# OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 24 February 2000 *

## I — Introduction

1. The Grand Duchy of Luxembourg has brought this action again Directive 98/5/CE 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 [1] (hereafter 'the Directive'), which was passed with the support of the fourteen other Member States in the Council and with the approval of the Parliament, on the ground that it ought to have been adopted unanimously at the end of the consultation period.

According to Luxembourg, the Directive amends the legal principle that access to the profession of lawyer in a particular Member State is subject to the candidate's acquisition of sufficient knowledge and experience in the law of that State.

Luxembourg also criticises the fact that the Directive would lead to discrimination in a Member State against lawyers who are nationals of that Member State as opposed to their migrant colleagues, and in addition alleges that insufficient reasons were provided for the Directive.

## II — Legislative development prior to the Directive

2. The contested Directive forms part of the development in the law intended to give effect to the freedom of movement established in the EC Treaty with regard to the legal profession.

*Directive 77/249/EEC*

3. The trail-blaze in this direction was Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective

* Original language: Spanish.
1 — OJ 1998 L 77, p. 36.

exercise by lawyers of freedom to provide services [2] (hereafter 'Directive 77/249'). That directive, adopted on the basis of what were then Articles 57 and 66 of the EC Treaty, required each Member State to recognise as a lawyer any professional possessing that title in any other Member State, with the following exceptions:

— a lawyer providing services must practise under his home-country professional title, with an indication of the professional organisation by which he was authorised to practise or the court of law before which he is entitled to practise (Article 3);

— Member States may exclude from the ambit of this rule 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 (Article 1(2));

— Member States may also require lawyers intending to pursue activities relating to the representation of clients in legal proceedings to be introduced to the presiding judge and, where appropriate, to the President of the relevant Bar in the host Member State, and/or to work in conjunction with a practising lawyer, 'avoué' or 'procuratore' in the host Member State.

*Directive 89/48/EEC*

4. The next step was taken through the adoption on the basis of former Articles 49, 57(1) and 66 of the Treaty of Council Directive 89/48/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 [3] (hereafter 'Directive 89/48').

5. Unlike Directive 77/249, Directive 89/48 is general in nature, applying to all regulated professions to the extent that they have not been the subject of specific measures. Directive 89/48 thus establishes that a host Member State may not refuse to authorise the practice by a migrant worker of a regulated profession without considering the equivalence of qualifications which he has gained in his home country (Article 3).

2 — OJ 1997 L 78, p 17.

3 — OJ 1989 L 19, p. 16.

6. Article 4 of Directive 89/48 also authorises the host Member State to require the applicant either:

(a) to provide evidence of professional experience, where the duration of the education and training is at least one year less than that required in the host Member State; or

(b) to complete an adaptation period not exceeding three years or to take an aptitude test, where there are substantial differences between the education and training received and that required in the host Member State.

7. However, in respect of the legal professions, the following sentence was inserted in the second paragraph of Article 4(1):

'By way of derogation from this principle, 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 stipulate either an adaptation period or an aptitude test.'

All the Member States, except Denmark, opted for establishing an aptitude test.

III — Directive 98/5/EC

8. Following four years of negotiations within the Council, Directive 98/5 was published on 14 March 1998. Its purpose is to facilitate practice of the profession of lawyer on a permanent basis in a self-employed or salaried capacity in a Member State other than that in which the professional qualification was obtained (Article 1(1)).

9. According to the statement of reasons given for that act, the *raison d'être* of the Directive is not only that, in relation to the general system of recognition established by Directive 89/48, it offers lawyers an easier route by which to join the profession in the host Member State, but also that it meets the needs of the consumers of legal services who, owing to the increasing trade flows resulting from the internal market, seek advice when carrying out cross-border transactions in which international law, Community law and domestic laws often overlap (fifth recital in the preamble to the Directive).

10. A further reason for the Directive is the need to resolve, at Community level, the

problem that only a few Member States permit, and in different forms, the practice of the law, otherwise than by way of provision of services, by lawyers from other Member States practising under their home-country professional titles, and the fact that such a diversity of situations leads to inequalities and distortions in competition which restrict freedom of movement (sixth recital).

11. Article 2 of the Directive states:

'Any lawyer shall be entitled to pursue on a permanent basis, in any other Member State under his home-country professional title, the activities specified in Article 5.

Integration into the profession of lawyer in the host Member State shall be subject to Article 10.'

12. By virtue of Article 4 of the Directive:

'1. A lawyer practising in a host Member State under his home-country professional title shall do so under that title, which must be expressed in the official language or one of the official languages of his home Member State, in an intelligible manner and in such a way as to avoid confusion with the professional title of the host Member State.

2. For the purpose of applying paragraph 1, a host Member State may require a lawyer practising under his home-country professional title to indicate the professional body of which he is a member in his home Member State or the judicial authority before which he is entitled to practise pursuant to the laws of his home Member State. A host Member State may also require a lawyer practising under his home-country professional title to include a reference to his registration with the competent authority in that State.'

13. According to Article 5 of the Directive:

'1. Subject to paragraphs 2 and 3, a lawyer practising under his home-country professional title carries on the same professional activities as a lawyer practising under the relevant professional title used in the host Member State and may, *inter alia*, 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. He shall in any event comply with the

rules of procedure applicable in the national courts.

2. Member States which authorise in their territory a prescribed category of lawyers to prepare deeds for obtaining title to administer estates of deceased persons and for creating or transferring interests in land which, in other Member States, are reserved for professions other that that of lawyer may exclude from such activities lawyers practising under a home-country professional title conferred in one of the latter Member States.

3. 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 titles 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" practising before it.

Nevertheless, in order to ensure the smooth operation of the justice system, Member States may lay down specific rules for access to supreme courts, such as the use of specialist lawyers.'

14. Article 10 of the Directive provides as follows:

'1. A lawyer practising under his home-country professional title who has 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 including Community law shall, with a view to gaining admission to the profession of lawyer in the host Member State, be exempted from the conditions set out in Article 4(1)(b) of Directive 89/48/EEC. *"Effective and regular pursuit"* means actual exercise of the activity without any interruption other than that resulting from the events of everyday life.

