

THE EDUCATION, LICENSING, AND TRAINING OF LAWYERS IN THE EUROPEAN UNION, PART I: CROSS-BORDER PRACTICE IN THE MEMBER STATES

by Julian Lonbay

INTRODUCTION

Lawyers have an important service role to play in the societies within which they work. They are the key protectors of fundamental rights and freedoms, they play a pivotal role in the life of the justice system, and they are vital for the promotion and protection of the rule of law. For these reasons, European Union (EU) member states and other countries regulate entry into the practice of law in the interests of the citizens and the clients for whom lawyers act. The licensing authorities strive to ensure that the lawyers admitted to practice have the appropriate competence and skills for use in the service of society.

These national licensing processes are primarily designed to fit the lawyers normally present and produced within the country or region. Thus it is hardly surprising that applying these processes to non-nationally trained lawyers and to lawyers trained in one jurisdiction who seek to practice in others causes some difficulties to arise. Similarly, a student with a law degree from one country who seeks entry into another country's legal training process may encounter obstacles. This article elaborates on and explains some of these difficulties and obstacles and the attempts to overcome them.

The article first outlines the nature and variety of legal professions active in Europe with a brief explanation of the structure and nature of the new European legal order which emerged after World War II. Next covered is how European licensing

authorities cope with cross-border practice in the context of this new European Community (EC) law environment. Lastly the article delves into the training regimes operating in Europe to see how the EC and the European dimension are having an impact on them. In the process, the role of the Council of Bars and Law Societies of Europe (CCBE) will be mentioned as appropriate.

What Is a "Lawyer" in Europe?

There are about 50 independent states in Europe, within a land mass slightly larger than that of the United States, depending on how one defines "Europe." There are well over 700 million inhabitants, and they are served by more than 700,000 lawyers.

There are several distinct legal traditions operating, the most notable and well-known ones being the common law systems and the civil law systems. Each country has its own legal order and traditions when it comes to legal education and training and the licensing of lawyers. Indeed, both the tasks performed by lawyers and the professions that they operate within vary from state to state. Thus one cannot easily talk of a European mode of delivering legal education and training;¹ moreover, the system for licensing lawyers varies from state to state, and indeed within states.

There are some similarities, however. Those European individuals who wish to practice in a legal

profession must typically study law at a university and then undertake practical legal training at a specialized legal training institute, followed, almost everywhere now, by a period of practical experience with a qualified legal professional, and then become licensed to practice, often by passing an examination. So there are typically academic and professional stages to this pre-licensing training and, in particular, a fairly lengthy period of apprenticeship. The professional stage of training differentiates the European legal training scheme from that found in the United States. It accounts for the relative lack of “clinical” legal education in European law schools. The EU does not have authority over the content of education, and states are, in large measure, free to prescribe their own entry routes to the legal professions. Yet as this article will show, there are now “European” entry routes alongside the national ones and, as will be outlined in Part II of this article, the EU is beginning to have a major impact on university-level education across Europe despite its lack of formal authority over this matter.

How Are Legal Services Delivered in Europe?

There is great variety in how legal services are delivered within the EU states. For example, in the United Kingdom, the legal profession is divided into solicitors and barristers (the latter are called advocates in Scotland). Traditionally, the profession of barrister provided expert advice and representation in courts (especially in the higher courts, for which barristers used to retain a monopoly). The solicitor, by tradition, was involved more with transactional law but

also gave legal advice and occasionally appeared in the lower courts to represent clients. If litigation was in prospect or if they needed specialized legal advice, solicitors would often refer their cases to barristers. This picture has now blurred, as solicitors can now become solicitor-advocates with full right of representation even in the highest courts, and barristers can now, in many circumstances, be approached without

the medium of a solicitor. Moreover, bear in mind that in the United Kingdom alone there are six distinct legal professions, each with its own professional body, regulators, and rules by which it operates, and this is just one of the many countries within the European Union.

Contrast the situation in the UK with that of, say, Germany. Here the *Rechtsanwalt* (lawyer) takes on both of the roles which in England are divided between solicitors and barristers (although less divided these days). However, much transactional work involves another profession, that of notary public (*Notar*). The notary public has a mandatory function in, for example, the handling of real estate transactions, something that in England might be dealt with by a solicitor or by a new breed of professional created in England and Wales not long ago called the licensed conveyancer. Bear in mind that each of the 16 local jurisdictions, or *Länder*, in Germany has its own Ministry of Justice and its own rules for admission to the Bar. One can see that the task of delivering legal services involves different types of legal profession, depending on which state(s) or region(s) one is doing business in. One can also see that there are many different legal

actors on the scene in Europe, with different spheres of competence. Each of the legal professions has a unique education and training pathway to access the profession and each has separate procedures for becoming a lawyer.

