

EUROPEAN ECONOMIC AREA
STANDING COMMITTEE
OF THE EFTA STATES

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SUBCOMMITTEE III ON FREE MOVEMENT OF PERSONS

WORKING GROUP ON MUTUAL RECOGNITION OF DIPLOMAS

Common Position of the EFTA/EEA States on the "Proposal for a European Parliament and Council Directive on the Right of Establishment for Lawyers under their Home Professional Title (COM (94)572 final)"

I INTRODUCTION

1. The EFTA/EEA States hereby present their common position on the above-mentioned Proposal, as provided for under Article 99 of the EEA Agreement. This common position is a basis for further consultations between EFTA and the EU side and is based on the original proposal as presented to the European Parliament. The EFTA comments also take into consideration some of the amendments proposed by the European Parliament in June 1996.

II THE COMMISSION'S ORIGINAL PROPOSAL AND PROPOSED AMENDMENTS BY THE EUROPEAN PARLIAMENT

General remarks

2. The main idea of the proposal, to make it easier for lawyers to establish themselves in other Member States, is welcomed by the EFTA/EEA States. Our main concern is that the conditions for the establishment of lawyers should not run counter to the Community's aim to strengthen consumer protection.

3. Legislation already exists in the field of cross-border services. Council Directive 77/249/EEC on the effective exercise by lawyers of freedom to provide services enables lawyers to carry out occasional or temporary professional work in other Member States. Mention should also be made of the Directive on the recognition of higher-education diplomas 89/48/EEC.

4. According to the norms in force for Directive 89/48/EEC for professions whose practice requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity, the host Member State may ask for an aptitude test.

There are good reasons for these regulations:

- In spite of the development of international and European law, the major part of legislation is and remains of national character; there are fundamental differences between Member States in areas such as land law, inheritance law, family and employment law, and civil and criminal procedure. Trying to harmonise legislation in these areas would not seem to be desirable.
- It is, therefore, for good reason that Europe's legal professions are highly regulated. In many Member States the provision of legal services is reserved for the host state's profession. Lawyers from other Member States can often only practise in the host state if they are duly admitted to the legal profession under the host state's regulations, such as bar admissions.
- Some activities, such as the work involved in buying and selling houses, are reserved in most Member States for local lawyers for reasons of consumer protection.

5. The Commission's original proposal gives a lawyer the right to practise in another Member State for five years under his "home country professional title", and would allow him, inter alia, to 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. In the proposed amendment by the European Parliament, however, this five year time limit has been lifted, meaning that any lawyer shall be entitled to practice in another Member State on a permanent basis under his home-country professional title.

6. The proposal also grants a lawyer practising under his home-country professional title and who has effectively pursued regularly for a period of at least three years an activity involving the law of the host Member State, the right to establish himself under the professional title of the host Member State. The proposal says that the lawyer shall provide the relevant competent authority in the host Member State with information on the number of cases he has dealt with and their nature.

Specific Remarks

7. The EFTA/EEA States consider that an "effective and regular" professional activity is not the best criterion for examining the qualification of an EEA-lawyer. The proposal will not provide the transparency that is necessary to allow informed consumer choice and will run counter to the Community's aim of strengthening consumer protection.

8. It might be very difficult to check whether the activities of the foreign lawyer relating to the host country's law are really "effective and regular", particularly since, according to Community law, branch offices in other Member States (foundation of secondary establishment) are possible. A clearer definition of "effective and regular" activity is required in the proposal.

9. Amendment 35 of the European Parliament proposes, inter alia, that the aptitude test be relaxed and could take the form of an interview. According to the EFTA/EEA States this would need further elaboration. The proposed amendment does not give sufficient guidelines for the criteria a host country may apply concerning the quality and quantity of the professional activity of the foreign lawyer. In order to ensure the quality of the legal service provided, the proposed Directive should more explicitly state the content of the professional activity necessary for a lawyer to establish himself in a host Member State.

10. Also with reference to Article 10, the EFTA side finds it is necessary to stress the need to ensure that the individual's professional experience of the host country law is both adequate and not excessively specialised in one particular area.

11. Amendment 10 of the European Parliament removes, as already mentioned, the time limit for practising under home-country professional title. This, in the view of the EFTA/EEA States, opens up for a new practice in the field of mutual recognition of diplomas. Up to now, the general idea has been to make rules for an easy integration of the professional into the profession of the host Member State. The removal of the time limit for this profession might not be of the greatest importance, as this profession is highly regulated in most EEA countries. The proposed amendment does, however, open for a new principle and should therefore be discussed widely in its own right.

III CONCLUSION

12. In conclusion, the EFTA EEA States believe that a quality control and consumer protection mechanism should vet any lawyer wishing to join the legal profession in a host country. The experiences of the Member States concerning the aptitude test for lawyers show that the existing legislation is a pragmatic and effective way of quality control and consumer protection.

13. The EFTA/EEA States question the European Parliament's proposal to relax the requirement for an aptitude test by an interview. This would need further elaboration. The content of such an interview should ensure that the number and nature of cases handled by the foreign lawyer in the law of the host Member State are sufficient to ensure high quality and consumer protection. Individual background and experience should also be given full credit.

14. The "effective and regular pursuit" should include an extensive experience in the law of the host Member State and should be defined not only as an activity without any interruption, but also as full-time activity within the host Member State.

15. The EFTA/EEA States also find that there is a need to examine more closely the suggested lifting of the five year time limit to practice under one's home-country professional title. This represents a departure from previously established procedures and the possible consequences for other professions should be carefully studied.

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