European Community Law and the EC Lawyer's Right to Practice in France after the Enactment of Loi No. 90-1259

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European Community Law and the EC Lawyer’s Right to Practice in France After the Enactment of Loi No. 90-1259

[N]os juristes constatent que les marchés de leurs partenaires européens demeurent le plus souvent fermés.¹

I. INTRODUCTION

The French legislature recently adopted Loi No. 90-1258, Loi No. 90-1259, and Décret No. 91-1197 to unify and restructure the legal profession.² Loi No. 90-1259 merged the profession of avocat (attorney) with the profession of conseil juridique (legal advisor).³ Prior to the change, avocats were qualified to appear in civil and criminal courts, and could give advice in non-litigious matters, whereas conseils juridiques of any nationality were only permitted to give advice in non-litigious matters and in most instances could not appear in court.⁴ Instead of liberalizing its professional requirements in light of the arrival

¹ Remarks, Madame Edith Cresson, former Minister of European Affairs for France, addressing the French European Commission to Study the Legal Professions in France. Madame Cresson discussed the difficulty French attorneys encountered trying to practice in other European Community Member States: “Our jurists note that the markets of their European partners remain closed the most often.” The goal of this Commission was to address ways in which the legal professions could be redefined to compete more effectively internationally. Madame Cresson’s remarks were delivered on February 6, 1989. The Commission Report was delivered in June 1989. See MISSION D’ÉTUDE SUR L’EUROPE ET LES PROFESSIONS DU DROIT, Rapport and Annexe I - Discours d’Installation de la Mission, at 3 (1989) (Study of Europe and the Legal Profession Annex 1 - Speech concerning the establishment of the study). Madame Cresson, who was appointed by President François Mitterand as the first female Prime Minister in the history of France, served for ten months, from May 1991, until April 2, 1992. Rone Tempest, Cresson’s Fall Could Deal Blow to Women in Politics, LOS ANGELES TIMES, Apr. 3, 1992, at A4.


The French legislature also adopted Loi No. 90-1258, which permits attorneys to practice in partnership or corporate entities as long as more than 50 percent of the entities’ shares are owned by attorneys practicing in the partnership or corporation and the other shares are owned by other members of the legal profession. Loi No. 90-1258, du 31 Décembre 1990, J.O. Jan. 5, 1991, tit. I. arts. 1, 5(Fr).

³ Loi No. 90-1259, supra note 2, art. 1.

⁴ SPEDDING, supra note 2, at 103-6.
of a single European economic market, France has created a virtual monopoly on the provision of legal services for members of its profession in France. Because of the merger of the two professions, starting January 1, 1992, lawyers from other Member States have been banned from practicing in France on a permanent basis unless they become members of the French legal profession.

To understand the difficulties that confront attorneys practicing transnational law in Europe with the intention of practicing in France, envision the following scenario. If a German Rechtsanwalt (lawyer) wants to provide legal services to his German corporate clients in Paris and Luxembourg, according to European Community law, the Treaty of Rome allows the lawyer to accomplish his goal in two ways. First, he could provide services to clients in Paris and Luxembourg on a temporary basis. In this scenario however, the lawyer would not be able to

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6 See generally Décret No. 91-1197, supra note 2 (setting the standards for legal practitioners in France). To become members of the French legal profession, EC attorneys must fulfill similar requirements in their Member State as French attorneys must fulfill in France. Id. art. 99. There are also numerous exceptions to the reform. Loi No. 90-1259, supra note 2, arts. 57-65. For instance, law professors need not concern themselves with these changes. Id. art. 57. Also, in-house counsel are not considered part of the legal profession in France and are thus exempted from these requirements. Id. art. 59.

7 Treaty establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. [hereinafter Treaty of Rome]. The European Economic Community came into existence with the signing of the Treaty in 1957 by the six original Member States of France, Germany, Italy, Belgium, Luxembourg, and the Netherlands. The purpose of the Treaty was to encourage the harmonious development of Member States through the creation of similar economic policies and closer relations between Member States. On the same day, another treaty was signed in Rome by the same parties creating Euratom (the European Atomic Energy Commission). These treaties, in a sense, and the Treaty of Paris, signed by the same six parties in 1951, creating the European Coal and Steel Community, created the European Communities. See generally P.J.G. Kapteyn & P. Verloren Van Themaat, INTRODUCTION TO THE LAW OF THE EUROPEAN COMMUNITIES 7-28 (Lawrence W. Gormuy ed., 2d ed. 1989) (provides historical background of the evolution of the European community).

8 The right to provide services allows citizens of one Member State to supply services on a temporary basis to citizens of another Member State. Article 60 of the Treaty of Rome provides:

Services within the meaning of this Treaty shall be deemed services normally supplied for remuneration, to the extent that they are not governed by the provisions relating to freedom of movement of goods, capital and persons . . . . Without prejudice to the provisions of this Chapter relating to the right of establishment, a person supplying a service may, in order to carry out that service, temporarily exercise his activity in the State where the service is supplied, under the same conditions as are imposed by that State on its own nationals.
represent himself as a member of either bar nor would he be able to conduct his practice with the same degree of independence he experienced in his own country. The second option for the German lawyer would be to requalify as a member of each bar and permanently establish himself in each city. Unfortunately, requalification is an arduous process of testing and waiting which in France alone may take up to four months to complete if the lawyer has no educational or training deficiencies to overcome.

Although the prospect of a single European market would seem beneficial to EC attorneys practicing transnational law throughout Europe, it has become a nightmarish tangle of twelve national governments promulgating laws that seemingly comply with the legal requirements of the Treaty of Rome yet make the practice of transnational law in Europe a virtual impossibility. In fact, for a lawyer who wanted to practice in all twelve Member States, it would take fifty years of study to qualify and an additional twenty-seven years of professional training to be able to practice throughout the Community.

France's latest reforms underline the conflict between Member States in this new pan-European era. The reforms reflect the struggle to apply the supra-national law of the European Economic Community to twelve countries while at the same time recognizing the cultural and national differences of twelve different legal systems. In the course of streamlining its legal profession, the French government has made it

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Treaty of Rome, *supra* note 7, art. 60.

9 Freedom of establishment is the right guaranteed to every national of the twelve Member States of the European Economic Community under Article 52 of the Treaty of Rome. It allows a citizen of one Member State to settle in another Member State in order to pursue economic activities within that state. Article 52 provides in relevant part:

Freedom of establishment shall include the right to engage in and carry on [economic activities as self-employed persons and to set up and manage undertakings], in particular companies within the meaning of Article 58, under the conditions laid down by the law of the country of establishment for its own nationals. . . .

*Id.* art. 52.

10 See Décret No. 91-1197, *supra* note 2, art. 99 § 2. This Article states that once an applicant has taken any required exams and fulfilled any training requirements, a decision from the Conseil National des Barreaux (National Council of Bar Associations) may not be forthcoming for up to four months. If the applicant does not meet the requirements determined by the Conseil des Barreaux (Council of Bars), a training period or additional course work may be required.

more difficult for foreign attorneys to establish themselves in France. Tension has been created by the competing interests of international law firms in France (which must be able to service their clients' needs wherever the clients have business interests) and the French bar associations and legal associations which exist to regulate their members and protect their interests.

This Note will first review the historical development of the French legal profession to demonstrate that although the reforms have created a legal monopoly, they have also helped to modernize a profession tied to centuries of tradition. Next, special attention will be paid to the Treaty of Rome and subsequent EC legislation, which specifically prohibits the erection of barriers to the establishment of one's profession within Member States of the Community. An analysis of European Court decisions will follow to assess how these judgments have influenced and molded the rights of attorneys to practice throughout the Member States. The Note concludes with a review of the most recent European Court of Justice decisions and predicts whether or not these latest French reforms violate the rights of attorneys trying to operate throughout the European Economic Community.

II. AN HISTORICAL OVERVIEW OF THE FRENCH LEGAL PROFESSION

The legal monopoly recently created with the enactment of Lois No. 90-1258, 90-1259, and Décret No. 91-1197, may unjustly affect foreign attorneys but these latest reforms are also an attempt at rejuvenating a profession that for centuries was wed to the traditions of King and Church. The obstacles raised against foreign attorneys are not simply protectionist reforms spurred on by the economic realities of heightened competition in the EC, but an example of the power French attorneys and their bar associations still wield in the legislature and in the country. However, these reforms cannot be viewed solely for the impact they have on French lawyers, for the changes will affect legal professionals throughout the EC.

A. Early History

To put the recent changes into perspective, it is necessary to understand that the profession's roots are intertwined with the history of France. The monarchical system of government and the Catholic Church are the two institutions that helped produce a profession dependent on centuries of customs and tradition from which it has only recently been able to break free. For centuries before the codification of written law, France had been separated into two systems of law, divided along geo-
The northern part of the country above a line reaching from Geneva to La Rochelle, was the *pays des coutumes* (land of customary law), comprising a multitude of differing bodies of law, including property, procedure, and succession. South of this line existed the *pays de droit écrit* (land of written law). This written law was based on the codification of the law of Justinian, or Roman law. At the time of the Revolution, there were approximately sixty *grandes coutumes* (systems of customary law), which included the regions of Paris, Normandy, Brittany, and Burgundy, and also three hundred *coutumes locales*.

