Judgment of the Court of 7 November 2000

Grand Duchy of Luxemburg v European Parliament and Council of the European Union

Action for annulment - Freedom of establishment - Mutual recognition of diplomas - Harmonisation - Obligation to state reasons - Directive 98/5/EC - Practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was acquired

Case C-168/98

European Court reports 2000 Page I-09131

In Case C-168/98,

Grand Duchy of Luxembourg, originally represented by N. Schmit, Head of the International Economic Relations and Cooperation Directorate in the Ministry of Foreign Affairs, and subsequently by P. Steinmetz, Director of Legal and Cultural Affairs in the same Ministry, acting as Agents, assisted by J. Welter, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers at 100 Boulevard de la Pétrusse,

applicant,

v

European Parliament, originally represented by C. Pennera, Head of its Legal Service, and A. Baas, Administrator in the same service, and subsequently by C. Pennera and J. Sant'Anna, Principal Administrator in its Legal Service, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

and

Council of the European Union, represented by M.C. Giorgi, Legal Adviser, and F. Anton, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of A. Morbilli, General Counsel of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer, Kirchberg,

defendants,

supported by

Kingdom of Spain, represented by M. López-Monís Gallego, Abogado del Estado, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais,

by

Kingdom of the Netherlands, represented by M.A. Fierstra, Head of the European Law Department in the Ministry of Foreign Affairs, acting as Agent, 67 Bezuidenhoutseweg, The Hague,

by

United Kingdom of Great Britain and Northern Ireland, represented by J.E. Collins, Assistant Treasury Solicitor, acting as Agent, and D. Anderson, Barrister, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

and by

Commission of the European Communities, represented by A. Caeiro, Principal Legal Adviser, and B. Mongin, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

interveners,

APPLICATION for annulment of 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 (OJ 1998 L 77, p. 36),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, C. Gulmann (Rapporteur), A. La Pergola, M. Wathelet and V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón, R. Schintgen and F. Macken, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,

Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 25 January 2000, at which the Grand Duchy of Luxembourg was represented by P. Steinmetz, assisted by J. Welter, the Parliament by C. Pennera, the Council by F. Anton, the Kingdom of Spain by M. López-Monís Gallego, the Kingdom of the Netherlands by J. van Bakel, Deputy Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, the United Kingdom by J.E. Collins, and M. Hoskins, Barrister, and the Commission by B. Mongin,

after hearing the Opinion of the Advocate General at the sitting on 24 February 2000,

gives the following

Judgment

Grounds

1 By application lodged at the Court Registry on 4 May 1998, the Grand Duchy of Luxembourg brought an action under the first paragraph of Article 173 of the EC Treaty (now, after amendment, Article 230 EC) for annulment of 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 (OJ 1998 L 77, p. 36).

2 By orders of the President of the Court of 16 September, 19 October, 11 November and 9 December 1998, the Kingdom of Spain, the Commission of the European Communities, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in support of the forms of order sought by the European Parliament and the Council of the European Union.

Directive 98/5

3 Directive 98/5 was adopted in accordance with the procedure laid down in Article 189b of the EC Treaty (now, after amendment, Article 251 EC), on the basis of Article 49 of the EC Treaty (now, after amendment, Article 40 EC), in so far as it contains provisions concerning the practice of the profession of lawyer in a salaried capacity, and of Article 57(1) and the first and third sentences of Article 57(2) of the EC Treaty (now, after amendment, Article 47(1) and the first and third sentences of Article 47(2) EC), in so far as it regulates the practice of that profession in a self-employed capacity.

4 The first paragraph of Article 2 of Directive 98/5 provides that any lawyer is to 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.

5 According to Article 5(1) of Directive 98/5, 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.

6 Article 5(2), however, allows 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 than that of lawyer to exclude from such activities lawyers practising under a home-country professional title conferred in one of the latter Member States. Article 5(3) adds that, for the pursuit of activities relating to the representation or defence of a client in legal proceedings and in so far 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. It also permits the Member States, in order to ensure the smooth operation of the justice system, to lay down specific rules for access to supreme courts, such as the use of specialist lawyers.

7 Articles 3, 4, 6 and 7 lay down the rules relating to:

- registration with the competent authority of a lawyer wishing to practise in a Member State other than that in which he obtained his professional qualification;

- the wording of the professional title used by a lawyer practising under his home-country professional title;

- the rules of professional conduct applicable;

- disciplinary proceedings.

