



UNIVERSITY  
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# FREE MOVEMENT OF LAWYERS IN THE EUROPEAN UNION

A Model for Regional Legal Integration

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# THE BASIC IDEA

- Legal services are essential to the EU internal market.
- Mobility of lawyers supports cross-border trade and citizens.
- System built on mutual recognition, not full harmonization.
- Lawyers remain part of national legal systems but can work across borders.

# LEGAL FOUNDATIONS

- Freedom of establishment (Art. 43 TFEU) and freedom to provide services (Art. 49 TFEU).
- "Reyners v. Belgium" (1974): lawyers cannot be excluded from these freedoms.
- Only narrow exceptions for functions involving direct exercise of public authority (e.g., notaries).
- Foundation for later legislation on mobility.

# TWO MAIN ROUTES

- Temporary cross-border practice – lawyer remains based in home country but works on matters in another Member State.
- Permanent establishment – lawyer sets up more permanently in another Member State.
- Different legal instruments – applicable only to lawyers from the EU/EEA – govern each route, reflecting different levels of integration.
- For lawyers from WTO countries – permanent establishment under home title possible, but right to practice limited to home country law and international law

# TEMPORARY PRACTICE

- "Directive 77/249/EEC" – early mobility instrument.
- Lawyers use their home-country professional title (e.g., Rechtsanwalt in London).
- No new qualifications required – only proof of home-country registration.
- Some states require cooperation with local counsel when appearing in court.
- 'Local counsel' requirement is controversial and sometimes protectionist.

# PERMANENT ESTABLISHMENT

- "Directive 98/5/EC" – allows lawyers to register in another Member State under their home title.
- After 3 years of effective and regular practice of host-country law, lawyers can fully integrate.
- Full integration = adopting host-country professional title and full membership in local bar.
- Alternative path via "Directive 89/48/EEC" – aptitude test based on qualification recognition for full integration without waiting period.
- Three-year practice route used more frequently in practice.

# SUMMARY TABLE

- Directive 77/249 | Temporary services | Home title | Local counsel requirement, low barriers
- Directive 89/48 | Qualification recognition | Aptitude test | Immediate full integration | (p) demanding, less used
- Directive 98/5 | Permanent establishment | 3-year practice | Gradual full integration | (P) Defining 'effective' practice

# PRACTICAL CHALLENGES

- Wide diversity of legal professions across EU (solicitors, barristers, avocats, Rechtsanwälte, etc.).
- Language barriers and different legal systems make integration demanding.
- Qualification recognition and aptitude tests often burdensome.
- Lawyers subject to both home and host professional rules – dual supervision can be complex.
- Mainly used by large international firms; less accessible for smaller practices.

# LESSONS FOR THE GREATER BAY AREA?

- Flexible mobility is possible without harmonizing legal systems.
- Mutual recognition of qualifications based on professional titles and between jurisdictions is crucial.
- Practical issues: language, qualification, professional discipline must be addressed.
- Avoid hidden protectionism – rules should not look open on paper but closed in practice.
- EU model offers tested framework for gradual integration.