The Structure of the European Union and Its Legal Order

At this point it might seem a vain hope to have any European-level involvement with the education and training of lawyers, let alone their regulation or rules on access to the professions. However, a series of political developments has seen the emergence, initially in western Europe but now reaching eastward, of the European Union. The EU currently comprises 27 states, with several others also bound, through sets of treaties, to its rules. In the late 1940s, ravaged by war and encouraged by American support and hopes of economic resurrection, a small group of six European states started to integrate their coal and steel industries by means of the European Coal and Steel Treaty of 1951. This partial integration was followed in 1957 with the Treaty of Rome, which created the European Economic Community (EEC). More states joined the initial six in successive waves of accession. The first to join were the United Kingdom, Denmark, and Ireland in 1972. The latest members of what is now called the EU are Romania and Bulgaria, joining in 2006. The EEC sought to create a common market. This entrenched the idea of a market economy at a time when state-led economies were looming from the communist eastern half of Europe, the other side of the Iron Curtain. The primary methods used to achieve this goal were to set out a series of principal objectives for the EEC and to provide a set of common European institutions authorized to make the necessary decisions and pass the necessary laws to achieve these objectives.

This regime forced the leaders and governments of the member states of the EEC to meet regularly and resulted in a net of integrating rules that meant the economies of the countries were increasingly enmeshed. The regular contacts at many levels began to allow some mutual trust to emerge. Sometimes the decision-making procedures work rather slowly; with 27 countries working together in 23 official languages, progress is not always as swift as might be hoped. Agreements sometimes can only be reached very slowly and with many compromises along the way. On the other hand, over time decisions do get made, and there are now over 95,000 pages of European-level legislation.

The decision-making process has been altered and improved by a series of treaty changes. The Single European Act of 1986 extended the use of qualified majority voting in the Council. The role of the now directly elected European Parliament was extended in successive treaties, and the Parliament now has powers of co-decision with the Council in many areas. The Treaty of Maastricht, which came into force in 1993, created the EU. The EU includes the EC. (The word "economic" was dropped from the name at this stage as it was clear that the objectives of the EC were far wider than merely economic.)²

The European Court of Justice

Importantly, part of the initial conception of this unified organization was the creation of a European Court of Justice (the Court of Justice), based in Luxembourg. This court has one judge from each member state and is assisted by eight Advocates General. The Advocate General is not a position known to the common law but is seen in the

Netherlands and France and other continental European countries. Advocates General are full members of the court, and after a hearing of the parties (if that is appropriate in the case) an Advocate General will give a nonbinding opinion suggesting how the case could be resolved. This is an independent and fully reasoned legal opinion. The Court of Justice often follows these opinions, though it is not bound by them. The Court of Justice itself gives a collective ruling. There are no independent or dissenting judgments. In an early case, *Van Gend en Loos*,³ reminiscent of *Marbury v. Madison* (the landmark U.S. Supreme Court case in which the Court asserted its power to review acts of Congress and invalidate those that conflicted with the Constitution), the Court of Justice declared that the 1957 Treaty of Rome had created a new legal order; it was not to be considered international law, but rather a new European Community law. A new legal system was born.

A New European Legal Order

The new European legal order was designed to reach through national legal systems to touch and grant rights to ordinary citizens. In order to be effective, it had to have primacy over national laws, including national constitutional law itself. Naturally, there was some national judicial reluctance to embrace this upstart legal order, but overall this reluctance has now been largely overcome for practical purposes, certainly in the older member states. For lawyers within the EU this means that European Community law (EC law), as it is now known, plays an increasingly important part in their daily professional lives. Where the EC legislature has fudged an issue and not made a law at all, then as often as not, litigation will throw the issue to

the Court of Justice for determination. In the recent past, this court has played a significant role in liberalizing legal services in the EU.