The increased study of canon law and Roman law during the twelfth and thirteenth centuries led to dramatic changes which forced the practice of law towards a greater harmonization. Because the study of law was increasingly viewed as a science to be studied and critically evaluated, jurists were unwilling to continue practices in legal proceedings based on faith and conjecture. One of these practices was the testing of sworn oaths of parties or witnesses by the administration of an ordeal. Instead of requiring the party to swear on a bible before giving testimony, he had to prove his honesty through one of three different physical tests. The three kinds of ordeals consisted of an ordeal by hot iron, by boiling water, or by cold water. If the party grabbed the hot iron or stuck his hand in boiling water and the injury took longer than three days to heal, he was presumed to be guilty of perjury. In the latter ordeal, the party had his hands and feet bound

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14 Id.
15 Id. Roman law provided a foundation for the development of French law. At the fall of the Roman Empire around A.D. 476, the Gallo-Roman tribes lived under Roman law which was later collected and compiled by Justinian. Id. at 6.
16 DAVID & DE VRIES, supra note 12, at 11. The *coutumes locales* were based on the *grandes coutumes* and varied by locality. Id.
17 Canon Law or *corpus Juris Canonici* was based on the Scriptures and was interpreted in light of conciliar and papal decrees. Canon law consisted of five parts. The first part was the Decretal of Gratien, texts and works collected by an Italian monk c.1150. Additional parts were added over the centuries. The final part, the Extravagantes was not added until the sixteenth century. FR. OLIVER-MARTIN, HISTOIRE DU DROIT FRANÇAIS DES ORIGINES À LA RÉVOLUTION 122-25 (1948).
19 ADHÉMAR ESMEIN, A HISTORY OF CONTINENTAL CRIMINAL PROCEDURE 6 (John Simpson trans., The Continental Legal History Series, 1913).
20 Id.
21 Id.
22 Id.
and was thrown into cold water. If he sank, his testimony was truthful but if he floated, the water was rejecting him, a sign from God that he was lying. These ordeals demonstrate the primitive sense of justice that existed until the waning of the Middle Ages, as well as the influence of the Catholic Church in legal proceedings.

At the same time that legal proceedings were being scrutinized for their scientific accuracy, "parlements" or lawcourts first came into existence, a reflection of the interest of jurists to follow a more defined regimen for administering justice. Although the word parlement, which means conference or discussion, was used before the thirteenth century, it seemed to acquire a more regal meaning during the mid-thirteenth century in France. At this time it came to mean a meeting of royal counsellors dispensing justice.

It was during the reign of Philipp the Bold that the legal profession started to take on its present form. In 1274, he promulgated regulations governing the practice of avocats, including such things as a sworn oath, a defined salary, and the promise to plead only just cases. Another important change that Philipp the Bold enacted was situating the Parlement permanently in Paris in the royal palace on the Ile de la Cité. His son, Philipp the Fair, continued his work and in 1296 reconstituted the Parlements from twice yearly meetings to a lawcourt consisting of a permanent staff following strict practices and procedures. It was not until Count Phillip of Valois passed an ordinance in 1345 that the first French Ordre des Avocats (bar association) was created and the foundation of a permanent Parlement in Paris was firmly established. The ordinance of 1345 required that all avocats obtain a university degree in law, be at least seventeen years old, moral, and Catholic. Thus, even though jurists were developing a sense of scientific inquiry and analysis for legal proceedings, the ties to Catholicism remained an integral part of the Parlement. Even in the fourteenth and fifteenth centuries, only half of the judges were laymen, while the other half were

23 Id.
24 Id.
26 DAVID & DE VRIES, supra note 12, at 10.
27 Id.
28 Id. at 46-47.
29 Id. at 17-18.
30 Id. at 22-29. Phillip the Fair ruled from 1285 until 1314. He followed Phillip the Bold, who ruled from 1270 until 1285. Id.
31 Id.
32 Id.
The idea of an attorney representing clients in legal proceedings, which was conceived in Roman law, spread among the jurists studying Roman law in the thirteenth century. When the Parlements (lawcourts) were founded, the legal profession in France consisted of two distinct legal positions: that of avocat (lawyer) and procureur (procedural attorney). Avocats were members of Parlements of the region where they practiced. Over the years, other Parlements were formed. However, it was not until after the Hundred Years War in the fifteenth century that provincial Parlements in Toulouse, Bordeaux, or Rouen, for instance, were created. Yet, throughout history it was the Parlement of Paris that had the most members and the most strength of influence and judiciary. For example, in 1789 the Ordre des avocats (Order of Attorneys, equivalent to today’s bar associations) to the Parlement of Paris numbered 605 members whereas the next largest Ordre numbered approximately one-third, at 215 members.

While the Parlements and the Ordres des avocats were becoming firmly established throughout France during the fourteenth century, the legal system was becoming more concrete as broad areas of coutumes (customary law) were ordered reduced to writing by Charles VII, in the Ordinance of Montil-les Tours, in 1454. However, this process was not completed until the sixteenth century, much to the consternation of

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33 Id. at 32-33.
34 Michael P. Fitzsimmons, The Parisian Order of Barristers and the French Revolution 2-3 (1987). An avocat worked with a procureur in every lawsuit. Only the avocat could petition the court orally and submit legal briefs using points of law or legal precedent. The procureur’s function was more administrative, and although legal briefs were submitted to the court by attorneys, they concerned only procedural matters or points of fact. Id.
35 Id. at 2.
36 David & de Vries, supra note 12, at 10.
37 Id.
38 Id.
39 Fitzsimmons, supra note 34, at 1-2. Every Parlement had an Ordre des avocats, similar to a bar association in the United States in some respects. The Ordre was chaired by a batonnier. Originally the batonnier was the leader of a religious brotherhood. He was responsible for keeping a baton with the banner of a religious Saint or patron of the brotherhood. He was the spiritual and professional head of the Ordre. The Ordre was charged with regulating the profession in its locale. Becoming a member of an Ordre, especially the Ordre des avocats au Parlement de Paris, was not simply a matter of attending law school, of which there were twenty-two before the Revolution. The candidate had to fulfill a compulsory apprenticeship. Acceptance into an Ordre gave a member instant social distinction. In fact, because membership in an Ordre included an exemption from the militia, a trait of nobility, members were considered demi-noblesse and called the noblesse de la robe. Id. See also Pierre Georges Lepaulle, Law Practice in France, 50 Colum. L. Rev. 945, 953 (1950) (describes Ordre des avocats and the batonnier).
40 David, supra note 13, at 6-7.
the Parlements, which had grown to depend financially on interpreting the complexities of customary and written laws that abounded throughout the kingdom.\textsuperscript{41}

From the 1300s until the French Revolution,\textsuperscript{42} the legal profession grew from a group of fifteen royal counsellors to a distinct class of nobility.\textsuperscript{43} Although any man meeting the qualifications could become an \textit{avocat}, judgeships from the sixteenth century well into the eighteenth century had become commodities to be bought and sold.\textsuperscript{44} Initially, these posts were sold by the Crown to create revenue but they could also pass from the holder, were subject to taxation on the holder's death and could even be mortgaged.\textsuperscript{45} In eighteenth century France, of the 590 families represented in the \textit{Parlement de Paris}, 212 families had produced at least two judges.\textsuperscript{46}

The French Revolution swept away hundreds of years of power and privilege that the Parlements and their \textit{Ordres} had created.\textsuperscript{47} The destruction of the Parlements and the \textit{Ordres} during the Revolution allowed the revolutionaries to reconstruct the profession and the courts, inserting more fairness and equality between men into these structures.\textsuperscript{48} On January 29, 1791, the Revolutionary National Assembly removed all barriers to the practice of law, renouncing all educational and qualifying requirements. It created three new legal professions: \textit{hommes de loi} (men of law), \textit{défenseur officieux} (official defender), and \textit{avoué} (ministerial officer).\textsuperscript{49} Under the new system all previous \textit{avocats} and \textit{procureurs} were called \textit{hommes de loi}.\textsuperscript{50} Unfortunately the National

\textsuperscript{41} Id.

\textsuperscript{42} SHENNAN, supra note 18, at 110-48. The main issues of the French Revolution had been decided between 1789 and 1795. During 1795 to 1799 other violent purges continued. Napoléon Bonaparte ascended to power on 18 \textit{brumaire}, year VIII, (October 18, 1799-months were renamed during the Revolution) and was divested of power by the Imperial Senate on April 3, 1814.

\textsuperscript{43} OTTO KAHN-FREUND ET AL., A SOURCE-BOOK ON FRENCH LAW 2-9 (1990). Besides being spared the obligation to serve in the military, their rank entitled them exemption from taxes and public labor. See generally SHENNAN, supra note 18, at 110-48 (describes development of legal profession in France and its social status over a 500-year period).

\textsuperscript{44} KAHN-FREUND ET AL., supra note 43, at 2-9.

\textsuperscript{45} Id.

\textsuperscript{46} Id.

\textsuperscript{47} FITZSIMMONS, supra note 34, at 1-2. One goal of the Revolution was to extinguish all professional organizations. In fact, the Preamble to the Constitution of 1791 stated "[n]either nobility, . . . nor distinctions of orders, . . . nor any corporations . . . exists any longer . . . . There are no longer any jurandes, nor corporations of professions." Id.

\textsuperscript{48} Id. at 54-58.

\textsuperscript{49} Id. at 76-78.