It shall be for the lawyer concerned to furnish the competent authority in the host Member State with proof of such effective regular pursuit for a period of at least three years of an activity in the law of the host Member State. To that end:

(a) the lawyer shall provide the competent authority in the host Member State with any relevant information and documentation, notably on the number of matters he has dealt with and their nature;

(b) the competent authority of the host Member State may verify the effective and regular nature of the activity pursued and may, if need be, request

the lawyer to provide, orally or in writing, clarification of or further details on the information and documentation mentioned in point (a).

Reasons shall be given for a decision by the competent authority in the host Member State not to grant an exemption where proof is not provided that the requirements laid down in the first subparagraph have been fulfilled, and the decision shall be subject to appeal under domestic law.

2. A lawyer practising under his home-country professional title in a host Member State may, at any time, apply to have his diploma recognised in accordance with Directive 89/48/EEC with a view to gaining admission to the profession of lawyer in the host Member State and practising it under the professional title corresponding to the profession in that Member State.

3. A lawyer practising under his home-country professional title who has effectively and regularly pursued a professional activity in the host Member State for a period of at least three years but for a lesser period in the law of that Member State may obtain from the competent authority of that State admission to the profession of lawyer in the host Member State, without having to meet the conditions referred to in Article 4(1)(b) of Directive 89/48/EEC, under the conditions and in accordance with the procedures set out below:

(a) The competent authority of the host Member State shall take into account the effective and regular professional activity pursued during the abovementioned 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 regulating professional practice and conduct.

(b) The lawyer shall provide the competent authority of the host Member State with any relevant information and documentation, in particular on the matters he has dealt with. Assessment of the lawyer's effective and regular activity in the host Member State and assessment of his capacity to continue the activity he has pursued there shall be carried out by means of an interview with the competent authority of the host Member State in order to verify the regular and effective nature of the activity pursued.

Reasons shall be given for a decision by the competent authority in the host Member State not to grant authorisation where proof is not provided that the requirements laid down in the first subparagraph have been fulfilled and the decision shall be subject to appeal under domestic law.

4. The competent authority of the host Member State may, by reasoned decision subject to appeal under domestic law, refuse to allow the lawyer the benefit of the provisions of this Article if it considers that this would be against public policy, in particular because of disciplinary proceedings, complaints or incidents of any kind.

5. The representatives of the competent authority entrusted with consideration of the application shall preserve the confidentiality of any information received.

6. A lawyer who gains admission to the profession of lawyer in the host Member State in accordance with paragraphs 1, 2 and 3 shall be entitled to use his home-country professional title, expressed in the official language or one of the official languages of his home Member State, alongside the professional title corresponding to the profession of lawyer in the host Member State.'

## IV — Consideration of the pleas in law supporting the claim for annulment

15. In support of its application, Luxembourg puts forward three separate pleas for annulment on the grounds of infringement of the following three provisions of the EC Treaty: the second paragraph of Article 52 (now, after amendment, the second paragraph of Article 43 EC); Article 57(2) (now, after amendment, Article 47(2) EC), and Article 190 (now Article 253 EC) of the EC Treaty respectively.

### A. *Infringement of the second paragraph of Article 52 of the EC Treaty*

16. The second paragraph of Article 52 provides:

'Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 58, 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.'

17. According to the applicant, that provision establishes a principle in accordance with which the self-employed migrant worker is to be treated in the same way as his national counterpart. The equal treatment thus required must be assessed with regard to the laws of the host Member State and not the laws of the migrant's home country. In support of this, it cites the judgment in *Patrick*, according to which 'the rule on equal treatment with nationals is one of the fundamental legal provisions of the Community and, as a reference to a

set of legislative provisions effectively applied by the country of establishment to its own nationals, this rule is, by its essence, capable of being directly invoked by nationals of all other Member States.' [4]

18. Luxembourg claims that, although in its judgment *Gebhard*, [5] the Court of Justice gave a broad interpretation to the concept of establishment, the right of establishment can be exercised only under the conditions laid down for nationals in the host country. The principle of assimilation set out above militates against the long-term extension, by way of harmonisation through a measure such as the Directive, of provisions specific to rules governing the provision of services within the meaning of Article 59 of the EC Treaty (now, after amendment, Article 49 EC) in favour of a large number of the professionals who may benefit from it.

19. The applicant highlights the differences between the legal systems of the different Member States and in particular between the training requirements applicable to lawyers. It concludes from this that, by abolishing any requirement for training in the law of the host Member State and allowing a lawyer from another Member State to practise that law, the Directive establishes a difference in treatment between nationals and migrants which is not and cannot be justified having regard to Article 52. In its submission, the contested Directive extends to the rules on establishment the advantages — temporary, by definition — enjoyed by the providers of services. Such extension would distort the concept of freedom of establishment, creating reverse discrimination which would be highly prejudicial to nationals and their competitive position.

20. The Parliament, the Council, Spain, the Netherlands, the United Kingdom and the Commission all contend that the first plea should be rejected, but for different reasons.

21. I also am of the opinion that this plea must be rejected; my reasons are similar to those put forward by the representatives of the United Kingdom Government.

22. The supposed infringement of the Treaty provision defining the scope of freedom of establishment, according to Luxembourg, can be summarised in the following terms: the Directive goes further than the requirements of Article 52, by permitting migrant lawyers to practise a non-salaried activity in more favourable conditions than those fixed by the laws of the host country for its own nationals. In that way, migrant lawyers are permitted, without any time-limit, to practise the law of the host country with no requirement to demonstrate any knowledge of, or undertake any training in, the subject. Reverse discrimination in relation to lawyers with Luxembourg qualifications is thus created

4 — Case 11/77 *Patrick* [1977] ECR 1199 et seq., especially p. 1204, paragraph 9.

5 — Case C-55/94 *Gebhard* [1995] ECR I-4165.

which, according to the applicant State, is contrary to the second paragraph of Article 52.

23. This argument is utterly irrelevant: the discrimination alleged by the applicant does not exist and, even if it did, it could not be challenged on the basis of Article 52. I shall address this final point first.