One of the aims of the EC from its inception has been to establish a common market, now more commonly called a single market.⁴ This involves the removal of barriers to the free movement of all the factors of production. In a single market, capital, goods, workers, and businesses should all, in principle, be able to move to the state that they think is most advantageous to them, thus unleashing optimal resource allocation and making the most efficient use of resources. As mentioned above, the Treaty of Rome itself asserts these freedoms, though they are subject to some exceptions. Moreover, the EC has legislated to help achieve these aims. Any EC legislation must comply with the primary Treaty law.

CROSS-BORDER LEGAL PRACTICE

To facilitate understanding of cross-border legal practice in the EU, I will start with a few term definitions. The *home state* is the one where the lawyer is licensed and has been practicing; in essence, the state where the lawyer is established. The *host state* is another state where the lawyer is not licensed but where he or she wishes to provide legal services. If the lawyer travels to provide a consultation in another member state, this is regarded in EC law as providing a service on a temporary basis. Article 49 EC specifically allows the right to provide cross-border services. Further, the *Gebhard* case⁵ established that even when lawyers (or other professionals) are providing a temporary service,⁶ they are entitled to open a branch office in order to do so. Lawyers are also entitled, by virtue of Article 43 EC, to establish a permanent presence in another member state.

Practice Temporarily in Another State or Become a Lawyer in That State?

In the case of the legal professions and the desire of lawyers to practice in other EU states, the general EC Treaty law on free movement applies, but there are also two key Directives (a type of EC secondary law) dealing with lawyers specifically. These legal instruments operate together to provide two different rights for EU lawyers. They can grant access to the legal profession of the host state, and they can allow lawyers to gain access to legal professional activities of the host state while retaining their home state titles.

The first benefit for legal professionals is that through the EC Treaty law and the EC Directives those already licensed as lawyers in one state can practice in another member state as home state lawyers; that is, they retain their initial professional titles (e.g., solicitor) in the new state, by two new EC routes. First, they can provide temporary cross-border services by virtue of Article 49 EC and, in particular, Directive 77/249/EEC.⁷ Second, they can establish a permanent practice in another member state by virtue of Article 43 EC and Directive 98/5/EC.⁸ In both cases, the lawyer can retain his or her initial professional title, although in the latter case there are options for joining the host state profession.

Another option for EU lawyers is to become licensed in the new state by joining the profession

in that state. Access to the legal professions themselves (as opposed to temporary legal practice) has been opened to all EU nationals not only through the availability of law study in any EU state, after which the graduates follow that country's traditional route of access to the local profession, but also through a system of mutual recognition of professional qualifications that has been introduced, allowing

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speedier cross-licensing for those who are already lawyers in one country and who seek to join the legal profession in another, via their Treaty-based rights and Directive 2005/36/EC.⁹ Additionally, Directive 98/5/EC on the establishment rights of lawyers allows those who have chosen this entry route to have expedited access to the local legal professional title after three years of practice in the host state, without prior examination.

Finally, and relatively recently, a new route to legal licensing has been opened by the Court of Justice in the *Morgenbesser* case.¹⁰ This covers those who are in the middle of legal training, enabling them to switch states halfway through their training in order to become a lawyer under a different state's training regime.

So we have then, in Europe, a legal system that allows lawyers to follow their clients to different countries and advise them there, whether on a

temporary (services) or a permanent (establishment) basis. We also have a system that allows lawyers to relatively easily add new legal professional titles in other states (i.e., without having to re-qualify completely). These routes will now be examined in slightly more depth.

Competence and Entry Controls

In the last few decades it has become much easier for EU nationals to enter the legal profession in another state. The traditional entry barriers and the rigorously regulated access to the professions of law in each country have been trumped by European free access rules. One no longer has to follow slavishly the prescribed national routes into the host state professions. It is not only the free movement rules that knock down the door; the European competition (antitrust) authorities are also asking for justifications of access-restricting rules (and a lot more besides, but that is another story). The new system does of course allow safeguards for national authorities.

The EC rules that mandate opening the doors to the legal professions by allowing the new EC-authorized pathways have had a large impact on national admission systems and the education and training regimes that lie behind them. This impact on admissions and the EU's role in the sphere of education and training will be dealt with in Part II of this article. I will now examine in more detail how the free movement systems operate.