\textsuperscript{50} Id.
Assembly never prescribed any requirements for this position, thus, many people without legal training were labeling themselves *hommes de loi* and anyone could be a *défenseur officieux*.\(^{51}\) This was a right the National Assembly conferred on every citizen; the right to represent himself and argue his own case before the court.\(^{52}\) Likewise, anyone could argue his own case before the court or assume the position of *défenseur officieux* and argue a case for another, orally or in writing.\(^{53}\)

The National Assembly created the position of *avoué* to handle the procedural aspects of cases for those untrained in the law.\(^{54}\)

On December 14, 1810, Napoléon Bonaparte signed into law a bill reconvening the *Ordres des Avocats*.\(^{55}\) This marked an evolution of the French legal profession not seen since Phillip of Valois legitimized the lawcourts and its professional organizations in 1345. The reason for reconvening the *Ordre* was to reduce the excesses that sprang up after the formation of the new profession.\(^{56}\) Prior to the Revolution, the *Ordre* had been touted as a corrupt and venal group — a self-regulating corporation which continually backed the Parlement in challenging the monarch.\(^{57}\) It seems that the new unregulated profession had also become an undisciplined and unscrupulous lot.\(^{58}\) The only way to insure integrity of the legal profession was to regulate the *ordres*.\(^{59}\) Napoléon allowed the reestablishment of the *ordre*, but it had only three hundred members, half the number prior to the Revolution.\(^{60}\) To ensure that the *avocats* would not be a threat to the Bonaparte regime, attorneys were forbidden to deliberate on matters of state and they also lost the right to

\(^{51}\) *Id.*

\(^{52}\) *Id.*

\(^{53}\) *Id.*

\(^{54}\) *Id.*

\(^{55}\) *Id.* at 181.

\(^{56}\) *Id.*

\(^{57}\) *Id.* at 154-92.

\(^{58}\) Lepaulle, *supra* note 39, at 946.

\(^{59}\) The Decree of December 14, 1810, contained the following forward:

> When we were considering the judicial order and the proper means to insure to our courts the high regard which is due to them, a profession, the exercise of which has powerfully influenced the administration of justice, has attracted our attention. We have consequently ordered by the law of Ventose 22, Year 12, the reestablishment of the Registration Board of the Advocates as one of the most fitted means of maintaining the integrity, scrupulousness, disinterestedness, desire of conciliation, love for truth and justice, enlightened zeal for the feeble and the oppressed, essential basis of their condition.

\(^{60}\) *FitzSimmons, supra* note 34, at 186.
regulate themselves. Unlike other professions, *avocats* had standing in the political system which Bonaparte believed could be used to subvert his reign. By the 1820s most of the restrictive legislation concerning the legal profession had been lifted and it started to resemble the profession as it existed before the Revolution, although without the power and influence it formally exerted.

Until the end of the nineteenth century, only two professions had the exclusive access to the courts. During this time it was necessary for a litigant to seek the services of two legal professionals to commence a legal proceeding. An *avocat* had to be hired to argue the case in court and an *avoué* (legal representative for litigation) had to be employed to advise the client and the *avocat* concerning the proceedings. The *avoué* was responsible for handling the procedural aspects of the case and presenting the client's claims to the court on behalf of the client.

B. Modern History

More legal professions emerged at the beginning of the twentieth century. Lawyers from the upper bourgeoisie had no interest in appearing before the courts of inferior jurisdictions such as the commercial courts and the *conseil des prud'hommes* (a body that hears labor disputes). One occupation that emerged from this situation was the *agréé près les tribunaux de commerce* (attorney before the commercial courts). At first, the *agréé* was not a lawyer but simply a party who represented the claims of a litigant before the commercial courts. His role was a combination of the roles played by both the *avoué* and the *avocat*. He had to understand the procedural aspects of his case and argue the law before the commercial courts. By 1941, the position received official recognition and legal status. All of these positions...

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61 Id. at 182.
62 Id.
63 Id. at 192.
65 Id.
66 Id.
67 Id.
68 Id. Women were prohibited from entering the legal profession until 1900, with the enactment of the law of December 1, 1900 (D.P. 1900-4-81). Today, women constitute nearly one third of the profession. Id. at 270.
69 Id.
70 Id.
71 Id.
72 Id.
were ultimately incorporated into the position of *avocat* in 1971 when the profession was first downsized.\(^7^3\)

The profession of *conseil juridique* (legal advisor) also arose at the turn of the century.\(^7^4\) The *conseil juridique* was unregulated and did not act as an advocate for a client but instead offered legal advice to industry concerning economic and financial affairs or to those who could not afford the services of an attorney from the established professions.\(^7^5\)

The transformations which society experienced after World War II and during the rebuilding of France also influenced the legal profession. In 1923, there were 6,000 attorneys in all of France and in 1948, 700 candidates in Paris alone sought admission to the bar.\(^7^6\) The regulated side of the profession began to feel the competition of these new attorneys, many of whom were the unregulated *conseils juridiques* who were being hired by foreign firms and industry. In addition, the *avocats* claimed that the public suffered from the advice of the *conseils juridiques*, who were not accountable to any regulatory body.\(^7^7\)

In 1952, five members of the French Parliament sought to establish the legal profession as a monopoly to the exclusion of the *conseils juridiques*.\(^7^8\) When it became evident that exclusion was not going to pass, the Association Nationale des Avocats (ANA) proposed to incorporate them into the profession.\(^7^9\) The ANA wanted to regroup the profession into four categories: *avoués*, *avocats*, *agréés* before the commercial courts, and *conseils juridiques*.\(^8^0\) The Parliamentary debates on this issue produced no changes in the profession though, in large part because the organized bar did not want to incorporate legal advisors into the profession.\(^8^1\)

Another legal position that was not discussed in the Parliamentary debates on the reorganization of the profession in 1952, was the position

\(^7^3\) Loi No. 71-1130, du 31 décembre 1971, J.O. Jan. 5, 1972, art. 1. Article 1 states in relevant part: "[t]he new profession of avocat is substituted for the profession of attorney before the commercial courts, attorney before the high courts and agréé before the commercial courts who practice alone or in professional societies." *Id*.

\(^7^4\) *Id*.

\(^7^5\) *Id.* art. 54. See also Wayne M. White, *The Reform of the French Legal Profession: A Comment on the Changed Status of Foreign Lawyers*, 11 *COLUM. J. TRANSNAT'L L.* 435, 437 (1972) (explaining the history of offering legal advise to clients not able to afford counsel from the established profession).

\(^7^6\) Lepaulle, *supra* note 39, at 957-58.

\(^7^7\) White, *supra* note 75, at 437.

\(^7^8\) *Id*.

\(^7^9\) *Id.* at 264.

\(^8^0\) *Id.* at 264-65.

\(^8^1\) *Id.* at 264-65.
of notaire or notary. Notaires, who are highly regulated by the state, currently number 7,300, and have a virtual monopoly on matters concerning alienation of property and matters concerning marriage settlements and succession. Because notaires are appointed by the state to authenticate legal documents, such as deeds and wills, their inclusion into the discussion concerning the redefinition of a new legal profession was not considered.

The profession of conseil juridique did create a niche for foreign attorneys who wanted to expand their practices to France. Although these attorneys could not appear in court, this limitation was easily solved by retaining local counsel. This niche was quickly filled by attorneys from American law firms who followed business to post-war France to help rebuild the economy. As the presence of American attorneys continued to grow, luring young highly qualified French attorneys to high paying American firms, resentment against Americans who were practicing as conseils juridiques created a backlash from the established legal professions.

The backlash against foreign attorneys and specifically Americans finally took the form of the “Law of 1971.” The reform of the profession brought the heretofore unregulated conseils juridiques within the main of the established professions and in so doing, ensured the protection of consumers seeking legal advice against those claiming to be legitimate conseils juridiques. The new regulations required all those practicing as legal advisors to be inscribed on an official list. The reform also merged three other lawyer professions with the profession of avocat. The purpose of this merger was designed to simplify and reduce the expense of legal services for consumers.

The reforms of 1971 gave avocats a virtual monopoly on the practice of law in France except for practice before the courts of appeal, which remained restricted to specialized avoués. At the same time,
the reforms also aided France and specifically Paris in becoming the center for the practice of international law in Europe. According to René Pleven, the Garde des Sceaux and Minster of Justice at the time, the reforms were meant to allow the conseils juridiques to flourish but to exist under the auspices of governmental regulation. He stated that the government’s ambition was to develop Paris into one of Europe’s great legal centers.

Since the reforms of 1971, Paris has become one of the leading legal centers in Europe. At the time of the reforms there were twenty-three American firms in Paris employing forty American lawyers in addition to the thirty-five American lawyers who were employed in French practices. Today there are only seventeen American firms but they employ over eighty-five American attorneys and there are also seventy American attorneys working in French conseil juridique practices. Other countries have also expanded their markets into Paris. The largest Danish firms are all located in Paris today, totalling six or seven, and the United Kingdom has as many as eight solicitor firms there. During the past twenty years, Paris has become the center in Europe for the practice of law, with the exception of London which has retained its liberal admission requirements.

The recognition of the conseil juridique by the “Law of 1971” may have been instrumental in making Paris a legal center in Europe, however, the French lawyer found his role considerably restrained even after 1971. For instance, it was still illegal for an avocat to meet with clients outside of his office. An avocat could not associate with attorneys practicing before the courts of appeal. Id. at 265-66.

