


# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive <a href="#">1994/0299(COD)</a>	Procedure completed
Lawyers: practice of the profession on a permanent basis	
Subject 2.40.01 Right of establishment	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>JURI</b> Legal Affairs, Citizens' Rights		26/07/1994
		PPE <a href="#">FONTAINE Nicole</a>	
	Former committee responsible		
	<b>JURI</b> Legal Affairs, Citizens' Rights		26/07/1994
		PPE <a href="#">FONTAINE Nicole</a>	
Council of the European Union	Council configuration	Meeting	Date
	Social Affairs	<a href="#">2060</a>	15/12/1997
	Budget	<a href="#">2026</a>	24/07/1997
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2007</a>	21/05/1997

Key events			
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	<a href="#">A4-0146/1996</a>	
18/06/1996	Debate in Parliament		Summary
19/06/1996	Decision by Parliament, 1st reading	T4-0338/1996	Summary
24/09/1996	Modified legislative proposal published	COM(1996)0446	Summary
24/07/1997	Council position published	<a href="#">08423/1/1997</a>	Summary
18/09/1997	Committee referral announced in Parliament, 2nd reading		

27/10/1997	Vote in committee, 2nd reading		Summary
27/10/1997	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A4-0337/1997</a>	
18/11/1997	Debate in Parliament		Summary
19/11/1997	Decision by Parliament, 2nd reading	T4-0548/1997	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

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

### Documentation gateway

Legislative proposal	<a href="#">COM(1994)0572</a> <a href="#">OJ C 128 24.05.1995, p. 0006</a>	21/12/1994	EC	Summary
Economic and Social Committee: opinion, report	<a href="#">CES0799/1995</a> <a href="#">OJ C 256 02.10.1995, p. 0014</a>	05/07/1995	ESC	Summary
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A4-0146/1996</a> <a href="#">OJ C 152 27.05.1996, p. 0005</a>	24/04/1996	EP	
Text adopted by Parliament, 1st reading/single reading	T4-0338/1996 <a href="#">OJ C 198 08.07.1996, p. 0068-0085</a>	19/06/1996	EP	Summary
Modified legislative proposal	COM(1996)0446 <a href="#">OJ C 355 25.11.1996, p. 0019</a>	24/09/1996	EC	Summary
Council position	<a href="#">08423/1/1997</a> <a href="#">OJ C 297 29.09.1997, p. 0006</a>	24/07/1997	CSL	Summary
Commission communication on Council's position	SEC(1997)1206	03/09/1997	EC	Summary
Committee recommendation tabled for plenary, 2nd reading	<a href="#">A4-0337/1997</a> <a href="#">OJ C 358 24.11.1997, p. 0004</a>	27/10/1997	EP	
Text adopted by Parliament, 2nd reading	T4-0548/1997 <a href="#">OJ C 371 08.12.1997, p. 0044-0059</a>	19/11/1997	EP	Summary

### Additional information

European Commission	<a href="#">EUR-Lex</a>
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## Lawyers: practice of the profession on a permanent basis

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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

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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

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In adopting the report by Mrs Nicole FONTAINE, the Committee on Legal Affairs gave its opinion on the three main themes contained in the proposal for a directive: - integration into the profession in the host Member State (Article 10): it proposed replacing the aptitude test to be integrated into the profession in the host Member State with an objective assessment. The competent authority in the host Member State would take account of the lawyer's professional experience in the host Member State together with his attendance at lectures or seminars on the law of the host Member States, including the rules regulating professional practice and conduct; - practising under the home-country professional title (Article 2): practising as a lawyer in the host Member State under the home-country professional title would not be limited to a certain period of time. In this respect, the European Court of Justice stated in its "Gebhard" ruling of 30 November that practising as a lawyer under the home-country professional title did not contravene the Treaty. The Committee on Legal Affairs felt that the competent authority in the host Member State where the lawyer had registered to practise should ask the competent authority in the home Member State to provide a certificate stating that the lawyer concerned fulfilled the conditions of honour, honourability and probity pertaining to the duties of a lawyer. The European Commission and the European Parliament's Committee on Legal Affairs considered that a lawyer practising under his home-country professional title should be subject to the rules on professional practice and conduct of the host Member State in respect of all the activities he pursued in its territory; - practise within a grouping (Article 11(5)): in this respect, the rapporteur preferred to take over the proposal of the CCBE (adopted unanimously) which strengthened the Commission's proposal by adding "holding of capital" and "name" to decision-making power. Further, if the fundamental rules governing a grouping of lawyers in the home Member State were incompatible with the rules in force in the host Member State, the host Member State could oppose the opening of a branch or agency within its territory; - other provisions: the Committee on Legal Affairs wished to exclude lawyers holding a ministerial office from the scope of the directive (for example, in France, lawyers pleading cases before the Supreme Administrative Court or Court of Cassation). ?