24. The second paragraph of Article 52 gives self-employed persons who establish themselves in another Member State the right to treatment as favourable as that afforded to nationals of the host Member State. This right is also conferred on those same nationals when, having been lawfully resident in the territory of another Member State and having undergone professional training recognised by the provisions of Community law there, they are, with regard to their State of origin, in a situation which may be assimilated to that of foreign migrant workers. [6] Article 52 does not, however, grant any privilege or, in particular, guarantee in any way to those workers who have not exercised their right to freedom of movement, treatment equal to that given to migrant workers.

6 — Case 115/78 *Knoors* [1979] ECR 399, paragraph 24.

In effect, the provisions of the Treaty regarding the free movement of persons do not apply to situations which are purely internal to a Member State. [7]

Therefore, the second paragraph of Article 52 cannot form the basis for the prohibition of a supposed discrimination against persons practising law in their Member State of origin on the basis of qualifications and professional training obtained in that same Member State. [8]

25. Furthermore, even supposing that Luxembourg could profitably invoke Article 52 or any other Treaty provision in order to challenge unequal treatment damaging to its own nationals (or workers placed on the same footing) who have not exercised their right to freedom of movement, in my view the Directive in question does not create the discrimination alleged. It must be borne in mind that, in order to be able to speak of inequality, there must be unequal treatment of comparable situations or equal treat-

7 — Judgments in *Knoors* (cited above), paragraph 24; Case 20/87 *Gauchard* [1987] ECR 4879, paragraph 13, and Joined Cases C-330/90 and C-331/90 *López Brea and Hidalgo Palacios* [1992] ECR I-323, paragraph 7.

8 — Compare, to this effect, the judgment in Joined Cases C-29/94 to C-35/94 *Aubertin and Others* [1995] ECR I-301, paragraph 13, where the Court of Justice recognised that neither Community law, nor Council Directive 82/489/EEC of 19 July 1982 laying down measures to facilitate the effective exercise of the right of establishment and freedom to provide services in hairdressing (OJ 1982 L 218, p. 24), preclude 'national rules which require that nationals of that Member State hold a diploma in order to operate a hairdressing salon, while permitting hairdressers who are nationals of other Member States to operate a hairdressing salon without holding such a diploma and without being obliged to entrust its operation to a manager holding that diploma'.

ment of different situations without justification.

26. There is, therefore, no discrimination between the lawyer who has fulfilled the national professional qualification requirements and practises in his home country under that professional title ('national lawyer') and the lawyer who practises in the host State under his foreign professional title ('non-integrated migrant lawyer'), by virtue of Article 2 of the Directive, as the two situations are different. In fact, the latter, as well as fulfilling the conditions for access to the profession of lawyer in one Member State, must, in order to practise in the host State, work in conjunction with a national lawyer in activities relating to representation in legal proceedings if the regulations of the host State so require (Article 5(3) of the Directive), abstain from particular notarial activities (Article 5(2) of the Directive) and, above all, practise under his original professional title in conditions which leave in no doubt the foreign nature of his qualifications and training (Article 4).

27. Nor is there discrimination between the national lawyer and the lawyer who, having practised effectively and regularly for at least three years in the host State, is treated like a national lawyer, by virtue of Article 10, either because he has practised for that period in the law of the host State, including Community law or because, without having practised in that law for that time, he has proved to the competent authorities that he possesses the required levels of knowledge and skill ('integrated migrant lawyer'). The Directive treats national lawyers and integrated migrant lawyers in the same way: in both cases, it is presumed that the lawyer has sufficient skills to practise his profession under the professional title of the host State. Any questions of legality which might arise in relation to this presumption of equal treatment may appropriately be considered when it turns to the second plea for annulment.

28. Lastly, Luxembourg claims, still within the ambit of the first plea and in response to the statements in intervention of the Netherlands and of the United Kingdom, that, in the absence of harmonisation of conditions for access to a profession, Member States may define the knowledge and skills required for the practice of that profession and require the presentation of a diploma certifying that its holder has attained those skills and that knowledge. In support of this it cites the jurisprudence found in the judgments in *Heylens*, *Vlassopoulou* and *Aguirre Borrell and Others*.[9] The applicant deduces from that case-law that the principles laid down in Article 52 regarding establishment are, on the one hand, the abolition of any nationality requirements and, on the other, pending harmonisation of training conditions, the maintenance of the requirement of knowledge of national law.

9 — Case 222/86 *Heylens* and Others [1987] ECR 4097, paragraph 10; Case C-340/89 *Vlassopoulou* [1991] ECR I-2357, paragraph 9, and Case C-104/91 *Aguirre Borrell and Others* [1992] ECR I-3003, paragraph 7.

29. In so far as it is not indissociable from the second plea, this claim constitutes a new plea in law and, since it is not based on matters of law or of fact which have come to light in the course of the proceedings, it must be declared inadmissible in accordance with Article 42(2) of the Rules of Procedure. In any event, this plea in law would not be successful, as it is based on the same erroneous interpretation of Article 52 as I observed in my analysis of the first plea.

30. The second paragraph of Article 52 defines only the minimum content — not the maximum — of the right of establishment. As the representative of the United Kingdom rightly says: it is no part of the function of Article 52 to impose limits on the process of liberalisation.

It is not surprising then that in the cases cited by the applicant[10] the Court of Justice has been concerned with defining the minimum content of this right which is enjoyed by self-employed persons who have made use of their right to freedom of movement and which may be used to oppose the outright refusal by national administrative bodies to allow them to practise certain professions or used as a defence to criminal proceedings for having practised without using the title required. In the absence of harmonisation, the host Member State, although it may maintain certain restrictions, 'must take into consideration the diplomas, certificates and other evidence of qualifications which the person concerned has acquired in order to exercise the same profession in another Member State by making a comparison between the specialised knowledge and abilities certified by those diplomas and the knowledge and qualifications required by the national rules.'[11]

31. In summary, the plea for annulment based on Article 52, paragraph 2 put forward by Luxembourg must be rejected.

B. *Infringement of Article 57(2) of the EC Treaty*

32. Article 57(2) states:

'2. [In order to make it easier for persons to take up and pursue activities as self-employed persons], the Council shall, acting in accordance with the procedure referred to in Article 251, issue directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. The Council, acting

10 — With the exception of *Heylens* and Others, which concerned an employee, and in which the Court of Justice based its findings on Article 48 of the EC Treaty (now, after amendment, Article 39 EC).