92 White, supra note 75, at 442. Garde des Sceaux translates literally as “Keeper of the Seals” and is a title used by the Minister of Justice. See WESTON, supra note 83, at 25.

93 Id.

94 John H. Riggs, Jr. et al., La Réforme des Professions Juridiques et Judiciaires (May 23, 1989), in MISSION D’ÉTUDE SUR L’EUROPE ET LES PROFESSIONS DU DROIT, supra note 1, Annexe III Procès-verbaux des auditions auxquelles a procédé la mission et leurs annexes at 1 (Minutes and attachments of the hearings which proceeded the study).

95 Id.


97 Séance du 2 Mai 1989, in MISSION D’ÉTUDE SUR L’EUROPE ET LES PROFESSIONS DU DROIT, supra note 94, Annexe III at 6 (hearing before the commission on the legal profession in Europe)(July 1989).(The meeting was presided over by Dominique Saint-Pierre, President de la Mission sur l’Europe et les Professions du Droit).

from other bar associations, could not belong to more than one bar, nor be a salaried employee.\textsuperscript{99} The \textit{conseils juridique} on the other hand, were not restrained by such rules and regulations and for the last twenty years have managed to seize an enormous share of the legal services market in France.\textsuperscript{100} Thus, the redefinition of the legal profession has had the effect of eliminating the \textit{avocat}'s main competitor by converting \textit{conseils juridiques} (legal advisors) into \textit{avocats} and subjecting both groups to the same professional standards.

C. 1990 French Reforms

On February 6, 1989, Madame Edith Cresson, Minister of European Affairs, addressed the French European Commission to Study the Legal Professions, a group ready to embark on a study to determine which measures could be taken to make the French legal professions more competitive internationally. The study's goals revolved around two themes: reconquering the national legal market and conquering the European market as well.\textsuperscript{101} It was with this vision that the French Senate, assisted by the bar associations of France, drafted the legislation that makes up the 1990 reforms.

The 1990 reforms which redefine the legal profession consist of three laws. Loi No. 90-1259 was adopted to merge the two French legal professions of \textit{avocat} and \textit{conseil juridique} in order to make the profession more competitive internationally.\textsuperscript{102} Décret No. 91-1197 is the implementing legislation of Loi No. 90-1259, and it addresses the formation of bar associations, access to the legal profession, professional rules, attorney discipline, and the requirements to provide services in France by EC attorneys.\textsuperscript{103} Loi No. 90-1258 defines in which profes-

\textsuperscript{99} Id.
\textsuperscript{100} Loi No. 71-1130, \textit{supra} note 73, arts. 54-60.
\textsuperscript{101} Remarks, Madame Edith Cresson, former Minister of European Affairs and former Prime Minister. She stated, "Les travaux de cette mission devraient se réaliser autour de deux thèmes principaux: favoriser la reconquête du marché national; conquérir le marché européen." (The purpose of this commission will be centered around two goals: retaking the national (legal) market and conquering the European market.) \textit{MISSION D'ETUDE SUR L'EUROPE ET LES PROFESSIONS DU DROIT, supra note 1, Annexe I at 4.}
\textsuperscript{102} Loi No. 90-1259 \textit{supra} note 2, art. 1. Article 1 states that the new professional title of \textit{avocat} and \textit{conseil juridique} will be \textit{avocat}. See Ethan Schwartz, \textit{Legal Revisions Threaten U.S. Law Firms in France}, \textit{WASH. POST}, July 12, 1990, at E1.
\textsuperscript{103} Décret No. 91-1197, \textit{supra} note 2, tit. I-V. A \textit{décret} or decree is issued by the President or the Prime Minister after the \textit{Conseil d'État} has been consulted. A \textit{décret} is much like an executive order issued by the President of the United States. The \textit{Conseil d'État} is the Supreme Court of the Administrative Courts in France. It was created in 1799 by Napoléon who thought that some administrative circumstances needed to be addressed by special courts. \textit{Lois} are statutes voted on by Parliament. \textit{WESTON, supra} note 83, at 86-88.
sional entities attorneys may associate.  

Loi No. 90-1259 makes no reference to a residency requirement for admission to the practice of law in France. However, in order to gain admission to any bar in France, which is a requirement to practice there permanently, the attorney must be inscribed as a member of an ordre d'avocats (bar association), which itself has a residency requirement. The attorney's professional address must be within the jurisdiction of the Tribunal de Grande Instance (Tribunal of General Jurisdiction) or the Cour d'Appel (Court of Appeals), where he intends to practice. Therefore a professional address is obligatory as set out in Loi No. 90-1259.

The nationality requirement depends on the nationality of the applicant and whether France has signed any agreements with the applicant's home state. For instance, France has bilateral conventions with approximately thirty-five countries, mostly its former colonies and protectorates, allowing their citizens the right to practice law in France without having French nationality, as well as some EC countries. All attorneys from Member States of the EC may practice law in France as avocats, provided that they have met the degree requirements of France for EC member citizens.

The fears of many foreigners, (i.e., that the French Bar would lobby the Senate and National Assembly to adopt a requirement to make all foreign lawyers take the French Bar Examination) seem to have rung

104 Loi No. 90-1258, supra note 2, tit. I.
105 An applicant for admission to practice law in France as an avocat must fulfill the following requirements according to Loi No. 90-1259, December 31, 1990:

(1) Have a professional address in France;
(2) Be of French nationality, a member of the EC, from a French territory, or from a country that confers reciprocity to French lawyers wishing to practice law;
(3) Have a maitrise en droit (masters degree in law) or an equivalent degree;
(4) Pass the French Bar Examination - the Certificat d'aptitude a la Profession d'Avocat (CAPA), or in the case of reciprocity, fulfill the requirements establishing sufficient familiarity with French law, to be determined by Decree of the Conseil d'Etat;
(5) Be of good moral character.

106 Id. See also SERGE-PIERRE LAGUETTE, LAWYERS IN THE EUROPEAN COMMUNITY 169-71 (1987).
107 Loi No. 90-1259, supra note 2, art. 11, § 1.
108 Id. See also TRANSNATIONAL LEGAL PRACTICE 115 (Dennis Campbell ed., 1982).
109 Décret No. 91-1197, supra note 2.
true in part, despite reassurances from many French lawyers.\textsuperscript{110} Henri Ader, \textit{bâtonnier} (Chairman) of the Paris Bar Association, insisted that the test requirement would not be the full-blown bar exam.\textsuperscript{111} He stated that the new law would be beneficial to foreign lawyers because they will be able to plead in courts from which they were previously excluded.\textsuperscript{112}

The admission requirements for EC attorneys are different depending upon whether the attorney provides legal services in France on an occasional basis or whether the attorney has established himself permanently in France.\textsuperscript{113} Title V of \textit{Décret No. 91-1197}, entitled "The Freedom to Provide Services in France by Attorneys from States of the European Community," states that lawyers from Member States must follow the admission procedures outlined in it.\textsuperscript{114} Article 200 emphasizes that the EC attorney’s provision of legal services be temporary or "\textit{une activité professionnelle occasionnelle}."\textsuperscript{115} Article 201 lists the legal professions from the Member States that may practice law in France.\textsuperscript{116} Article 202 requires the attorney to follow the professional rules used in French courts when defending a client in criminal proceedings or in public courts.\textsuperscript{117} Article 203 allows the foreign attorneys to follow their own professional code when dealing with all other matters and Article 204 outlines disciplinary procedures to be used should a foreign attorney cause any infractions.\textsuperscript{118}

For those EC attorneys seeking the right to establish themselves in France, Title II, entitled "\textit{Accès à la Profession D'Avocat}" lists the conditions that must be met before an applicant will be admitted to a bar association.\textsuperscript{119} These conditions fall under the sub-chapter entitled "\textit{Conditions Particulières d’Inscription au Barreau des Ressortissants de la Communauté Économique Européenne}."\textsuperscript{120} To avoid fulfilling the requirements that French nationals must meet to practice law, i.e. diplo-

\textsuperscript{112} \textit{Id.}
\textsuperscript{113} \textit{Id.}
\textsuperscript{114} \textit{See Décret No. 91-1197, supra note 2, arts. 99, 201-4.}
\textsuperscript{115} Titre V, \textit{la Libre Prestation de Services en France Par les Avocats des États Membres des Communautés Européennes}, \textit{Décret No. 91-1197, supra note 2, art. 200 (The Free Provision of Services in France by attorneys of Member States of the European Community).}
\textsuperscript{116} \textit{Id.}
\textsuperscript{117} \textit{Id.} art. 201.
\textsuperscript{118} \textit{Id.} art. 202.
\textsuperscript{119} \textit{Id.} arts. 203-4.
\textsuperscript{120} \textit{Id.} ch. II, § I (particular conditions required for bar admission by those of the European Economic Community).
mas, apprenticeships, and bar exams, the applicant must have successfully completed, at a minimum, a three-year university program in a Member State. The applicant must meet additional requirements demonstrating attainment of the requisite educational formation. This includes evidence of a diploma and a certificate or title from the applicable authority of the applicant’s home State permitting the applicant to practice law. If the attorney received a law degree from a third country, the Member State must certify the attorney’s educational credentials and show proof of at least three years of professional experience in the Member State.