Temporary Provision of Legal Services

Directive 77/249/EEC gives European Economic Area (EEA) and Swiss lawyers the right to provide services temporarily under their home titles in another member state, with no prior registration with the host state Bar being necessary. (The EEA was created in 1994 and includes all the EU member states plus Norway, Iceland, and Liechtenstein. These

states must comply with most of the EU single-market laws by adopting appropriate national measures, and they have access to the benefits of the single market, including the rules on free movement of lawyers.) The term "lawyer" is defined in a relatively narrow sense in the Directive, which contains a list of the professions covered in Article 1.¹¹ Article 1 does not cover *procuradores* (Spanish procurators, one of several types of

lawyers in Spain),¹² licensed conveyancers, notaries, or many other legal actors operating in Europe, and thus these professionals are not provided with the Directive's authority for cross-border provision of services. For those that do receive the benefit, the host state's "competent authority," normally the Bar or Law Society, may request proof of the lawyer's title. The CCBE has developed a lawyer's professional identity card which is recognized by the Court of Justice and national competent authorities as prima facie proof of a lawyer's right to practice.¹³

Lawyers, under this Directive, can advise on local (i.e., host state) law as well as their own national law. In some circumstances, specified in the Directive, there are limits on transactions involving

probate (wills) and the sale of land.¹⁴ The visiting lawyer must also comply with the host state rules of conduct before the courts of the host state, and, in some cases, must work in conjunction with a host state lawyer when representing clients. Such lawyers must also observe and respect the professional rules of the Bar of the host state, including the rules regarding incompatible activities, as long as they are capable of being observed

by a foreign lawyer who is not established and to the extent to which their observance is objectively justified to ensure in the host state the proper exercise of a lawyer's activities.¹⁵ So lawyers who provide services in a host state under the authority of this Directive are subject to two sets of rules of professional conduct, those of the home state and those of the host state. This is often termed "double deontology." Apart from this limitation, the host state is not able to impose any barriers to the temporary provision of services by such lawyers. They remain subject to the rules of their state of origin regarding access to and exercise of professional activities. After a few hiccups,¹⁶ this system has worked relatively well and is now commonly used by many lawyers in Europe.

The safeguards are primarily based on reliance upon and trust in the visiting lawyer's home-state rules and rigor. The host state is not entitled to apply the full rigor of its regulatory regime to visiting professionals, as this would effectively nullify

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the right to provide cross-border services. One of the first rules to fall to EC law was the requirement of residence.¹⁷ Many national laws in the EU used to require lawyers to live in the area where they were practicing. This rule would stop any cross-border provision of legal services, because, for instance, if a German *Rechtsanwalt* living in Düsseldorf wanted to go to Brussels to advise a client, the residence rule

would effectively prohibit the trip. It was the famous *van Binsbergen* case from the Netherlands¹⁸ that resolved this issue in favor of allowing cross-border practice. The Court of Justice ruled that Article 49 EC had direct effect, meaning that European lawyers could rely on it before any member state national court without further EC implementation measures. The Dutch rule involved in *van Binsbergen* was nondiscriminatory but it was still deemed invalid in these circumstances, as

such rules could only be applied if they were objectively justified by "the general good." The Court said that the Dutch could require permanent establishment only if the rules were "objectively justified by the need to ensure observance of professional rules of conduct connected, in particular, with the administration of justice and with respect for professional ethics."

On the facts of the case the Dutch rules were not considered to be objectively justified. The residence requirement could not pass muster with the Court of Justice, as it was too restrictive of cross-border

practice. The case was important because it recognized state interests—there was a justification for enforcing professional rules against incoming professionals if those rules protected “the general good.” In § 12–13 the Court of Justice recognized that

[S]pecific requirements imposed on the person providing the service cannot be considered incompatible with the Treaty where they have as their purpose the application of professional rules justified by the general good—in particular rules relating to organization, qualifications, professional ethics, supervision and liability—which are binding upon any person established in the state in which the service is provided, where the person providing the service would escape from the ambit of those rules being established in another member state.

Moreover, the Court said,

[A] Member State cannot be denied the right to take measures to prevent the exercise by a person providing services whose activity is entirely or principally directed towards its territory of the freedom guaranteed by article 59 EEC [now 49 EC] for the purpose of avoiding the professional rules of conduct which would be applicable to him if he were established within that State; such a situation may be subject to judicial control under the provisions of the chapter relating to the right of establishment and not of that on the provision of services.

The system established for temporary services works well, and lawyers from all jurisdictions regularly use it without any difficulties. (As registration is not allowed, however, there are no statistics available.)