11 — Judgments cited above, *Vlassopoulou*, paragraph 16, and *Aguirre Borrell and Others*, paragraph 11.

unanimously throughout the procedure referred to in Article 251, shall decide on directives the implementation of which involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. In other cases the Council shall act by qualified majority.'

33. By this second plea in law, Luxembourg hopes to show that the Directive was incorrectly adopted, according to Article 57(1) and the first and third sentences of Article 57(2), excluding the second sentence. [12] That error allowed the Council to act by qualified majority instead of unanimously, despite the fact that the Directive imposed an amendment of the legal principles relating to both training for, and access to, the legal profession.

34. According to the Grand Duchy, the Directive infringes a fundamental legal principle of the legal profession, which exists in all the Member States, by virtue of which only those persons who have demonstrated a sufficient knowledge of the national law or who have acquired recognition of their qualification by passing a test where appropriate, such as that provided for in Directive 89/48, may gain access to the profession.

35. Furthermore, the Directive alters other conditions for access to the profession by natural persons by removing prohibitions in force in various Member States relating to establishment under the home-country professional title and joint practice in the profession.

36. In support of its argument, Luxembourg cites, in particular, the judgment in *Germany* v *Parliament and Council*, [13] which states in paragraphs 16 and 17:

'... in the absence of coordination at a Community level the Member States may, subject to certain conditions, impose national measures pursuing a legitimate aim that is compatible with the Treaty and is justified on overriding public interest grounds, which include the protection of consumers (see, in particular, Case 205/84 *Commission* v *Germany* [1986] ECR 3755).

Consequently, the Member States may, in certain circumstances, adopt or maintain measures constituting an obstacle to free movement. Article 57(2) of the Treaty

12 — The Directive was adopted by virtue of Articles 49 and 57(1) and (2), first and third sentences. I agree with the Kingdom of Spain that the main provisions of the Directive (*inter alia* Articles 2, 3, 5 and 10) are based on Article 57(1), while only Articles 8 (salaried practice) and 11 (joint practice) justify the inclusion, as a legal basis, of Articles 49 and Article 57(2). See also, Sobotta, Ch. and Kleinschnittger, Ch.: Freizügigkeit für Anwälte in der EU nach der Richtlinie 98/5/EG, *Europäische Zeitschrift für Wirtschaftsrecht*, 1998, No 21, pp. 645 et seq., particularly p. 650.

13 — Case C-233/94 *Germany* v *Parliament and Council* [1997] ECR I-2405.

authorises the Community to eliminate obstacles of that kind in particular by coordinating the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. Since coordinating measures are concerned, the Community is to have regard to the public interest aims of the various Member States and to adopt a level of protection for that interest which seems acceptable in the Community.'

According to Luxembourg, this case-law ought to have prompted the Community legislature, when adopting the Directive, to reconcile the different interests involved, taking due account of the interests of the consumer in being able to consult lawyers who are established in a particular State and who have sufficient knowledge of the law of that State.

37. In summary, the applicant submits that the legal basis of the Directive ought to have included the second sentence of Article 57(2) since the Directive alters the legal principles relating to training and conditions of access to the legal profession and, in particular, because the Directive:

— abolishes the requirement that the migrant lawyer, in order to practise the law of the host State, should acquire the necessary knowledge in that law;

— permits migrant lawyers from the outset to practise fully under the rules of establishment and under their home-country title, and

— liberalises the joint practice of the legal profession.

Luxembourg also criticises the Directive for not taking consumer protection into account.

38. The three Institutions and the three Member States parties to these proceedings, following essentially parallel lines of argument, ask that this plea be dismissed.

39. I share their view. I shall examine Luxembourg's arguments in ascending order of importance.

40. In the first place, it is not the case that the Directive authorises joint practice of the

legal profession. Quite the contrary, since Article 11 of the Directive starts with the following proposition: 'Where joint practice is authorised in respect of lawyers carrying on their activities under the relevant professional title in the host Member State, ...'. And even if the alleged liberalisation operated in relation to the State of origin, the possibility of joint practice undoubtedly affects only procedures of practice and not conditions for access. In any event, as the Commission points out, joint practice is no longer prohibited in the Member States.

41. Nor, secondly, is it the case that Article 2 of the Directive, by declaring the right of all lawyers to practise in any Member State under their home-country professional title, alters a legislative principle. In my view, there is no such alteration.

42. The right of a lawyer in possession of qualifications obtained in one Member State to practise in another Member State under his home-country professional title in the fields covered by that professional title (that is to say, usually, the law of the home State, including Community law, and international law), is directly derived from the freedom of establishment enshrined in Article 52 of the Treaty, the direct effect of which has been affirmed by the Court of Justice. [14]

To the extent that it is not possible for consumers to be confused with regard to the actual abilities of a professional who is established in those conditions, the host State cannot plead overriding reasons of public interest in order to adopt and maintain measures which constitute an obstacle to free movement within the meaning of the judgment in *Germany* v *Parliament and Council*, cited by the applicant. [15] That there might have been (or that there continues to be) legislation in the Member States in conflict with that principle is a mere circumstance which does not affect the validity of that principle.

43. Further, the Directive allows the migrant lawyer to give advice in the law of the host country. However, that provision is not a novelty either. As the applicant State acknowledges, Directive 77/249 already offered that option to lawyers providing services in a State other than their home country by treating them in the same way as national lawyers and not excluding that option from the ambit of their activities. At the latest by the end of the two years provided in Directive 77/249, each Member State must have established a legal principle according to which a lawyer from another Member State may advise on the law of the host country, subject to the conditions imposed by the Directive, those being the obligation to use the home-country professional title so as to avoid any confusion and, in some cases, the maintenance of restrictions relating to

14 — Case 2/74 *Reyners* v *Belgium* [1974] ECR 631.

15 — This goes further than requiring more administrative verification of qualifications, in the sense of the judgment in Case C-19/92 *Kraus* [1993] ECR I-1663.

certain notarial activities and representation in legal proceedings.