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The rapporteur, Mrs Fontaine (EPP, F), said that the ultimate objective of the directive aimed at facilitating the practice of the profession of lawyer was to compensate for the inadequacies of the general directive adopted in 1989, since in the course of the four years in which this directive had been in force only one significant case had been recorded of non home-country lawyers being given freedom to practise, and this had been in Luxembourg. Mrs Fontaine referred to the two criteria on which the amended directive would be based: objective assessment by the profession, and respect for the spirit and the letter of the Treaty as clarified by the recent legal precedent set by the Gebhard ruling. Among the measures featuring in the proposal the rapporteur referred in particular to the withdrawal of the aptitude test for those wishing to join the Bar in the host country and the opportunity for non-national lawyers to practise for an unlimited period under their home-country professional title, subject to the same professional rules and code of ethics of the host country. Finally, Mrs Fontaine pointed out that the new freedom that the directive would give to the profession of lawyer was essential if European legal practices were to compete with the major law firms operating outside the Community. Commissioner Monti declared that the Commission could accept the main amendments, including Amendment No 10 on the abolition of the five years of experience required before being allowed to practise under the home-country

professional title and Amendment No 24 on the aptitude test. This only left the secondary amendments that concerned matters of principle, namely Amendments Nos 7 and 9 (exclusion of lawyers holding ministerial office) and Amendments Nos 12 and 21 (obligation on the host country to allow exemption from the requirement to join the social security scheme). As regards the eight supplementary amendments, Mr Monti said that he could not accept them if they were incompatible with those that had been submitted by the Legal Affairs Committee: this was the case with Amendments Nos 29 to 33. In conclusion, the Commissioner cited some examples of the professional rules that had to be respected, namely the ban in certain Member States on operating two legal practices in their territory and the ban on certain activities that were detrimental to the independence of lawyers and to professional confidentiality; finally, he stressed the important links between market uniformity and the directive in question.

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## Lawyers: practice of the profession on a permanent basis

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. ?

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## Lawyers: practice of the profession on a permanent basis

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. ?

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## Lawyers: practice of the profession on a permanent basis

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. ?

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## Lawyers: practice of the profession on a permanent basis

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. ?

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## Lawyers: practice of the profession on a permanent basis

The Committee on Legal Affairs unanimously backed the proposal to approve the Council's common position. The Council agreed to the points made by Parliament and, like the Commission, took on board most of the 28 amendments adopted by Parliament at first reading. According to the rapporteur, Mrs Fontaine (EPP,F), the system proposed by Parliament will result in a balanced position based on two principles: the right for lawyers to practise in a country (the host country) other than the one in which they obtained their original qualifications, and the right to apply for membership of the legal profession in the host country. The Commission's initial proposal envisaged an aptitude test for membership

of the profession in the host country and suggested that the qualifications from the country of origin should be valid for five years only. In line with an amendment put forward by Parliament, the aptitude test is to be replaced by an objective assessment of the skills of any lawyer wishing to work in another country (professional experience, attendance at law courses in the host country, plus the code of professional ethics). The aptitude test will thus no longer be able to serve as a form of disguised protectionism. In practice, this means that, for example, a solicitor who has obtained his qualification in London will be able to set up as a lawyer in Milan on the basis of his solicitor's qualification, with no time limit. The rapporteur pointed out that the directive had been devised in response to demand from within the legal profession, which had been consulted by the Legal Affairs Committee, in particular via the Consultative Committee of the Bars and Law Societies of the European Community (CCBE). ?

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## Lawyers: practice of the profession on a permanent basis

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Noting that most of the amendments adopted at first reading had been taken over by the Council, the rapporteur invited Parliament to approve the common position as presented so that the legal profession could move further toward its opening up within Europe. Commissioner Monti was keen to stress that this had been an exemplary case of cooperation between the institutions. He therefore guaranteed that the Commission would pay careful attention to the correct implementation of the directive.

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## Lawyers: practice of the profession on a permanent basis

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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. ?

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## Lawyers: practice of the profession on a permanent basis

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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. ?