, the standing of the profession and respect for the rules concerning incompatibility.

#### *Article 5*

For the pursuit of activities relating to the representation of a client in legal proceedings, a Member State may require lawyers to whom Article 1 applies :

- to be introduced, in accordance with local rules or customs, to the presiding judge and, where appropriate, to the President of the relevant Bar in the host Member State ;
- to work in conjunction with a lawyer who practises before the judicial authority in question and

who would, where necessary, be answerable to that authority, or with an 'avoué' or 'procuratore' practising before it.

#### *Article 6*

Any Member State may exclude lawyers who are in the salaried employment of a public or private undertaking from pursuing activities relating to the representation of that undertaking in legal proceedings in so far as lawyers established in that State are not permitted to pursue those activities.

#### *Article 7*

1. The competent authority of the host Member State may request the person providing the services to establish his qualifications as a lawyer.

2. In the event of non-compliance with the obligations referred to in Article 4 and in force in the host Member State, the competent authority of the latter shall determine in accordance with its own rules and procedures the consequences of such non-compliance, and to this end may obtain any appropriate professional information concerning the person providing services. It shall notify the competent authority of the Member State from which the person comes of any decision taken. Such exchanges shall not affect the confidential nature of the information supplied.

#### *Article 8*

1. Member States shall bring into force the measures necessary to comply with this Directive within two years of its notification and shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 9*

This Directive is addressed to the Member States.

Done at Brussels, 22 March 1977.

*For the Council*

*The President*

Judith HART