These same conditions are found, almost word for word, in Article 5(2) and (3) of the contested Directive. The only difference between the two systems is that the first comes within the ambit of the provision of services and the second develops freedom of establishment. Nevertheless, I cannot see how that could have any bearing, in particular in relation to consumer protection, on the sole element of public interest cited by the applicant.

44. On the contrary, I think, in common with a large number of the parties, that it would be inconsistent to allow the lawyer providing services to advise on the law of the host State but not the lawyer who is established in that State and who, by virtue of his greater contact with the local legal system, must be in a better position to offer reliable advice. In those circumstances, the resulting restriction imposed on the established lawyer would not satisfy any of the four conditions laid down by the Court in *Gebhard*, cited above, that is to say, that it should apply in a non-discriminatory manner, that it should be justified by imperative requirements in the general interest, that it should be suitable for securing the attainment of its objective and that it should go no further than necessary for the attainment of that objective. [16] In particular, in that same judgment, the Court of Justice accepted that the temporary nature of the provision of services does not mean that a provider of services may not equip himself with some form of infrastructure (including an office, chambers or consulting rooms) in the host Member State in so far as that is necessary for the purposes of performing the services in question, [17] and the Court had previously recognised that the right of establishment of natural persons involves the ability to have various centres of activity in different Member States. [18]

45. Luxembourg claims that the limitations laid down by Article 5 of the Directive and the obligation to practise under the home-country professional title do not ensure adequate protection for the consumer. It rejects the approximation of the established migrant lawyer and the provider of services. Except by unlikely oversight, the latter would be confined to acting within his fields of competence, on account of the temporary and occasional nature of his presence, whereas the established lawyer would find himself in a position of permanent supply which, from an economic point of view, would strongly encourage him to extend the ambit of his activities.

46. The three institutions which are parties, the remaining fourteen Member States and the CCBE, the Council of the Bars and Law Societies of the EC, are of the contrary view that, in fact, these measures provide an

16 — Paragraph 37.

17 — Paragraph 27.

18 — Case 107/83 *Klopp* [1984] ECR 2971, paragraph 19.

acceptable level of protection in the Community.

It is not for the Court of Justice, in the absence of a manifest error of assessment, to give a judgment which encroaches on the scope of political decision-making by the legislature.

47. In my view, the predictions made by the Grand Duchy are not of a judicial nature and fall squarely within the competence of the legislative power. In any event, the quantitative importance of negligent conduct ought not to affect the appraisal of its unacceptable nature. [19] Finally, to the extent that it is not provided for in its current legislation, there is nothing to stop Luxembourg from increasing supervision, prohibiting lawyers from accepting cases where they know, or ought to know, that they lack sufficient competence, [20] or making the disciplinary or penal sanctions applicable to professional negligence more severe.

It is impossible to eliminate all risk of incompetent conduct on the part of migrant lawyers, just as it is impossible to prevent a national lawyer from advising in matters of national law for which he does not have the necessary skills. It is for the client alone, informed of the lawyer's foreign training through the professional title which he displays, to evaluate the risk, '[being] free to entrust his interests to a lawyer of his choice'. [21]

48. In summary, as in the case of Directive 77/249, the Community legislature has taken the view that the obligation to use the home-country professional title and the possibility of excluding certain notarial and procedural activities are, in the context of Article 2 of the contested Directive, sufficient safeguard for the consumer. In consequence, no legal principle has been altered. [22]

49. There remains to discuss the supposed abolition of any obligation on the migrant lawyer to acquire knowledge in the legal domain of the host country. In the applicant's view, that measure would entail an amendment of a national legal principle relating to training and the conditions of access to the profession.

50. I hope that I have already shown that that argument does not apply to migrant lawyers who practise under their home-

19 — In which I agree with the applicant. See the Report for the Hearing, paragraph 25.

20 — Following the example of the CCBE Code of Conduct (Article 3.1.3).

21 — Case 427/85 *Commission* v *Germany* [1988] ECR 1123, paragraph 27.

22 — And even if a legal principle had been altered, that would not affect, as I shall point out later, either the training for the conditions for access to a profession, within the meaning of Article 57(2), second sentence.

country professional title. In their case, the rights laid down in the Directive are directly derived from the EC Treaty or come as a consequence of rules already set out in Directive 77/249.

51. The situation is different for those lawyers who avail themselves of the system of full integration provided for by Article 10. It will be recalled that that provision gives the migrant lawyer three routes by which he can be placed on a completely equal footing with national lawyers. They are as follows:

— recognition of his professional title in accordance with Directive 89/48 following the completion, as the case may be, of either the adaptation period or the aptitude test provided for by Article 4(1)(b) of that Directive (second paragraph);

— practice under his home country professional title, establishing effective and regular pursuit for a period of at least three years of an activity in the law of the host country, including Community law (first paragraph), and

— practice under his home country professional title, for the same period of time but for a lesser period in the law of the host country, following verification by the competent authority of his experience and knowledge in the law of the host country (third paragraph).

52. Given that the Grand Duchy alleges presumed abolition of any obligation that the lawyer who wishes to establish himself under his national professional title should demonstrate sufficient knowledge of the legal system of the host country, its complaint can only be understood as being directed at the second of those cases. The other two recognise the right of the host country to verify that those skills have been acquired.

53. It must then be clarified whether the possibility of treating migrant lawyers in the same way as the lawyers of the host country, without their having to pass an aptitude test on the law of that country, amounts to an act which, if implemented in at least one Member State, would bring about an alteration in the legal principles in force there in the field of training and conditions for access to a profession for natural persons.

54. In my opinion, the Directive has no effect whatsoever on national training systems. It is silent as to the subjects which must be learned by those aspiring to be

lawyers, and as to teaching methods, length of courses, or the centres which can provide those courses.[23] Each Member State continues to regulate these matters freely.[24]

55. Now, if it can be shown that the Directive creates an amendment to the legal principles relating to *conditions of access* to a profession, then it is the case that it ought to have been adopted in accordance with the procedure referred to in the second sentence of Article 57(2) — that is to say unanimously. I shall examine each of these concepts separately (amendment, legal principles, conditions of access), but in the order which most suits my arguments.