In Member States that do not regulate entry into the profession, the attorney must be able to show that during the course of the last ten years he was employed for at least two years as an attorney. This work experience must be certified by a competent state authority. Once these requirements have been met, the applicant may have to undergo an exam before a board of examiners. The contents of the exam will be decided by the Ministry of Justice after consultation and advice of the Conseil National des Barreaux (National Council of Bar Associations). An exam is likely when the applicant’s legal education is substantially different from the educational programs required by the regional centers for professional development of the bar where the applicant is seeking admission. After the applicant has taken the exam, the Conseil National des Barreaux makes its decision in about four months. Attorneys wishing to establish themselves in France can take the exam only three times. Because the exam process is determined on a case-by-case basis, the applicant’s work experience and formal training are considered, and depending on the applicant’s educational experience, he may or may not have to undergo an entrance exam.

Despite over 700 years of evolution, the legal profession in France has experienced some of its most dramatic changes in the last twenty years. The question remains whether these latest reforms will strengthen

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121 Id. art. 99.
122 Id. art. 99(1).
123 Id.
124 Id. art. 99(2).
125 Id.
126 Id.
127 Id.
128 Id.
129 Id.
130 Id.
131 Id.
the competitiveness of the profession internally and internationally, or whether France's legal profession needs more drastic changes than the merging of the conseil juridique and the avocat in order to realize it's goal of conquering the European market.\textsuperscript{132} Ultimately, whether or not France's crusade is successful may not depend on its effects on the French but on whether the reforms are deemed in compliance with European Community law.

III. EUROPEAN COMMUNITY LAW AFFECTING THE LAWYER'S RIGHT TO PRACTICE

A. The Treaty of Rome

The Treaty of Rome\textsuperscript{133} outlines the European Community policies

\textsuperscript{132} The French government spends much less on its legal system than many other European countries. The per capita expenditures are revealing and help to explain why more reforms may be needed: France, 7 francs; Germany, 30 francs; Holland, 60 francs; and Great Britain, 98 francs. Sokol, supra note 98, at 1036 n.65. In the United States, there is one lawyer for every 350 persons, in Great Britain, one for every 700 persons, in Germany, one for every 1,000 persons, and in France one for every 2,500 persons. \textit{Le Monde}, December 9, 1992. (LEXIS, Intlaw Library). Even after the merger, the number of attorneys is low with approximately 25,000. Germany has approximately 58,000. \textit{Le Quotidien de Paris}, October 7, 1991.

\textsuperscript{133} Treaty of Rome, supra note 7. Article 4 of the Treaty created four primary institutions to administer EC law: the Assembly or Parliament, the Council, the Commission, and the Court of Justice. The signing of the Single European Act created a new court of First Instance in October 1988, thus the Court of Justice can also act as a court of appeal from decisions of the newly created Court of First Instance. (Council Dec. of October 24, 1988, O.J. 1988, L 319/1.) Since July 7, 1979, the Parliament has been composed of delegates elected by the populace of their respective countries. Currently, the Parliament has 518 seats with distribution divided proportionately according to each Member State's population. Germany, France, Italy, and the United Kingdom elect 81 delegates; Spain elects 60, the Netherlands elects 25; Belgium, Greece, and Portugal elect 24; Denmark elects 16. Ireland elects 15, and Luxembourg elects 6 members. According to Article 137, the Parliament has advisory and supervisory powers. It may discuss issues pertaining to the Communities and adopt resolutions. It may even dismiss the entire Commission with a two-thirds majority vote, although such a move would be drastic, as each Member State would then have to appoint new representatives. See Treaty of Rome, supra note 7, arts. 137-44. See also KAPTEYN & VAN THEMMAAT, supra note 7, at 137-43.

The Council is made up of delegates from each Member State. Article 145 states that the purpose of the Council is "to ensure that the objectives set out in this Treaty are attained." The Council acts usually only on proposals submitted by the Commission. Because the work level has increased substantially and the Council is not a permanent body, a Committee of Permanent Representatives (COREPER) was created to analyze the proposed legislation of the Commission. See Treaty of Rome, supra note 7, arts. 145-54. See also KAPTEYN & VAN THEMMAAT, supra note 7, at 103-8.

The Commission is made up of 17 members. It has two members each from France, Germany, Italy, Spain, and the United Kingdom, and one member from each of the other seven states. Every legislative decision made by the Council must first come from the Commission as a proposal. Another task of the Commission is to ensure that the requirements of the Treaty are being followed by its Members. See Treaty of Rome, supra note 7, arts. 5, 155-63. See also
concerning the provision of services and the right of establishment in Articles 2 and 3. These articles stipulate that Member States shall not erect "obstacles to freedom of movement of persons, services, and capital." When France crafted its laws concerning the new legal profession it was careful to draft its national legislation without violating these rights guaranteed to all EC nationals by the Treaty of Rome.

Implementing Décret No. 91-1197, Title V, addresses the right of attorneys from Member States to provide legal services in a section entitled "The Freedom to Provide Services in France by Attorneys from Member States of the European Economic Community." Title II, Chapter II, sub-section 3, addresses the right of attorneys from Member States to establish themselves in France. The section outlines the requirements that must be fulfilled before entry to a bar association is permitted.

The section is entitled "Particular Conditions for Inscription in a Bar Association for Those from the European Economic Community."

Although the French legislature has included provisions in its reforms concerning the right of establishment by EC attorneys, the laws allow each applicant's credentials to be reviewed on a case-by-case basis. Thus, an applicant will not be certain whether his admission to practice will require additional requirements and could allow for discriminatory application of the law. Therefore, this uncertainty can make the right of an EC attorney to establish himself in France illusory.

The right of establishment and the freedom to provide services apply to all areas of industry and commerce within the European Economic Community, including members of the liberal professions.

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134 Id.
135 Id.
136 Id.
137 Decree No. 91-1197, supra note 2, tit. V.
138 Id. art. 99.
139 Id.
140 The liberal professions include lawyers, accountants, actuaries, architects, doctors, surgeons, veterinarians, dentists, pharmacists, surveyors, etc . . . it includes those professions that are not governed by only ordinary law and morality, but also by professional codes of conduct designed
The freedom of establishment provides an individual the right to pursue activities as a self-employed person.\textsuperscript{141} This means that a person can establish himself in another Member State to pursue economic activities.\textsuperscript{142} The Treaty makes no reference to limits on the number of places where someone may establish himself, permitting either permanent professional or personal residences or in the case of corporate entities, secondary branches, agencies, or subsidiaries.\textsuperscript{143}

The freedom to provide services according to Article 60 of the Treaty means services for remuneration and includes industrial, commercial, professional, and even activities for craftsmen.\textsuperscript{144} This freedom includes the right of a person who provides services to temporarily take residence in the State where he is pursuing his economic activity. For this reason, rights of establishment and services are closely linked and discussed. If a worker has the right to provide a service in a country not his own, then he must also have the right to establish himself in this new country.\textsuperscript{145}

Although theoretically the concept of permanent establishment to pursue economic activities and a temporary provision of services in a Member State appear to be distinct concepts, in practice they can become indistinguishable. Determining when a temporary stay becomes permanent is an ill-defined area of Community law, but one that can have vast implications for an attorney.\textsuperscript{146} Depending on whether an attorney practicing in a host State is there on a temporary basis or on a permanent basis can mean the added burden of a few years of preparation to fulfill local bar requirements before practice is legally permissible.\textsuperscript{147}

Articles 55 and 56 of the Treaty, however, provide limits on these

\textsuperscript{141} Treaty of Rome, supra note 7, art. 52.
\textsuperscript{142} Id.
\textsuperscript{143} Id.
\textsuperscript{144} Id. art. 60.
\textsuperscript{145} id.
\textsuperscript{146} Id. On April 17, 1969, the Commission presented the Council with a directive concerning lawyers and the provision of services. Although the directive was never adopted, it did attempt to delineate the difference between temporary services and establishment. Article 3 provided:

\textsuperscript{147} Lombay, supra note 11, at 10.
rights and allow States to restrict to nationals positions that are connected with governmental authorities of that particular Member State. Because the right of establishment and the right to provide services are not absolute rights, it is possible that a national of one Member State may not be able to satisfy the requirements of the host. The host State may have national qualifications or rules of professional conduct that must be met by all attempting to enter the profession. At the same time, these freedoms guarantee that non-nationals will not endure discriminatory employment practices while exercising their rights.

B. European Court of Justice Decisions Concerning a Lawyer’s Right to Establishment and Right to Provide Services

The Treaty of Rome provided for a transitional period lasting twelve years from the date of signing, during which time all legislation concerning the freedom to provide services and the right of establishment was to be implemented. As the Treaty was signed in 1957, the required legislation should have been implemented by 1969. It was not. The Treaty prescribed a two-stage procedure to adopt Community legislation to effectuate the freedom of establishment for workers within

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148 Treaty of Rome, supra note 7, art. 55. Article 55 states in relevant part:

Activities which in any State include even incidentally, the exercise of public authority shall, in so far as that State is concerned, be excluded from the application provisions of this Chapter.

Id. Article 56 states in relevant part:

Before the expiry of the transitional period, the Council, acting by means of a unanimous vote on a proposal of the Commission and after the Assembly has been consulted, shall issue directives for the co-ordination of the above-mentioned legislative and administrative provisions.

Id.


150 See Treaty of Rome, supra note 7, art. 60.

151 Treaty of Rome, supra note 7, art. 8, para. 1 states: “[t]he common market shall be progressively established in the course of a transitional period of twelve years.” Article 8, para. 7 states:

Subject to the exceptions or deviations provided for in this Treaty, the expiry of the transitional period shall constitute the final date for the entry into force of all the rules laid down and for the completion of all the measures required for the establishment of the Common Market.