8 Article 10(1) provides that a lawyer practising under his home-country professional title who has, for a period of at least three years, effectively and regularly pursued an activity in the host Member State in the law of that State, including Community law, may be admitted to the profession of lawyer in the host Member State without being required to meet the condition of an adaptation period not exceeding three years or of an aptitude test, those conditions being laid down in Article 4(1)(b) 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 (OJ 1989 L 19, p. 16).

9 Article 10(3) of Directive 98/5 provides that 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 also obtain from the competent authority of that State, provided that the latter takes account of certain additional factors, admission to the profession of lawyer in the host Member State and the right to practise it under the professional title corresponding to the profession in that Member State, without having to meet the conditions of an adaptation period or aptitude test laid down in Article 4(1)(b) of Directive 89/48.

10 Article 10(2) allows a lawyer practising under his home-country professional title in a host Member State to apply at any time to have his diploma recognised in accordance with Directive 89/48, 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.

11 Articles 11 and 12 regulate the joint practice of the profession of lawyer.

12 Where joint practice is authorised in respect of lawyers carrying on their activities under the relevant professional title in the host Member State, Article 11 permits, subject to certain provisos, lawyers practising in that State under their home-country professional title:

- to pursue their professional activities in a branch or agency of the group to which they belong in their home Member State;

- to have access to a form of joint practice, where they belong to the same group or come from the same home Member State;

- to practise jointly with other lawyers from different Member States also practising under their home-country professional titles, and/or lawyers from the host Member State.

13 Article 12 provides that lawyers practising in such a group may employ the name of any grouping to which they belong in their home Member State and that the host Member State may require that, in addition to that name, mention be made of the legal form of the grouping in the home Member State and/or of the names of any members of the grouping practising in the home Member State.

Substance

14 The Grand Duchy of Luxembourg puts forward three grounds for annulment, alleging infringement of the second paragraph of Article 52 of the EC Treaty (now, after amendment, the second paragraph of Article 43 EC), infringement of the second sentence of Article 57(2) of the Treaty and infringement of Article 190 of the EC Treaty (now Article 253 EC).

15 In support of its pleas in law, it calls in question Articles 2, 5 and 11 of Directive 98/5, which concern respectively the right of migrant lawyers to practise under their home-country professional title, their area of activity and joint practice of the profession.

Infringement of the second paragraph of Article 52 of the Treaty

16 The plea of infringement of the second paragraph of Article 52 of the Treaty falls into two parts alleging, (i) introduction of a difference in treatment between nationals and migrants and, (ii) prejudice to the public interest in consumer protection and the proper administration of justice.

The first part

17 The Grand Duchy of Luxembourg argues that the second paragraph of Article 52 of the Treaty establishes a principle that a migrant self-employed worker is to be treated in the same way as his national counterpart. That national treatment rule means that equal treatment, or non-discrimination, must be measured by reference to the legislation of the host Member State and not to that of the home Member State, or Member State of origin, of the migrant self-employed worker. Further, the right of establishment may not be granted in breach of overriding principles governing the self-employed professions, common to the laws of the various Member States.

18 The applicant claims that, while harmonisation may justify dispensing with any assessment of knowledge of international law, Community law and the law of the Member State of origin, no such dispensation can be contemplated as regards the law of the host Member State. The knowledge to be acquired in the field of national law, unlike the knowledge imparted in other training contexts, is not identical or even broadly the same from one Member State to another. Moreover, the special characteristics of knowledge of national law are recognised by Directive 89/48.

19 The Grand Duchy of Luxembourg points out that Article 52 of the Treaty constitutes a particular expression of the general principle of equal treatment.

20 In its submission, by abolishing all requirement of prior training in the law of the host Member State and by permitting migrant lawyers to practise that law, Directive 98/5 unjustifiably discriminates between nationals and migrants contrary to Article 52 of the Treaty, which does not authorise the Community legislature to abolish a requirement of prior training in a directive which does not purport to harmonise training conditions.

21 The applicant adds that at the same time Directive 98/5 ignores the essential difference which exists, and must continue to exist, between establishment and provision of services, in so far as Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p, 17) itself permits lawyers providing services to practise the law of the host Member State without having to show any knowledge of that law.