56. In the first place, I have serious doubts about the pertinence of considering the provisions in question as regulating the *conditions for access* to a profession. When does a person accede to the profession of lawyer, within the meaning of Article 57?

57. In principle there are two possible answers.

According to the first, there would be as many means of 'access' to the profession of lawyer in the European Union as there are different legal systems, with their own rules and requirements. In this case, it would be access not to the profession of lawyer in the absolute sense, but rather to the profession of lawyer within a determined legal order. This is the definition proposed by Luxembourg.

According to the second, there is only one kind of 'access' to the profession, subject to different rules in each of the European systems. The provisions relating to legal practice in a Member State other than that in which the professional qualification was obtained regulate no more than the mutual recognition of formal evidence of aptitude or, at most, the rules of practice of a

23 — As an example of a regulation which does contain provisions for coordination relating to training, see Council Directive 93/16/EEC of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications (OJ 1993 L 165, p. 1). Article 23 of which demands, in effect, that doctors must have acquired: '(a) adequate knowledge of the sciences on which medicine is based and a good understanding of the scientific methods including the principles of measuring biological functions, the evaluation of scientifically established facts and the analysis of data; (b) sufficient understanding of the structure, functions and behaviour of healthy and sick persons, as well as relations between the state of health and physical and social surroundings of the human being; (c) adequate knowledge of clinical disciplines and practices, providing him with a coherent picture of mental and physical diseases, of medicine from the points of view of prophylaxis, diagnosis and therapy and of human reproduction; (d) suitable clinical experience in hospitals under appropriate supervision.' Also, 'A complete period of medical training of this kind shall comprise at least a six-year course or 5 500 hours of theoretical and practical instruction given in a university under the supervision of a university'. Article 24 contains additional conditions: completion and recognition of six years of controlled, full-time study, including practical and theoretical teaching which takes place in centres with specified characteristics, etc. Other provisions establish requirements relating to the training of specialist doctors.

24 — For the rest, the applicant's allegation that by abolishing any requirement of training, the Directive derogates from the fundamental requirement of knowledge, prior to practice and evidenced by a diploma, of the law of the host country, is confused with its argument relating to conditions of access.

profession. This is the view put forward by the United Kingdom among others.

58. Not in the Treaty, or the derived law, or the jurisprudence of the Court of Justice are there to be found firm grounds supporting one or other of these interpretations. The texts use expressions such as 'access to the profession', 'access to the activities' and 'practice of the activities' indiscriminately and plainly without technical precision.

59. That being so, I consider it inevitable to prefer the second definition as it is less restrictive of the right to freedom of establishment.

It must not be forgotten that freedom of movement constitutes one of the primordial objectives of the Treaty which, moreover, confers individually on every worker in the Community the fundamental right of free access to employment.[25] On the other hand, the lawful requirement, in the various Member States, relating to the possession of qualifications for admission to certain occupations, constitutes a restriction on the effective exercise of the freedom of movement of workers guaranteed by the Treaty.[26] In other words, if freedom of movement, and, hence, freedom of establishment, are the rule, national measures which form obstacles to it, and which Member States may maintain in certain circumstances, are the exception.

In order to remove those obstacles, the Community gave itself the power to adopt Directives on mutual recognition of titles and on coordination, in which it takes into account the public interest pursued by the different Member States and adopts a level of protection for that interest which seems acceptable.[27] The provisions of Article 57(1) and (2) come within this ambit.

For the adoption of the directives provided for therein, the Treaty refers to the procedure laid down in Article 189b of the EC Treaty (now, after amendment, Article 251 EC), which establishes a system of joint decision-making between the European Parliament and the Council, the latter acting by qualified majority. Only in the situations envisaged by the second sentence of Article 57(2) is unanimous approval in the Council required following consultation with the Parliament. If a decision is the rule, unanimity is the exception. Furthermore, interpreting the areas subject to the procedure of joint decision broadly reinforces the participation of the Parliament in the legislative process of the European Union, and that participation reflects, within the Community, a fundamental democratic principle, that the peoples should take part in the exercise of power

25 — *Heylens*, cited above, paragraphs 8 and 14.

26 — *Patrick*, paragraph 16, and *Heylens*, paragraph 11, both cited above.

27 — *Germany* v *Parliament and Council*, cited above, paragraph 17.

through the intermediary of a representative assembly. [28]

60. The exceptional dual nature — material and procedural — of the provision contained in the second sentence of Article 57(2) makes it necessary to interpret it restrictively and to prefer, when choosing between two equally possible interpretations, that which best fits with the logic of that Article and with the general scheme of the Treaty.

61. It is therefore permissible to conclude provisionally that the system of assimilation established by Article 10, and, in particular, Article 10(1), does not entail an amendment to legal principles relating to conditions of access in force relative to the regulation of professions. [29]

That system, like that introduced by Article 2, does not seek to change the conditions laid down by national legislation for access to a profession.

In this respect, I find it highly significant that Directive 89/48, which regulates exactly the same material (practice under the title of the host country through a combination of home-country qualifications and a period of adaptation or an aptitude test) was not even adopted on the basis of the first and third sentences of Article 57(2) but only on the basis of Article 57(1) (mutual recognition of diplomas, certificates and other evidence of formal qualifications). [30]

62. Similar arguments lead me to ask whether such an amendment, if amendment there is, affects the *legal principles* in force in a Member State at least in relation to access to a profession or whether it affects procedure only. Essentially, the Directive does no more than generalise the formula consisting of assimilation by way of a three-year adaptation period which Directive 89/48 had established as an option (see paragraph 7 above).

28 — Case C-300/89 *Commission* v *Council* [1991] ECR I-2867, paragraph 20.

29 — The historical explanation for the inclusion, by virtue of the Single European Act, of the second sentence of Article 57(2), backs up my interpretation. It sought to require unanimity in the Council in order to amend the German *national system* of the *Meisterbrief*, which applied to certain artisan professions.