Id.

152 Id. Article 189 defines the three types of legislation that are binding on all Member St-
the Community, during which time additional domestic restrictions were prohibited. However, the first directive affecting lawyers was not adopted by the Council until 1977.

During the intervening eight years, the European Court of Justice decided a number of cases which helped to interpret the Treaty provisions and refine their application concerning legal services and establishment. The first case to address the right of establishment was Reyners v. Belgian State. This case stands for the proposition that a Member State cannot claim that certain professions are closely connected to governmental entities simply in order to exclude other EC professionals from pursuing these positions. In this case, Belgium claimed that the right of establishment and the right to provide services guaranteed by Articles 52 and 59 of the Treaty of Rome were conditional because of the exception clause of Article 55 concerning "official activities" or activities closely connected with the governments of Member States.

Mr. Reyners was a Dutch national who had completed his law studies in Belgium, applied to the Belgian Bar, and was refused admission because the law in Belgium at the time stated that only Belgian nationals would be admitted to practice. A Royal Decree was passed

Regulations shall have general application. They shall be binding in every respect and directly applicable in each Member State.

Directives shall bind any Member State to which it is addressed as to the result to be achieved, while leaving to domestic agencies a competence as to form and means.

Decisions shall be binding in every respect for the addressees named herein.

Recommendations and opinions shall have no binding force.

Id.

This regulation is the most direct form of Community legislation, affecting all Member States at once. It may not be substituted by Member State legislation. It must be implemented in its entirety as promulgated. Directives are also binding on all Member States but they may use their discretion in the form of application. Because each Member State must pass its own enabling legislation, the process is very tedious. Decisions from the European Court of Justice are only binding on the parties to whom they are addressed. Thus, decisions do not operate as precedent and cannot be considered law like directives and regulations. Decisions contribute to the refinement of Community law. See generally KAPTYN & VAN THEMAAT, supra note 7, at 185-201 (discusses policy-making and administration).

153 Treaty of Rome, supra note 7, art. 53.
156 Id. at 634.
157 Id. at 633.
making an exception to the nationality requirement, however the exception required that the applicant’s State of nationality provide reciprocity to Dutch lawyers before the applicant would be admitted to the Bar. In this case, the law in the Netherlands did not provide reciprocity to Belgian attorneys and Mr. Reyners was not admitted to the Bar. Mr. Reyners challenged the Belgian law on the grounds that it violated the Treaty of Rome which guaranteed his right to freedom of establishment.

Mr. Reyners’ case was referred to the European Court of Justice, which addressed two questions in its decision: (1) how broad can a country define activities of official authority or “activities that are connected to the State” within the meaning of Article 55 of the Treaty of Rome and (2) whether Article 52, concerning freedom of establishment, applies to the legal profession even though no directives have been passed as prescribed by Articles 54(2) and 57(1), concerning the legal profession.

The European Court of Justice decided that the term “activity” did not apply to an entire profession, but rather to particular positions or activities that were connected to the exercise of official authority. Thus, Belgium’s assertion that all legal practice, including consultation, representation, and general legal assistance, was exempt from the Treaty’s guaranteed rights because such practice could include activities of an official nature was held to be erroneous. The court held that only those activities that were connected to State functions would be reserved for nationals. If Article 55 were interpreted to mean that activity and profession were synonymous, the court reasoned that entire professions could be restricted to nationals because of the linkage with official authority.

1. Since the end of the transitional period Article 52 of the Treaty is a directly applicable provision, despite the absence, in a particular sphere, of the directives prescribed by Articles 54(2) and 57(1) of the Treaty.

2. The exception to freedom of establishment provided for by the first paragraph of Article 55 must be restricted to those of the activities referred to in Article 52 which in themselves involve a direct and specific connexion.
The Court's response to the second question makes this case the seminal decision concerning the right of establishment from the European Court of Justice and it has provided a theoretical foundation on which later cases have rested. The impact of this decision on the right of establishment for attorneys will continue to be far reaching until the Commission proposes and the Council adopts an establishment directive for lawyers. The court held that although no implementing directives had been adopted concerning the right of establishment for attorneys, the Treaty nonetheless guaranteed the rights of those persons seeking establishment.\textsuperscript{167} The court delivered its opinion in open court in Luxembourg on June 21, 1974, holding that the Treaty of Rome \textit{did} apply to the legal profession and that Mr. Reyners was to be admitted to the Belgian Bar.\textsuperscript{168} The holding also confirmed that the general activities of a lawyer such as representation, consultation, and legal assistance were not deemed to be connected with official functions of the State.\textsuperscript{169} That such general activities were not considered to be official functions of the State refined the application of the Article 55 and Article 56 exceptions in the Treaty of Rome, which allowed Member States to exclude non-nationals from activities which were connected to State functions.

Shortly thereafter, on December 3, 1974, the court decided a similar case concerning the freedom to provide services which contributed to the continuing evolution of lawyers' rights to practice throughout the community.\textsuperscript{170} In \textit{van Binsbergen}, the Court applied the principles from \textit{Reyners} concerning the abolition of restrictions on attorneys' right of establishment to an attorneys' right to provide services throughout the Community. The court held that Articles 59 and 60 of the EC Treaty \textit{do} create rights that are applicable to the legal profession.\textsuperscript{171}

Mr. van Binsbergen was a Dutch resident living in the Netherlands who was being represented in the Netherlands Court of Appeals by Mr. Kortmann, a legal advisor who changed his legal domicile from the

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with the exercise of official authority; it is not possible to give this description, in the context of a profession such as that of avocat, to activities such as consultation and legal assistance or the representation and defence of parties in court, even if the performance of these activities is compulsory or there is a legal monopoly in respect of it.
\end{quote}

\textit{Id.} at 656.\textsuperscript{167} \textit{Id.} \textsuperscript{168} \textit{Id.} \textsuperscript{169} \textit{Id.} at 657.\textsuperscript{170} Case 33/74 Johannes Henricus Maria van Binsbergen v. Bestuur Van de Bedrijfsvereniging Voor de Metaalnijverheid, 1974 E.C.R. 1299, 1 C.M.L.R. 298 (1975) [hereinafter van Binsbergen].\textsuperscript{171} \textit{Id.} at 1312.
Netherlands to Belgium during the course of the proceedings. After Mr. Kortmann moved, the Dutch courts denied him access to represent Mr. van Binsbergen because he no longer had a permanent Dutch residence as required by Dutch law. Mr. Kortmann contested the law as a violation of the Treaty of Rome's right to provide services. The case was brought before the European Court of Justice which held that Articles 59 and 60 of the Treaty guaranteed the Dutch attorney the right to provide services in the Netherlands regardless of his domicile.

Although the court applied the principles of Reyners to this case, it emphasized that the need for establishment could be required if the host State had specific rules of professional conduct that required the establishment of the attorney within the territory of the State. For instance, had Mr. Kortmann's legal advisor been subject to the professional regulation of a bar association, it may have been necessary for him to have been established in the Netherlands to practice. In this case however, legal advisors were not regulated in the Netherlands, and such establishment rules were not required.

A case that set the stage for the adoption of a directive concerning the provision of services was the Patrick case. Mr. Patrick was a British national who had met all the qualifications necessary to practice as an architect in Britain and had received a certificate from the British Architectural Association authorizing his practice. At this time, French legislation permitted foreign architects to practice in France if they could show proof of a certificate from their native country that was equivalent to the certificate required in France. The certificate issued by the British Architectural Association was recognized by a French Ministerial decree on June 21, 1964, as equal to the French certificate. In 1973, when Mr. Patrick applied to practice in France, he was denied permission because there existed no convention between the two countries recognizing the reciprocity of the two diplomas.

172 Id. at 1315.
173 Id. at 1301.
174 Id.
175 Id. at 1321.
176 Id. at 1316.
177 Id. at 1310, para. 15.
178 Id.
180 Id. at 1201.
181 Id.
182 Id.
183 Id.
The Court reiterated its holding in *Reyners* that Article 52 prohibited discrimination against nationals of other Member States despite the absence of a specific directive concerning the recognition of diplomas. The Court held that the purpose of directives was to facilitate compliance with the Treaty provisions concerning the right of establishment and the provision of services.

The *Thieffry* case, similar to the *Patrick* case on the facts, held great import for attorneys and also encouraged the passage of EC legislation concerning legal services. This case also involved the mutual recognition of diplomas and the interpretation of Article 57, and rested on the previous Court rulings from the *Reyners* and *van Binsbergen* cases concerning the prohibition of discrimination.

Mr. Jean Thieffry was a Belgian lawyer who held a Belgian doctor of law degree which had been recognized by the University of Paris 1 - Panthéon Sorbonne as equivalent to the license degree in French law. Mr. Thieffry also passed the *Certificat d'Aptitude a la Profession d'Avocat* (the French Bar Examination) and although the University of Paris recognized that a law degree from a Belgian university was equivalent, the Paris Bar Council asserted that a French degree was a prerequisite for law practice in France and denied Thieffry access to the

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184 Id. at 1204-5.
185 Id. at 1205-6. Furthermore, the Court concluded that:

The answer to the question referred to the Court must therefore be that, with effect from 1 January 1973, a national of a new Member State who holds a qualification recognized by the competent authorities of the Member State of establishment as equivalent to the certificate issued and required in that State enjoys the right to be admitted to the profession of architect and to practice it under the same conditions as nationals of the Member State of establishment without being required to satisfy any additional conditions.