22 The Parliament and the Council, supported by the interveners, deny the existence of any reverse discrimination. They submit that lawyers practising under their home-country professional title and lawyers practising under the professional title of the host Member State are in different situations, the first being subject to several restrictions on the pursuit of their activity. In any event, it is no part of the function of Article 52 of the Treaty to prescribe limits on the process of liberalising access to self-employed activity.

23 In response to those arguments, it must be stated that the prohibition of discrimination laid down in Article 52 of the Treaty is only the specific expression of the general principle of equality which, as one of the fundamental principles of Community law, must be respected by the Community legislature and which requires

that comparable situations should not be treated differently unless such difference in treatment is objectively justified (see, to this effect, Case C-280/93 Germany v Council [1994] ECR I-4973, paragraph 67, and Case C-27/95 Woodspring v Bakers of Nailsea [1997] ECR I-1847, paragraph 17).

24 In this case, it must be concluded that the Community legislature has not infringed that principle, since the situation of a migrant lawyer practising under his home-country title and the situation of a lawyer practising under the professional title of the host Member State are not comparable.

25 Whereas the latter may undertake all the activities open or reserved to the profession of lawyer by the host Member State, the former may be forbidden to pursue certain activities and, with regard to the representation or defence of clients in legal proceedings, may be subject to certain obligations.

26 Thus, Article 5(2) of Directive 98/5 permits, subject to certain conditions, the host Member State to exclude lawyers practising under a home-country professional title from the activity of preparing deeds for obtaining title to administer the estates of deceased persons or for creating or transferring interests in land.

27 Similarly, the first subparagraph of Article 5(3) allows the host Member State, in certain circumstances, to require lawyers practising under their home-country professional title to work in conjunction with either a lawyer practising under the professional title of that State before the judicial authority in question or with an avoué practising before it. The second subparagraph of that article authorises the Member States to lay down specific rules for access to supreme courts, such as the use of specialist lawyers.

28 In addition, under Article 4(1) of Directive 98/5, a lawyer practising in a host Member State under his home-country professional title is required to do so under that title, which must be expressed ... in an intelligible manner and in such a way as to avoid confusion with the professional title of the host Member State.

29 The complaint of discrimination against lawyers practising under the professional title of the host Member State is therefore unfounded. In consequence, the first part of the first plea must be rejected.

The second part

30 The Grand Duchy of Luxembourg asserts that it has challenged the validity of Directive 98/5 in the interests of consumers and in the interest of the proper administration of justice. According to the case-law of the Court, the application of professional rules to lawyers, in particular those relating to organisation, qualifications, professional ethics, supervision and liability, provides ultimate consumers of legal services and the sound administration of justice with the necessary guarantees of integrity and experience (Case C-3/95 Reisebüro Broede v Sandker [1996] ECR I-6511, paragraph 38). By abolishing all requirement of training in the law of the host Member State, Directive 98/5 prejudices the public interest, in particular the protection of consumers, pursued by the various Member States in requiring, for access to and practice of the profession of lawyer, a legally prescribed qualification. In this connection, the applicant argues that to accept that training may be acquired in practice necessarily implies that practice precedes training. In addition, to claim that a lawyer practising under his home-country professional title will not practise the national law of the host Member State which he does not know is to disregard the imperative requirements which militate against running such a risk; the quantitative likelihood of such a risk should not have any bearing on the determination that it is unacceptable.

31 The Parliament and Council, supported by the interveners, submit that Directive 98/5 takes into account overriding public interest grounds, in particular those of consumer protection, in Articles 4, 5, 6 and 7. The Parliament and the United Kingdom point out that, under the rules of professional conduct, lawyers are in any event obliged not to handle cases when they know or ought to know that those cases fall outside their competence and that any breach of that rule constitutes a disciplinary offence.

32 In that regard, the Court observes that, in the absence of coordination at Community level, the Member States may, subject to certain conditions, impose national measures pursuing a legitimate aim compatible with the Treaty and justified on overriding public interest grounds, which include the protection of consumers. They may thus, in certain circumstances, adopt or maintain measures constituting a barrier to freedom of movement. Article 57(2) of the Treaty authorises the Community to eliminate obstacles of that kind in order to make it easier for persons to take up and pursue activities as self-employed persons. When adopting measures to that end, the Community legislature is to have regard to the public interest pursued by the various Member States and to adopt a level of protection for that interest which seems acceptable in the Community (see, to that effect, Case C-233/94 Germany v Parliament and Council [1997] ECR I-2405, paragraphs 16 and 17). It enjoys a measure of discretion for the purposes of its assessment of the acceptable level of protection.