30 — The same occurs in relation to various Directives which liberalise specific occupations. As such, Directive 82/489, cited above, allows a migrant hairdresser to practise his occupation by substituting for the required qualification in the host State experience gained in the home country. That did not stop the Court from recognising that 'it is evident from the fourth and fifth recitals in the preamble that the Directive does not aim to harmonise the conditions laid down by national rules for access to the occupation of hairdresser and the pursuit of that occupation' (*Aubertin and Others*, cited above, paragraph 12). Also, in relation to Council Directive 67/43/EEC of 12 January 1967 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons concerned with: 1. Matters of 'Real Estate' (excluding 6401)(ISIC Group ex 640), 2. The provision of certain 'Business Services not elsewhere classified' (ISIC Group 839) (OJ, English Special Edition 1967, p. 3), the Court has held that that Directive does not preclude national rules which reserve certain activities in the real-estate sector to persons practising as estate agents within a regulated profession, the Court of Justice affirmed that the said Directive 'merely requires the abolition of all direct or indirect discrimination based on nationality, but does not aim to harmonise the conditions laid down in national rules regulating the taking up or pursuit of the profession of estate agent' (*López Brea and Hidalgo Palacios*, cited above, paragraph 15).

63. Furthermore, even supposing that the Directive does regulate fundamental aspects of the system for access to a profession, it would be necessary to demonstrate, for this plea to be founded, that there had been an *amendment* to that system. In examining that condition, it is of primary importance to specify with great precision the principle concerned.

64. In the text of its application, Luxembourg does not use the same terms throughout. It alludes to a 'fundamental legislative principle of the legal profession which is common to all Member States, which is that it is a profession to which only persons with the necessary aptitudes in national law can gain access', [31] and then says that 'the fundamental principle which is altered by the Directive is that which obliges all migrant lawyers to acquire knowledge in the law of the host country'. [32]

65. To summarise, the legislative principle referred to by Luxembourg, in general terms, is that any person wishing to gain access to the legal profession in a particular State must have the necessary knowledge and skills in the law of that State. I would agree that a similar principle exists in all the Member States; I cannot agree, however, with the rest of the Grand Duchy's argument.

66. According to the applicant, the Directive abolishes the requirement for all lawyers to know the law of the State in which they intend to practise by doing away with the requirement for an aptitude test.

67. I think that Luxembourg is confusing fact with presumption of that fact, the reality of knowledge and skills with the indices for assessing them.

In effect, passing an aptitude test merely make it possible to assume that the candidate has a certain level of knowledge; it does not amount to knowledge itself but is 'proof' of knowledge only in a figurative sense.

68. The other method which is generally accepted as being capable of forming a basis for the presumption, or, if you prefer, a strong indication, that certain skills have been acquired is through the accumulation of suitable experience.

31 — Page 17 of the application.

32 — Page 18 of the application. The Directive would thereby put an end to the legislative principle in Luxembourg which requires testing of the level of knowledge of Luxembourg law of any candidate for the legal profession, the principle having been established because Luxembourgish students, not having a university of their own, carry out their studies in foreign universities. In reality, this is only applicable to candidates who already hold the legal qualification obtained in another Member State.

In the Middle Ages, Alfonso X the Wise, King of Castille and Leon (1252-1284), wrote in his Book of Laws or Registers [33] that 'todo ome que fuere sabidor de derecho o del fuero o de la costumbre de la tierra, porque lo aya usado como oficio por de grand tiempo, puede ser abogado por otro' ('any man who has knowledge of the law, or of the usage, or of the custom of the land, because he has for a long time used that knowledge in his office or occupation, may be the advocate of another'). [34]

69. As I have indicated, Directive 89/48 provided, in its Article 4(1)(b), for the practice of the profession under the host country title following an adaptation period of three years. Although it is true that that Directive allowed Member States to choose to require lawyers to pass an aptitude test (an option which the great majority of Member States took up), the fact remains that, at the latest from the entry into force of Directive 89/48, the possibility of lawyers joining the profession in the host country without having to pass an aptitude test has existed as a principle.

70. The Court of Justice has also recognised, in the specific case of the legal profession, the importance of acquired experience as evidence of professional aptitude. In *Vlassopoulou*, cited above, the authorisation to practise the profession in Germany sought by a Greek lawyer was refused because she had not studied law in Germany, nor passed the two state examinations required by the German legislation. The Court of Justice declared, firstly, that the competent authority of the Member State was obliged, by virtue of Article 52, to compare the knowledge and abilities certified by the foreign diploma with the requirements established for nationals. If that comparison showed only partial equivalence, the national authorities must go on to assess whether 'the knowledge acquired in the host Member State, either during a course of study or by way of practical experience, is sufficient in order to prove possession of the knowledge which is lacking'. [35] It is of relevance that the Court's reasoning in that judgment was based exclusively on the Treaty.

71. The contested Directive does no more than codify that jurisprudence, with the following touch: the choice between the aptitude test and the period of adaptation is now given to the individual, and not the Member State. This advance is in line with the objective of Article 57, which is to

33 — The Seven Registers make an admirable attempt to rationalise Roman and Canon law. Although the popular support enjoyed by the traditional Castilian 'fueros' deprived them of legal force, they inspired judgments from the King's Supreme Court and shaped the way of thinking of the new jurists. The practical influence of their rules and principles has been felt up until recent times.

34 — Law 2a. of Title 6 of Register III.

35 — Paragraph 20.

'make it easier for persons to take up and pursue activities as self-employed persons'.

It is understandable that some prefer one method over the other,[36] just as some argue for one or another type of test or for shorter or longer periods of adaptation, but personal preferences cannot be put forward as legal criteria.

72. Last, it is my understanding that the Directive, by allowing full integration for the migrant lawyer on proof of effective and regular pursuit for a period of at least three years of an activity in the host Member State in the law of that State, including Community law, affects only the means by which knowledge and legal skills not covered by the home country diploma are accredited, without jeopardising the principle which states that any candidate for the profession of lawyer must have the necessary knowledge and skills in the legal field in which he intends to practise.

36 — In that way, some celebrate the new Directive as favouring 'effective practice rather than theoretical knowledge acquired from textbooks' (Nebbia, P: The New Directive on Lawyers' Establishment: Uses and Abuses, *European Current Law Yearbook*, 1998, p. xlii, particularly p. xlv), while others feel that 'it does not seem as though we can give up reliable control mechanisms which allow the verification of a minimum level of legal knowledge' ['verlässliche Kontrollmechanismen, auf deren Grundlage ein gewisser Mindeststandard der Rechtskenntnisse verifizierbar ist, erscheiner unverzichtbar'] (Henssler, M: Der lange Weg zur EU-Niederlassungsrichtlinie für die Anwaltschaft, *Zeitschrift für europäisches Privatrecht*, 1999, pp. 689 et seq., particulary p. 704 — which, despite that, states that the Directive does not affect national legal principles relating to training or conditions of access).