Permanent Establishment in Another Member State

Another option for EU lawyers is to establish a permanent practice in the host state. The *Gebhard*¹⁹

case was the culmination of a set of cases that led to the opening up of establishment rights for lawyers and other professionals. Gebhard was a German lawyer practicing in Milan, Italy. For many years he had practiced there happily with a group of Italian lawyers. He then set up a *studio legale* (legal office) and described himself as an *avvocato* (an Italian lawyer). He was not an *avvocato* but rather a *Rechtsanwalt* (a German lawyer), and his main role was advising Germans coming to Italy about the local law, whose questions he farmed out to *avvocati*. He also acted as a bridge for German businesses coming into Italy and for expatriate Germans in Italy wanting to sort out their legal matters in Germany. The Milan Bar acted against him for using the title *avvocato* and the subsequent litigation led to Luxembourg where the Court of Justice gave its important ruling indicating that Italy could not impose the full range of regulations on migrating lawyers. The Court said that if non-national lawyers wanted to do what *avvocati* do, and call themselves *avvocati*, then they had to do what the *avvocati* did, namely, join the local profession. EC law had already made this easier by the adoption of Directive 89/48/EEC on the mutual recognition of qualifications (now replaced by Directive 2006/36/EC).²⁰ However, if incoming lawyers wished to stay, for example, *Rechtsanwälte*, then they would not necessarily be doing what the Italian lawyers were doing; they would be undertaking different work. In the latter scenario, the host state could impose its rules and regulations only if they were nondiscriminatory and proportionate to the public interest protected by them. This ruling opened the door to what had previously been called *établissement sauvage* (“wild establishment,” or establishment outside the perceived confines of the law). Before this ruling, many had thought that Article 43 EC allowed access

only under the same conditions as those that applied to locals, but the *Gebhard* case showed that it in fact allowed a wider access for incoming lawyers.

As the Court of Justice stated in the *Gebhard* case,²¹

The concept of establishment within the meaning of the Treaty is . . . a very broad one, allowing a Community national to participate, on a stable and continuous basis, in the economic life of a Member State other than his State of origin and to profit therefrom, so contributing to economic and social interpenetration within the Community in the sphere of activities as self-employed persons (see, to this effect, Case 2/74 *Reyners v. Belgium* [1974] ECR 631, paragraph 21).

In principle, professional practice is regulated locally and Article 43 EC, which sets out establishment rights, in paragraph 2 indicates that “[f]reedom of establishment shall include the right to take up and pursue activities as self-employed persons . . . under the conditions laid down for its own nationals by the law of the country where such establishment is effected.”

This might have meant that each state could fully retain its own rules regarding professional activity. However, in the *Gebhard* case the judgment went beyond this, indicating that

the possibility for a national of a member State to exercise his right of establishment, and the

conditions for his exercise of that right[,] must be determined in the light of the activities he intends to pursue. . . . Where the taking up of a specific activity is not subject to any rules in the host State a national of any other Member State will be entitled to establish himself. . . . Membership of a professional body may be a condition of taking up and pursuit of particular activities. It cannot itself be constitutive of establishment.

The *Gebhard* judgment then stated that

...[N]ational measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfil four conditions: they must be applied in a non-discriminatory manner; they

must be justified by imperative requirements in the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain it.

This ruling thus paved the way for a Directive allowing permanent establishment of lawyers practicing under their home state professional titles. Bars and Law Societies had not agreed on this point; some had insisted that permanent establishment must mean joining the host state profession, thus disallowing lawyers the freedom to practice under their home state professional titles. So the conditions were thus set for the adoption of Directive 98/5/EC,²² which the CCBE had a big hand in helping to create.²³ The Directive allows lawyers to establish themselves in another

member state under their home professional titles. They must register with the competent authority (normally a Bar or a Law Society). Having registered,²⁴ they can undertake almost all professional activities in the host state except those reserved by Article 5 of the Directive. The excluded areas can include property transfers, probate, and legal representation.²⁵ The incoming lawyer is subject to the host state deontological and other rules but can practice immediately. All areas of legal advice, including advice on the host state law, are open. This is a major change for the legal professions, as there is no prior assessment of capacity to act as a local lawyer before the incoming lawyer can actually undertake such practice.²⁶ It was a leap of faith. As the Court of Justice stated in *Commission v. Luxembourg*:²⁷

It would therefore seem that the Community legislature, with a view to making it easier for a particular class of migrant lawyers to exercise the fundamental freedom of establishment, has chosen, in preference to a system of a priori testing of qualification in the national law of the host Member State, a plan of action combining consumer information, restrictions on the extent to which or the detailed rules under which certain activities of the profession may be practised, a number of applicable rules of professional conduct, compulsory insurance, as well as a system of discipline involving both the competent authorities of the home Member State and the host State. The legislature has not abolished the requirement that the lawyer concerned should know the national law applicable in the cases he handles, but has simply released him from the obligation to prove that knowledge in advance. It has thus allowed, in some circumstances, gradual assimilation of knowledge

through practice, that assimilation being made easier by experience of other laws gained in the home Member State. It was also able to take account of the dissuasive effect of the system of discipline and the rules of professional liability.