Id.

187 Treaty of Rome, *supra* note 7, art. 57. Article 57 states in relevant part:

In order to facilitate the engagement in and exercise of non-wage-earning activities, the Council, on a proposal of the Commission and after the Assembly has been consulted, shall, in the course of the first stage by means of a unanimous vote and subsequently by means of a qualified majority vote, act by issuing directives regarding mutual recognition of diplomas, certificates and other qualifications.

Id.

188 Thieffry, 1977 E.C.R. at 767.
Paris Bar. Although the Paris Bar Council recognized that the Treaty of Rome provisions concerning the right of establishment prohibited discrimination based on nationality, it took the view that mutual recognition of diplomas was only mandatory to the extent of the directives adopted by the Council. The Bar Council took the position that since no directives had been passed in this context, mutual recognition was not mandatory. The Court held that it was up to the national authorities of the Member States not to frustrate the objectives of the Treaty of Rome by applying national rules that were not in accord with the objective of ensuring the right of establishment for all citizens.

C. The Services Directive 77/249

On March 27, 1977, the Directive to Facilitate the Effective Exercise by Lawyers of the Freedom to Provide Services was adopted. The purpose of the Directive was to abolish the restrictions imposed by Member States on attorneys attempting to provide legal services within the Community. Despite its all encompassing title, this directive is

189 Id.
190 Id.
191 Id. at 770.
192 Id. at 779. The Court concluded:

In these circumstances, the answer to the question referred to the Court should be that when a national of one Member State desirous of exercising a professional activity such as the profession of advocate in another Member State has obtained a diploma in his country of origin which has been recognized as an equivalent qualification by the competent authority under the legislation of the country of establishment and which has thus enabled him to sit and pass the special qualifying examination for the profession in question, the act of demanding the national diploma prescribed by the legislation of the country of establishment constitutes, even in the absence of the directives provided for in Article 57, a restriction incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty.

194 The introduction to the directive states in relevant part:

Whereas, pursuant to the Treaty, any restriction on the provision of services which is based on nationality or on conditions of residence has been prohibited since the end of the transitional period;

Whereas if lawyers are to exercise effectively the freedom to provide services host Member States must recognize as lawyers those persons practic-
very limited in scope and reinforces the holdings from the European Court of Justice concerning the right of attorneys to provide services.\footnote{A recent application of the Services Directive is Case 205/84, Commission v. F.R.G., 11 E.C.R. 3755 (1986), 2 C.M.L.R. 69 (1977), where the European Court of Justice held that services included the instance where a branch office was opened in a host country by a corporation from another Member State but the employees were nationals of the host country. Although establishment would appear to be occurring, it was not. Establishment would occur only if the principal had taken up permanent residence in the host country, as opposed to setting up only business operations there.} Because the provision to provide services and the right of establishment are often overlapping, the European Council promulgated this legislation to apply only to the provision of services in temporary situations.\footnote{Council Directive 77/249, supra note 193, at 17.} The Directive consists of eight provisions that address professional titles to be used by attorneys, professional codes, and sanctions.\footnote{See generally id.} It insures that EC lawyers are to be recognized by their home State professional title in every Member State.\footnote{id. arts. 2, 8.}

Article 4 distinguishes between services attorneys provide to a client in legal proceedings, before public authorities, and other legal proceedings.\footnote{id. art. 4(1)-(4).} While pursuing the former, the attorney “shall observe the rules of professional conduct of the host Member State, without prejudice to his obligations in the Member State from which he comes.”\footnote{id. art. 4(2).} However, when the attorney is providing any other legal service, he will be governed by the practices of his host country “without prejudice” to the professional rules of the host State.\footnote{id. art. 4(4).}

The most far-reaching change is found in Article 5, which allows attorneys to represent a client in court in every Member State in civil and criminal proceedings. Member States may require the foreign lawyer to work in conjunction with a local attorney to insure that a foreign attorney’s unfamiliarity with procedural rules and different legal systems does not hinder his representation or harm his client.\footnote{Id. art. 5.}
D. Decisional Law and Legislation After the Services Directive

The Services Directive brought Community law closer to realizing a transnational legal practice within the European Community, but it took additional Court of Justice decisions to remove many more of the arbitrary requirements and discriminatory conditions imposed by Member States on attorneys attempting to practice law throughout the European Economic Community.

The first of these cases is Ordre des Avocats du Barreau de Paris v. Klopp, which states that Member States cannot refuse to admit lawyers to practice because they may already have established practices in other Member States. Mr. Klopp was a German national and a member of the Dusseldorf Bar, who had received a doctorate by the Faculty of Law and Economics of the University of Paris in 1980. He applied to the Paris Bar Council to take the oath for avocat and for admission to its training center but was denied admission because internal rules of the Paris Bar Council required all avocats to have only one practice within the jurisdiction of the regional court where he was practicing.

The French Court of Appeals set aside the decision of the Paris Bar Council as being inconsistent with the rights established under the Treaty of Rome, but the Paris Bar Council appealed and the French Court of Cassation stayed the proceedings and requested a preliminary ruling from the European Court of Justice.

The European Court of Justice stated that although a directive on freedom of establishment had not been adopted by the Council, its prior decision from Reyners was applicable here, that Article 52 of the Treaty imposes obligations on Member States to abolish restrictions on the freedom of establishment. The Paris Bar Council and French government maintained that the freedom of establishment was contingent upon the national rules of the Member States as long as those rules

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204 Id. at 2973.
205 Id. Although multiple offices of the same practice are allowed if in the same jurisdiction.
206 The Court of Cassation is the highest court of the non-administrative judicial branch. It is the court of final appeal on questions of law and exercises ultimate authority over all the courts which apply private law. It does not substitute its decisions for the decisions from lower courts with which it disagrees, but instead quashes them (Cassation comes from the verb casser, meaning to break). WESTON, supra note 83, at 72.
208 Id. at 2987, paras. 9-10.
were not discriminatorily applied to non-nationals. The Paris Bar Council cited the second paragraph of Article 52, which states that the pursuit of economic activities shall be allowed “under the conditions laid down for its own nationals by the law of the country where such establishment is effected.” The Court pointed out, however, that under such a strict interpretation of Article 52, a Member State could require that a lawyer only have one establishment throughout the Community, thereby effectively violating his right of freedom of establishment. The Court opined that the freedom of establishment did not create a single right of establishment and therefore, a Member State could not limit the setting up of agencies, branches, or subsidiaries by nationals of another Member State within its territory.

In 1988, the Court of Justice heard two cases that challenged Article 4 provisions of the Services Directive, concerning the “work in conjunction” rules and national rules relating to the observance of professional ethics. The case of Claude Gullung v. Conseils de l’ordre des avocats du Barreau de Colmar et de Saverne, involved an attorney of dual nationality who was dismissed from the practice of notary in Germany and then sought to be admitted to practice as a conseil juridique in France. His application for admission to the Marseilles and Mulhouse Bars was rejected on the grounds that Mr. Gullung did not meet the requirements of good character prescribed in the “Law of 1971.” However, Mr. Gullung was finally admitted to the German Bar as an attorney. In 1981, Mr. Gullung received a notice from the Mulhouse Bar prohibiting any member from lending Mr. Gullung assistance because he did not meet the requirements as to good character laid down by the Services Directive and by the French implementing legislation. In 1985, Mr. Gullung appeared before the Court of Appeals in Colmar, France, providing services with the assistance of an avocat who was allowed before the court. Mr. Gullung’s appearance before the court in Colmar prompted decisions by the Colmar Bar Council and the Saverne Bar Council prohibiting any attorney of those bars from assist-

209 Id. at 2988, para. 12.
210 Id. at 2989, para. 17.
211 Id. at 2989, para. 18.
212 Id. at 2989, para. 19.
214 Id. at 113.
215 Id. See also Loi No. 71-1130, supra note 73, at Article 54, which states that attorneys applying for admission to practice must “satisfy the conditions of morality required of attorneys.”
217 Id.
218 Id.
ing him in representing clients because his registration at a bar had been denied on the ground that he did not have the integrity, good repute, and dignity to become an avocat.\textsuperscript{219} Mr. Gullung challenged these decisions claiming that they violated his rights under the Services Directive 77/249 and under Article 52 of the Treaty of Rome concerning the right of establishment.\textsuperscript{220}

The Court addressed the issue of services by referring to Article 4, which states that any foreign lawyers providing services in a host State must abide by the professional rules of that State or suffer penalties for non-compliance, as referred to in Article 7 of the Services Directive.\textsuperscript{221} The Court concluded that Mr. Gullung could not rely on the Services Directive to give him access to the bars in question because he had violated professional rules of conduct set down by the host State.\textsuperscript{222}

Mr. Gullung also claimed that his right to establishment in France would be violated if he could not provide services, because his office in Germany had a branch office in Mulhouse, France, citing the Court's decision in Klopp, as evidence of his right to establish without registration with a second bar in France.\textsuperscript{223} The Court stated though that Article 52, guaranteeing the right of establishment, permitted a Member State to impose the same requirements on foreign lawyers as it did on its own lawyers.\textsuperscript{224}

The second case to challenge provisions of the Services Directive is Commission of European Communities v. Federal Republic of Germany, where the Court of Justice held that the German Enabling Act\textsuperscript{225} of the Directive went too far by requiring that every foreign lawyer have a German co-counsel when appearing before the German legal proceed-

\begin{itemize}
\item \textsuperscript{219} Id.
\item \textsuperscript{220} Id. at 114.
\item \textsuperscript{221} Id. at 137.
\item \textsuperscript{222} Id. at 138, para. 22.
\item \textsuperscript{223} Id. at 114.
\item \textsuperscript{224} Id. at 141. The Court concluded that:

Article 52 of the EEC Treaty must be interpreted as meaning that a Member State whose legislation requires lawyers to be registered at a bar may impose the same requirements on lawyers from other Member States who take advantage of the right of establishment guaranteed by the Treaty in order to establish themselves as members of a legal profession in the territory of the first Member State.