73. I do not wish to finish without dealing with certain observations made during the hearing.

On the question of whether it may be concluded from Article 10(1) that a lawyer who had practised solely in the field of Community law for the three-year period would have the right to full integration, it must be recalled that Community law forms an integral part of the law of the Member States and, with the exception of legal proceedings involving the institutions, is applied in the national legal context. Furthermore, it will be for the Member State concerned, including its judicial bodies, and, in some cases, the Court of Justice, to interpret the precise scope of the provisions of the Directive.[37]

In addition, the applicant's representative explained that, pursuant to the Directive, a lawyer could obtain integration by virtue of Article 10(1), despite having given negative proof of his knowledge by failing the aptitude test provided for in Directive 89/48. That argument is fallacious: the aptitude test serves only to give a presumption of knowledge; failing the test deprives the candidate of this form of accreditation,

37 — The terms 'regular' and 'effective' are also indeterminate legal concepts which will probably lead to controversy over interpretation. For this, see Ewig, E: Verwirklichung der Niederlassungsfreiheit für Rechtsanwälte in der EU und im EWR, *Neue Juristische Wochenschrift*, 1999, No 4, pp. 248 et seq., in particular, p. 252.

but does not create a presumption that he lacks those skills. [38]

74. In my opinion, for all the reasons given, the second plea must be dismissed.

C. *Infringement of Article 190 of the EC Treaty*

75. According to Article 190:

'Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty.'

76. According to the Grand Duchy, the Directive contains 'no justification for the Community legislature's choice in placing on the same footing, from the point of view of establishment, those migrant lawyers practising under their home-country title and those who opt for integration and the use of the host state title.'

77. I must straight away admit that I do not quite understand what the applicant is referring to here: the Directive does not treat the two in the same way. While the former have the right to practise permanently, in whichever Member State, in the same activities as national lawyers (Article 2), the latter are, in addition, subject to the requirements of assimilation laid out in Article 10.

78. In those circumstances, it is difficult to understand what defect in reasoning is complained of by Luxembourg. Added to that is the fact, as pointed out by the Parliament and by Spain, that this plea in law, as it is argued, is directed at challenging the substantive provisions of the Directive rather than the recitals in the preamble thereto, and uses, to that end, the same arguments as in the first two pleas.

79. Thus, in its written application, Luxembourg asserts that:

'The third recital in the preamble constitutes nothing more than an affirmation and a *petitio principii*: lawyers who could not be integrated quickly "should be able to... continue to practise under their home-country professional titles".

38 — It might be useful to ask oneself how many lawyers (or judges) in practice would be able to pass the examinations of a law degree.

The fifth recital contains a manifest inaccuracy: if it is true that cross-border trade flows are increasing, resulting in creating a need for the creation of teams with multiple abilities in international law, Community law and national laws, it is wrong to state that consumers of legal services need to seek advice from established professionals who have no recognised qualification in the law of their host state but who, nevertheless have the right to practise fully in that state.

The ninth recital gives as the only guarantee to the consumer the fact that he will be informed of the professional title of the established migrant lawyer. This protection is purely formal and illusory and cannot provide a justification for the choice made.

The tenth recital is limited to explaining the mechanism which has been adopted in order to remove obstacles, that is, the extension to established lawyers of the favourable system for service providers. That does not provide any justification for the choice taken or the fact that the Directive departs from the basic principle laid down in Article 52 of the Treaty.'

80. With regard to the obligation to state reasons for acts, it must be recalled that Article 190 requires that all acts to which it applies should contain a statement of the reasons which led the Institution to adopt them, so that the Court of Justice can exercise its power of review and so that both Member States and the persons concerned may learn of the conditions under which the Community institutions have applied the Treaty. [39]

81. I believe that the Directive fulfils this obligation, above all in light of its two principal new introductions, that is to say, the possibility of permanent establishment under the home-country professional title and the possibility of integration under the provisions of Article 10.

82. In particular, the third recital, far from forming a *petitio principii*, does no more than set out the different possibilities: integration, after passing the test provided for by Directive 89/48, and the two new routes opened by the Directive.

83. The real reasons for those two principal measures are to be found in the 5th, 6th and 14th recitals in the preamble. Thus, the Directive should facilitate integration in the host Member State and make it possible to meet increasing demand for legal advice in relation to transactions where international law, Community law and national laws overlap (fifth recital, see paragraph 9, above).

39 — See, in particular, *Germany* v *Parliament and Council*, cited above, paragraph 25.

The Directive finds grounds also in the diversity of legislation in the various Member States relating to the possibility of a lawyer establishing himself permanently under his home-country title, which diversity distorts competition and creates an obstacle to free movement (sixth recital, see paragraph 10 above).

With regard to the procedures for integration provided for by Article 10, the Directive is justified by reference to Articles 48 and 52 of the Treaty, as interpreted by the Court of Justice, which oblige the host Member State to take into account professional experience acquired in its territory. In this sense, the Directive explains that 'after effectively and regularly pursuing in the host Member State an activity in the law of that State including Community law for a period of three years, a lawyer may reasonably be assumed to have gained the aptitude necessary to become fully integrated into the legal profession there' and that consequently 'at the end of that period the lawyer who can, subject to verification, furnish evidence of his professional competence in the host Member State should be able to obtain the professional title of that Member State' (14th recital).

84. I consider, therefore, that in adopting the Directive the Parliament and the Council have not failed to fulfil the obligation to state reasons imposed by Article 190 of the Treaty. The third and final plea must, therefore, be rejected.

## V — Conclusion

85. Having regard to the considerations above, I propose that the Court of Justice should dismiss the action for annulment brought by the Grand Duchy of Luxembourg against Directive 98/5/EC of the European Parliament and 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, and order the applicant to pay the costs.