The Directive²⁸ allows incoming lawyers, after three years of practice in the host state law, to more or less automatically become local professionals with no prior testing. The Directive defines host state law as including EC law,²⁹ which could mean an incoming lawyer actually would not need to practice any national law and yet still be able to become a local lawyer after three years!

The conflicts rules in Directive 98/5/EC are quite detailed; in fact, about half of the Directive deals with which rules are going to apply to such lawyers, and a discussion of those issues goes beyond the scope of this article.³⁰ The CCBE Code of Conduct helps to guide lawyers regarding their behavior when acting in cross-border situations. It requires, inter alia, that lawyers not undertake any work for which they are not competent.

The right to establish practice in a host state under home state title has been relatively widely used. The most popular destinations are France (over 700) and Belgium (well over 500), with the UK (over 300) and Switzerland (over 200) following up. Establishment by becoming licensed in and joining the profession of the new state, under Article 10 of Directive 98/5/EC, is less popular; here the UK takes the lead with over 90 (from 23 different states), followed by Poland, Switzerland, and Ireland with figures in the 30s. There have been teething problems with implementation of the Directive in some member states. In Luxembourg, for example, the law requiring incoming lawyers to cope with the

three languages in use there (German, French, and Luxembourgish) was found to be excessive by the Court of Justice. Other issues have been the level of indemnity insurance necessary, the level of registration fees to join the Bar, difficulties caused by the differences in the status of in-house counsel in the various states, and tax and legal aid schemes. There are, so far, no widespread complaints of incompetence of incoming lawyers.

CONCLUSION

It is clear that the rules emanating from the EU have had a profound effect on the scope and rights of legal practice across Europe. Over the decades of evolution of these rules, considerable mutual trust has been built up between Bars and Law Societies of the various member states whose national regulatory authorities regularly meet within the CCBE. The alternative routes, briefly described above, have also had a major impact on the national access rules which can be bypassed by the new routes mentioned. These routes include a regime for mutual recognition of qualifications, mandated by Article 47 EC (which I have not had space to deal with in any detail here). Part II of this article will cover the system in place for mutual recognition of qualifications as well as a series of training and educational activities and initiatives taking place within the EU that are having a major impact on legal education and legal training across Europe. 

ENDNOTES

1. Lonbay, Julian, *Training Lawyers in the European Community* (The Law Society 1990). Generally, see Dr. Lonbay's website, <http://elixir.bham.ac.uk>, for information on the types of legal actors and an explanation of the training required to become a legal professional in some of the member states of the EU.
2. At this time the EU was granted additional authority in the fields of justice and home affairs and common foreign and security policy. These matters were dealt with in an intergovernmental fashion where member states retained much more control than under the EC decision-

- making processes. The Treaties of Amsterdam (1997) and Nice (2003) made further significant changes, including granting EU authority in the fields of police and judicial cooperation in criminal matters. See Lonbay, Julian, "Free Movement of Persons in the EU: The Legal Framework," in *Accountability and Legitimacy in the EU* (Anthony Arnall and Daniel Wincott eds., Oxford University Press 2002). Currently the Treaty of Lisbon, with further significant alterations, is in the process of being (perhaps) adopted.
3. Case 26/62, *N. V. Algemene Transport- en Expeditie Onderneming Van Gend en Loos v. Nederlandse administratie der belastingen* [Netherlands Inland Revenue Administration] E.C.R. 3 (1963).
 4. See Article 14 EC.
 5. Case C-55/94, *Reinhard Gebhard v. Consiglio dell'ordine degli Avvocati e Procuratori di Milano* E.C.R. I-4165 (1995). See also Lonbay, Julian, *Case-note on Gebhard*, 33 COMMON MARKET LAW REVIEW 1073 (1996).
 6. Gebhard, *id.* § 26. The Italian implementation of Directive 1977/249/EEC, 26 March 1977, OJ L78/17, had said that the opening of an office indicated establishment, with the implication that all the local regulatory rules would have to be complied with.
 7. Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services, (1977) OJ L78/17 as amended.
 8. Directive 98/5/EEC 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, (1998) OJ L77/36 as amended.
 9. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, (2005) OJ L255/22.
 10. Case C-313/01, *Christine Morgenbesser v. Consiglio dell'Ordine degli Avvocati di Genova* E.C.R. I-13467 (2003).
 11. Article 3 of Directive 77/249/EEC states:
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.
 12. For an explanation of the types of lawyers in Spain, see http://elixir.bham.ac.uk/Country%20information/Spain/lawyers_frameset.htm.
 13. The CCBE was founded in 1960 and acts as the liaison between the EU and Europe's national bars and law societies whose national delegations represent its members. It has 31 full members, 2 associate members, and 8 observer members. The CCBE advances the views of European lawyers and defends the legal principles upon which democracy and