33 In this instance it is clear that several of the provisions of Directive 98/5 lay down rules intended to protect consumers and to ensure the proper administration of justice.

34 Thus, Article 4 provides that a lawyer practising under his home-country professional title is required to do so under that title, so that consumers are informed that the professional to whom they entrust the defence of their interests has not obtained his qualification in the host Member State and that his initial training did not necessarily cover the host Member State's national law.

35 As has already been pointed out, Article 5(2) and (3) authorises the host Member State, subject to certain conditions, to forbid migrant lawyers to undertake certain activities and to impose certain obligations on them in connection with the representation or defence of a client in legal proceedings.

36 Article 6(1) makes a lawyer practising under his home-country professional title subject not only to the rules of professional conduct applicable in his home Member State but also to the same rules of professional conduct as lawyers practising under the professional title of the host Member State in respect of all the activities which he pursues in its territory.

37 Article 6(3) authorises the host Member State to require a lawyer practising under his home-country professional title either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that State lays down for professional activities pursued in its territory, unless he is covered by insurance taken out or a guarantee provided in accordance with the rules of his home Member State, without prejudice to the possibility of requiring additional insurance or an additional guarantee to be contracted where the equivalence is only partial.

38 Under Article 7(1), where a lawyer practising under his home-country professional title fails to fulfil the obligations in force in the host Member State, the rules of procedure, penalties and remedies provided for in that State are to apply.

39 Article 7(2) and (3) imposes, in disciplinary matters, obligations of reciprocal information and cooperation between the competent authority of the home Member State and that of the host Member State.

40 Article 7(4) further provides that the competent authority in the home Member State shall decide what action to take, under its own procedural and substantive rules, in the light of a decision of the competent authority in the host Member State concerning a lawyer practising under his home-country professional title.

41 Last, Article 7(5) provides that the temporary or permanent withdrawal by the competent authority in the home Member State of the authorisation to practise the profession shall automatically lead to the lawyer concerned being temporarily or permanently prohibited from practising under his home-country professional title in the host Member State.

42 Furthermore, it should be noted that, quite apart from the applicable rules of professional liability, the rules of professional conduct applicable to lawyers generally entail, like Article 3.1.3 of the Code of Professional Conduct adopted by the Council of the Bars and Law Societies of the European Union (CCBE), an obligation, breach of which may incur disciplinary sanctions, not to handle matters which the professionals concerned know or ought to know they are not competent to handle.

43 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.

44 In making such a choice of the method and level of consumer protection and of ensuring the proper administration of justice, the Community legislature has not overstepped the limits of its discretion.

45 In consequence, the second part of the first plea must also be rejected.

Infringement of the second sentence of Article 57(2) of the Treaty

46 In its second plea, the Grand Duchy of Luxembourg maintains that Directive 98/5 ought to have been adopted, not by a qualified majority in accordance with the procedure laid down in Article 189b of the Treaty, but unanimously, in accordance with the second sentence of Article 57(2) of the Treaty.

47 It recalls the wording of Article 57(2) of the Treaty:

For the same purpose [in order to make it easier for persons to take up and pursue activities as self-employed persons], the Council shall ... 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 unanimously on a proposal from the Commission and after consulting the European Parliament, 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 in accordance with the procedure referred to in Article 189b.

48 In its view, in several Member States, Articles 2, 5 and 11 of Directive 98/5 specifically amend the existing major principles governing training and conditions of access for natural persons to the profession of lawyer.

49 It submits that the amendment of training requirements is obvious, since there is no longer any requirement of prior training in the law of the host Member State or recognition of equivalence following an aptitude test.

50 The applicant claims that the principles governing access have also been amended by Directive 98/5, since:

- Articles 2 and 5 authorise the full practice of the profession of lawyer under the home-country professional title, which was impossible before in the great majority of Member States, and abolish the requirement for migrant lawyers to acquire knowledge of the law of the host Member State;

- Article 11 liberalises joint practice of the profession of lawyer, including in those Member States which did not permit that form of practice or that means of access to the profession.

