

Free Movement of Lawyers in EU



Changed circumstances

- legal business became more internationalized and business oriented also for small att. offices, individual attorneys
- new types of lawyers, new methods of „production“, legal products, finances, marketing... increased cross border types of work
- differences among legal orders (except principles like norms) ... still increase
- *and... national attorneys' regulatory frameworks differ greatly (sic!)*



Modes / types of att. legal services

- 1 – cross border transfer of service only
- 2 – recipient moves (goes) to the MS of the lawyer
- 3 – *a lawyer moves to the MS of the recipient to perform service(s)*
- 4 – *a lawyer establishes in the host MS*

A look to the up-to-date development

1970-1990

- **discrimination**
- **indirect discrimin.**

(cases Van Binsbergen, Klopp, Reyners...)

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- **dir. 77/249**
(lawyers' services)

1990 - 2000

- **access to the market approach**
- **indistinctly applicable rules**

(cases like Säger, Gebhard...)

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- **recognition apart from secon. law**
(Vlassopoulou...)

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- **competiton law influences**
(Wouters, Cipola...)

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- **dir. 98/5** *(establis.)*
 - **dir. 89/84** *(RPQ)*

from 2000 on...

- **dir. 2005/36 + changes (PQ)**
- **dir. 2006/123 – Services Directive**

- **Open issues:**
 - *double deontology*
 - *insurance*
 - *salaried practice*
 - *new organisations of law firms*
 - *Requalification of partially trained lawyers*

Legal bases

TFEU Arts. 49 & 56



ECJ case law in case of no secondary law



Concern issues, not only RPQ, like:

- *discrimin. (dir. & indirect)*
- *costs of second (home) lawyer*
- *legal expense insurance*
- *form of att. offices*
- ... + exemptions

Secondary law + case law

RPQ

Establis.

Services

D. 2005/36
diplomas,
certificates,
trainings

D. 98/5
- all services
two systems of requalific.:
- gradual (3y)
- RPQ
- joint practice

D. 77/249
- all services
except those reserved for home lawyers;
- need to be accompanied;
- host MS professional rules

Remaining challenges

- **Double deontology**
 - *18% experienced difficulties*
 - *main difficulties in diff. mandatory rules*
- **Insurance**
 - *professional indemnity insurance ...coverage/costs differs*
 - *legal expense insurance... local lawyers are usually less costly*
- **Salaried practice (in-house counsels increase)**
 - *no professional privilege in 17 MS*
 - *significant obstacle: infor. might loses the confiden. in case of cross border activities*



- **Diff. organizations of law firms & and JP with non-lawyers**

- *legal form requirements are frequent*
- *freedom of establishment (49) is limited with D. 98/5*
- *cooperation lawyers/non-lawyers can be limited/forbidden in the host MS without any justification in case of non-discrimination*

- **Requalification**

- *gradual integration (3y) – what exactly is effective/regular pursuit?*
- *RPQ of partially trained lawyers (Morgenbesser, Peśla) & partially practice rights... point of departure: host MS requirements*

To conclude...

- being established is the safest way, but this is neither easy, not always a reality, nor a goal
- a legal business development overtakes rules on (the liberalization) the free movement of lawyers
- harmonisation is still missing – abuses are possible (*Koller, Peśla?!)*...further regulatory intervention at the EU level would be wellcomed, but...
- without the harmonization, the conflict of law rules would be needed (not a perfect solution)