

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

Article 11

Joint practice

Where joint practise is authorised in respect of lawyers carrying on their activities under the relevant professional title in the host Member State, the following provisions shall apply in respect of lawyers wishing to carry on activities under that title or registering with the competent authority:

- (1) One or more lawyers who belong to the same grouping in their home Member State and who practise under their home-country professional title in a host Member State may pursue their professional activities in a branch or agency of their grouping in the host Member State. However, where the fundamental rules governing that grouping in the home Member State are incompatible with the fundamental rules laid down by law, regulation or administrative action in the host Member State, the latter rules shall prevail insofar as compliance therewith is justified by the public interest in protecting clients and third parties.
- (2) Each Member State shall afford two or more lawyers from the same grouping or the same home Member State who practise in its territory under their home-country professional titles access to a form of joint practice. If the host Member State gives its lawyers a choice between several forms of joint practice, those same forms shall also be made available to the aforementioned lawyers. The manner in which such lawyers practise jointly in the host Member State shall be governed by the laws, regulations and administrative provisions of that State.
- (3) The host Member State shall take the measures necessary to permit joint practice also between:
 - (a) several lawyers from different Member States practising under their home-country professional titles;
 - (b) one or more lawyers covered by point (a) and one or more lawyers from the host Member State.

The manner in which such lawyers practice jointly in the host Member State shall be governed by the laws, regulations and administrative provisions of that State.

- (4) A lawyer who wishes to practise under his home-country professional title shall inform the competent authority in the host Member State of the fact that he is a member of a grouping in his home Member State and furnish any relevant information on that grouping.
- (5) Notwithstanding points 1 to 4, a host Member State, insofar as it prohibits lawyers practising under its own relevant professional title from practising the profession of lawyer within a grouping in which some persons are not members of the profession, may refuse to allow a lawyer registered under his home-country professional title to practice in its territory in his capacity as a member of his grouping. The grouping is deemed to include persons who are not members of the profession if

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- the capital of the grouping is held entirely or partly, or
- the name under which it practises is used, or
- the decision-making power in that grouping is exercised, *de facto* or *de jure*,

by persons who do not have the status of lawyer within the meaning of Article 1(2).

Where the fundamental rules governing a grouping of lawyers in the home Member State are incompatible with the rules in force in the host Member State or with the provisions of the first subparagraph, the host Member State may oppose the opening of a branch or agency within its territory without the restrictions laid down in point (1).