51 The applicant lays particular emphasis on the fact that Directive 98/5 does away with the principle laid down by law that every candidate for the profession of avocat should be tested on his knowledge of Luxembourgish law, to the detriment of consumer protection.

52 The Council and the Parliament argue that the second sentence of Article 57(2) of the Treaty must be given a strict interpretation, since that provision is an exception derogating from the general procedure. They submit that, in the circumstances of this case, the conditions for application of that provision have not been satisfied. The Parliament, supported by the Kingdom of Spain, states that Directive 98/5 establishes the principle of mutual recognition of professional qualifications acquired in accordance with the rules laid down by each Member State, for the purpose of guaranteeing freedom of establishment for lawyers, having acquired one of those qualifications, throughout the whole Community. It concludes therefrom that, to that extent, the contested measure falls within the scope of Article 57(1) of the Treaty. The Commission contends that Directive 98/5 establishes a mechanism for the mutual recognition of authorisation to practise which, as such, falls within the scope of the Article 57(1) and the first and third sentences of Article 57(2) of the Treaty.

53 With regard to the joint practice of the profession of lawyer, the Council, the Kingdom of the Netherlands and the Commission submit that this is in any event a matter of the detailed rules governing the practice of the profession and is not concerned with the principles laid down by law relating to access to the profession.

54 It must be borne in mind that 57(1) of the Treaty provides:

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 189b, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.

55 Next, Articles 2 and 5 of Directive 98/5, itself intended in particular to make it easier to practise as a self-employed lawyer, affirm the right, subject to certain exceptions, for any lawyer to pursue on a permanent basis, in any other Member State, under his home-country professional title, the same professional activities as a lawyer practising under the relevant professional title of the host Member State, including advising on the latter's national law.

56 Thus it establishes a mechanism for the mutual recognition of the professional titles of migrant lawyers wishing to practise under their home-country professional title. This mechanism supplements that established by Directive 89/48, which, as regards lawyers, is intended to authorise the unrestricted practice of the profession under the professional title of the host Member State.

57 Contrary to the submission of the Grand Duchy of Luxembourg, Articles 2 and 5 of Directive 98/5 therefore fall within the scope of Article 57(1) of the Treaty and not of the second sentence of Article 57(2).

58 In consequence, the argument that there has been an amendment of existing principles laid down by law governing the professions within the meaning of the second sentence of Article 57(2) of the Treaty, which would have required unanimous adoption of Directive 98/5, is not relevant so far as concerns Articles 2 and 5 of Directive 98/5.

59 With regard to Article 11 of Directive 98/5 concerning the joint practice of the profession of lawyer, it is sufficient to state that it does not deal with a condition for access to the profession of lawyer but a condition for the exercise of that profession. Moreover, as the Parliament, the Council, the Kingdom of Spain and the Commission point out, that provision does not require the host Member State to accept that condition if it does not permit joint practice by lawyers practising under the relevant professional title. Consequently, the rules on joint practice could properly be adopted on the basis of the first and third sentences of Article 57(2) of the Treaty.

60 It follows that the second plea must be rejected.

Infringement of Article 190 of the Treaty

61 The Grand Duchy of Luxembourg claims that Directive 98/5 infringes the obligation, laid down in Article 190 of the Treaty, to state the reasons on which an act is based, in that the directive does not provide any serious justification for abandoning all requirement of a prior qualification in the national law of the host Member State. Nor does it contain any explanation why it is necessary to afford a lawyer practising under his home-country professional title both immediate access to the profession with full competence from the first day, even in respect of national law, and also subsequent unlimited practice under that title. Last, the applicant submits that the reasoning in the 3rd, 4th and 14th recitals of the preamble to Directive 98/5 is in part contradictory. In its view, the statements made in those recitals, which relate to the objective of a migrant lawyer's obtaining the professional title of the host Member State after a certain period, are inconsistent with the decision to authorise practice of the profession under the home-country professional title without any time-limit.

62 It should be observed that the Court has consistently held that the scope of the obligation to state reasons depends on the nature of the measure in question and that, in the case of measures of general application, the statement of reasons may be confined to indicating the general situation which led to its adoption, on the one hand, and the general objectives which it is intended to achieve, on the other. If the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for the various technical choices made (see, inter alia, Case C-150/94 United Kingdom v Council [1998] ECR I-7235, paragraphs 25 and 26).