the rule of law are based. It is concerned with all European cross-border matters as they affect lawyers. See <http://www.ccbe.eu> for general information about the CCBE's role, and <http://www.ccbe.eu/index.php?id=30&L=0> for information about the CCBE identity card (last visited Sep. 30, 2008).

14. Article 1(1), *op. cit.* at note 7:
... Notwithstanding anything contained in this Directive, Member States may reserve to prescribed categories of lawyers the preparation of formal documents for obtaining title to administer estates of deceased persons, and the drafting of formal documents creating or transferring interests in land.
15. Lawyers must abide by their home state rules "without prejudice" to respecting rules that govern the host state lawyers, in particular:
... 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 4(4) of Directive 77/249/EEC, *op. cit.*
16. For example, Case 427/1985, *Commission v. Germany*, E.C.R. 1123 (1988); Case C-294/1989, *Commission v. France*, E.C.R. I-3591 (1991); see also Lonbay, Julian, *Cross-Frontier Provision of Services by Lawyers*, 13 EUROPEAN LAW REVIEW 347 (1988).
17. Nationality requirements have also been removed. Case 2/74, *Jean Reyners v. Belgian State*, E.C.R. 631 (1974). Belgium, in the *Reyners* case, argued that lawyers were actually exercising official authority and therefore were exempt from establishment rules under Treaty Article 45 EC. The Court rejected this argument.
18. Case 33/74, *van Binsbergen v. Bestuur van de bedrijfsvereniging voor de Metaalnijverheid*, E.C.R. 1299 (1975).
19. See note 5.
20. Council Directive 1989/48/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, 24 January 1989, OJ L19/16. See, generally, Lonbay, Julian, "The Mutual Recognition of Professional Qualifications in the EC," in *Professional Liability Law and Insurance* 1-40 (2nd ed., Ray Hodgkin ed., 1999).
21. Gebhard, *op. cit.* § 25-26.
22. 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, 14 March 1998, OJ L77/36.

23. See http://www.ccbe.eu/index.php?id=6&id_rubrique=1&L=0.
24. Directive 98/5/EC Article 3.
25. Directive 98/5/EC Article 5.
26. There's a history behind this. The Commission always wanted a three-year adaptation period. They never wanted testing in the diplomas Directive and they finally got their way in this Directive.
27. Case C-168/98, *Commission v. Luxembourg*, E.C.R. I-9131 (7 November 2000) § 43.
28. Directive 98/5/EC Article 10.
29. Directive 98/5/EC Article 10.
30. See also Lonbay, Julian, *Lawyer Ethics in the Twenty-First Century: The Global Practice Reconciling Regulatory and Deontological Differences: The European Experience*, VANDERBILT JOURNAL OF TRANSNATIONAL LAW (2001), available at [http://www.thefreelibrary.com/Lawyer ethics in the twenty-first century: the global practice...-a080750270](http://www.thefreelibrary.com/Lawyer+ethics+in+the+twenty-first+century:+the+global+practice...-a080750270) (last visited Sep. 30, 2008); and Lonbay, Julian, *Legal Ethics and Professional Responsibility in a Global Context*, 4 WASHINGTON UNIVERSITY GLOBAL STUDIES LAW REVIEW 609 (2005), available at http://law.wustl.edu/wugslr/issues/volume4_3/p609Lonbay.pdf (last visited Sep. 30, 2008).



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