63 In the present case, Directive 98/5 contains a coherent and sufficient description of the general situation which led to its adoption:

- the abolition, as between Member States, of obstacles to freedom of movement for persons and services constitutes one of the objectives of the Community, that freedom of movement involving inter alia the possibility for nationals of the Member States of practising a profession, whether in a self-employed or a salaried capacity, in a Member State other than that in which they obtained their professional qualifications (first recital);

- a lawyer who is fully qualified in one Member State may already, pursuant to Directive 89/48, ask to have his diploma recognised with a view to establishing himself in another Member State in order to practise the profession of lawyer there under the professional title used in that State (second recital);

- in the field of the provision of services, Directive 77/249 already allows lawyers of one Member State, subject to certain provisos, to carry on their activity in another Member State, practising the law of their home Member State, Community law, international law and the law of the host Member State (10th recital);

- only a few Member States already permit in their territory the pursuit of activities of lawyers, otherwise than by way of provision of services, by lawyers from other Member States practising under their home-country professional titles; however, in Member States where this possibility exists, the practical details differ considerably, and such a diversity of situations leading to inequalities and distortions in competition between lawyers from the Member States and constituting an obstacle to freedom of movement (sixth recital).

64 Directive 98/5 also contains a statement of the general objectives which it proposes to attain:

- fully qualified lawyers who do not become quickly integrated into the profession in the host Member State, inter alia by passing an aptitude test as provided for in Directive 89/48, should be able to achieve such integration after a certain period of professional practice in the host Member State under their home-country professional titles or else continue to practise under their home-country professional titles (third recital);

- action along these lines at Community level is intended, on the one hand, to provide lawyers with an easier means whereby they can integrate into the profession in a host Member State compared with the general recognition system and, on the other, to meet the needs of consumers of legal services carrying out cross-border transactions (fifth recital);

- it also seeks to resolve the problems linked to distortion of competition and obstacles to freedom of movement caused by great differences in the practical details attaching to the practice of the profession under the home-country professional title in the Member States which already permit such practice (sixth recital);

- Directive 98/5 seeks to ensure that consumers are properly informed by providing that lawyers who are not integrated into the profession in the host Member State are required to practise in that State under their home-country professional titles (ninth recital).

65 Thus, it is clear that, in its adoption of a measure of general application, the Community legislature has satisfied the obligation to state reasons laid down in Article 190 of the Treaty.

66 That obligation did not require it to give specific reasons for its decision, with a view to implementing its general objectives, to remove the requirement to prove prior qualification in the national law of the host Member State and to grant the corresponding right immediately to practise the profession in the area of that law. Nor was it required to give specific reasons for its decision, made for the same purpose, not to set any time-limit on the right to practise under the home-country professional title in the host Member State. Furthermore, the Community legislature is not required to set time-limits for a measure intended to make it easier to exercise freedom of establishment, in so far as that freedom by definition presupposes the possibility of stable and continuous participation in the economic life of the host Member State.

67 Finally, there is no inconsistency to be found between, on the one hand, the recitals referring to the objective of the migrant lawyer's obtaining the professional title of the host Member State after a certain period and, on the other, the decision by the Community legislature to authorise practice under the home-country professional title without any time-limit. The two ways of practising the profession are subject to different bodies of rules, the second being subject to its own restrictions in relation to removing the requirement to provide evidence of prior qualification in the national law of the host Member State. In addition, as has been pointed out, a Community measure intended to make it easier to exercise freedom of establishment does not require any temporal limitation of its effects.

68 In those circumstances, the third plea in law must also be rejected.

69 Since none of the three pleas put forward has been upheld, the action must ultimately be rejected.

Decision on costs

Costs

70 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for. Since the Grand Duchy of Luxembourg has been unsuccessful, it must be ordered to pay the costs in accordance with the forms of order sought by the Parliament and the Council. Under the first subparagraph of Article 69(4) of the Rules of Procedure, Member States and institutions which have intervened in the proceedings are to bear their own costs. The Kingdom of Spain, the Kingdom of the Netherlands, the United Kingdom and the Commission are therefore to bear their own costs.

Operative part

On those grounds,

THE COURT,

hereby:

1. Dismisses the application;

2. Orders the Grand Duchy of Luxembourg to pay the costs;

3. Orders the Kingdom of Spain, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the Commission of the European Communities to bear their own costs.