\item \textsuperscript{225} Bundesgesetzblatt, Jahrgang 1980, Teil 1, at 1453. Since this ruling, new provisions have been added to bring German law into line with the decision. See Bundesgesetzblatt, Jahrgang 1990, Teil 1, at 479.
\end{itemize}
ing.226 The Enabling Act went so far as to require a co-counsel even when there was legally no mandatory requirement to have any kind of legal representation before the Court.227 Therefore, even when a client did not need representation before the Court, if his attorney was a visiting lawyer, the client was required, according to the Enabling Act to hire a German lawyer as well.228

The Court held that it was permissible for the host State to require co-counsel to assist with a legal proceeding to offer advice and support but that the directive was not intended to require that a visiting attorney have a co-counsel throughout every type of legal proceeding.229 The court did hold, however, that when the visiting attorney was acting as defense in a criminal representation or when the client's best interests were at stake, then a co-counsel requirement was appropriate.230

E. A Directive for the Mutual Recognition of Diplomas

Although the right to provide transnational legal services has been recognized to a large extent in the Community through decisional law

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For the pursuit of activities relating to the representation of a client in legal proceedings, a Member State may require lawyers to whom Article 1 applies:

- to be introduced, in accordance with local rules or customs, to the presiding judge and, where appropriate, to the president of the relevant bar in the host Member State;

- 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 . . . .

Id.

227 Id. at 1124-25.
228 Id. at 1157, para. 9.
229 Id. at 1159, paras. 13-14.
230 Id. More recently, the Court of Justice ruled on a similar provision in France. On July 10, 1991, in the case of Commission v. France, the Court reiterated the importance of Council Directive 77/249, which France had violated because it had not adopted all the laws, regulations, and administrative provisions needed to comply with this directive. In this case, France required French nationals who practiced law in another Member State to obtain assistance from attorneys of the French Bar when practicing before bodies of no judicial function in France. In fact, under French law the proceedings at issue did not even require the compulsory assistance of a lawyer. Echoing the Court's holding in Commission of the European Communities v. Republic of Germany, it was held that the French requirement violated the provision of services pursuant to Directive 77/249/EC.
and legislation, the right to establish oneself in another Member State is still not within reach. However, in 1988, following an agreement by the Heads of State at Fontainebleau in June 1984, the Commission adopted a new approach. Instead of applying a vertical approach wherein separate directives would be crafted for each profession to harmonize professional qualifications, it proposed adopting a horizontal approach, based on mutual recognition of all professions for which a higher education diploma was required. On December 21, 1988, the Council adopted the Mutual Recognition Directive which established a framework for Member States to recognize higher education diplomas awarded for professional schooling of three years or longer. This directive applies to all liberal professions and took effect on January 4, 1991. According to Article 4(1)(b), Member States may require foreign EC nationals to pass aptitude tests or apprenticeships before establishment or admission to a bar will be permitted.

IV. A CHALLENGE TO LOI 90-1259?

Whether France will manage to enforce the provisions of Loi No. 90-1259 and implementing Decree No. 91-1197 concerning access to the legal profession by other EC nationals depends upon whether the Commission proposes an establishment directive to the Council, or whether an attorney attempting to establish himself in France challenges the provisions as a violation of Article 52 of the Treaty of Rome, claiming that the entrance requirements are an insurmountable barrier to establishment and are not in the public good.

The likelihood of the Council adopting an establishment directive is negligible, if the outcome of the recent meeting of the Consultative Committee of the Bars and Law Societies of the European Community (CCBE) is an indication of the current favor of such a proposal. In May 1991, the CCBE met in Dublin where a draft directive proposed to

231 STEINER, supra note 149, at 190.
232 Id. at 190-91.
234 Id.
235 Article 4(1)(b) states in relevant part:

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.

Id.
secure the right of United Kingdom lawyers to establish themselves in other Member States under the title they use in the United Kingdom was defeated. It was believed that had the CCBE passed such a draft directive, the European Commission might have supported a similar directive concerning the establishment for lawyers. The proposal only received eight of the ten votes it needed to pass, with France, Spain, Luxembourg, and Greece refusing to support the measure.

It is more likely that the Council will leave the task of “legislating” to the European Court of Justice, which will continue to mold and refine its interpretations of the Treaty of Rome until freedom of establishment is realized for all the Community’s lawyers and liberal professionals. Recently the Court of Justice decided two cases involving alleged violations of the right of establishment and recognition of professional qualifications that may portend the outcome of a legal challenge to Loi No. 90-1259. The holdings in these cases address the extent to which the right of establishment should be recognized and demonstrate the uncertain result of a challenge to the new French law.

In the case Re Marc Gaston Bouchoucha, the Court of Justice was charged with deciding whether a French rule concerning the practice of certain medical activities prevented Mr. Bouchoucha from exercising his profession as an osteopath and establishing himself in France. Mr. Bouchoucha was prosecuted for illegally practicing medicine in Nice since 1981 by practicing as an osteopath and not a doctor as required by Article L 372 of the Public Health Code and Article 2 of the Order of January 6, 1962. The judgment of the Tribunal Correctionel found Mr. Bouchoucha guilty and fined him 5,000 FF, but the fine was suspended and the conviction was never entered on his casier judiciaire or personal record of criminal convictions. The prosecution and two of the civil parties to the suit (Syndicat National des Medecins Osteotherapeutes Francais and the Syndicat National des Medecins Specialises en Reeducation Fonctionelle) appealed. The Court of Appeals in Aix-en-Provence stayed the proceedings and referred to the Court of Justice the question of whether a French national who held a French state degree as masseur-kinesitherapist and a degree in osteopathy from the European School of Osteopathy in Great Britain, was pro-

237 Id.
238 Id.
240 Id. at *4.
241 Id.
242 Id. at *5.
hibited from practicing osteopathy in France on the ground that he did not hold a doctor of medicine degree as required by the Ministerial Order of January 6, 1962.\textsuperscript{243}

Mr. Bouchoucha stated that in addition to his degrees in osteopathy, he taught at the Paris-Nord-Bobigny Medical University,\textsuperscript{244} a position reserved only for persons who have degrees in medicine.\textsuperscript{245} In addition, he pointed out that in France the profession required no formal course of study but yet was reserved only for practice by doctors untrained in the field.\textsuperscript{246} Hence, Mr. Bouchoucha argued that in this situation, France’s refusal to permit him to practice osteopathy was an unjustified restriction on his freedom to establish in France.\textsuperscript{247}

Citing Article 52, Advocate General Darmon concluded in his opinion that Mr. Bouchoucha should be precluded from the practice of osteopathy because in the absence of community directives or legislation recognizing diplomas in this field, Member States were free to regulate the practice.\textsuperscript{248} Thus, in France, the practice of osteopathy is reserved for doctors. Presumably, with the Mutual Recognition Directive now in force, Mr. Bouchoucha’s educational attainments will have to be recognized by the French authorities, setting aside Mr. Darmon’s opinion.

The second case also involved the determination of the extent to which professionals’ right of establishment would be protected by Article 52 of the Treaty of Rome. The case Vlassopoulou v. Ministerium fur Justiz, involved a Greek lawyer who was refused admission to the practice of law as a Rechtsanwalt (lawyer).\textsuperscript{249} Mrs. Vlassopoulou was admitted to the Athens Bar and held a doctorate in law from the Uni-

\textsuperscript{243} Id.
\textsuperscript{244} Unreported Case C61/89, Re Marc Bouchoucha, at *4 (1990), available in LEXIS, Int’l Library, Celex File (first reporting of the case-court transcript).
\textsuperscript{245} Id. at *5.
\textsuperscript{246} Id. at *4, *5.
\textsuperscript{247} Id. at *4.
\textsuperscript{248} Id. at 8-9. The Court reiterated the opinion of Commission v. Belgium, another case involving the right of establishment among medical professionals, stating, “[f]reedom of establishment includes the right to take up and pursue activities as self-employed persons under the conditions laid down by the legislation of the country of establishment for its own nationals.” Case 221/85, Commission v. Belgium, 2 E.C.R. 719, 736-37, paras. 9-10, 1 C.M.L.R. 620 (1988). The Court added, “provided that such equality of treatment is respected, each Member State is, in the absence of Community rules in this area, free to lay down rules for its own territory governing the activities of laboratories providing clinical biology services.” Id.
versity of Tubingen, Germany.\textsuperscript{250} While working as a legal advisor for six years in Mannheim, she specialized in Greek and European Community law.\textsuperscript{251} After being denied admission to the German Bar because she did not meet the requirements that included successfully completing two state exams and an apprenticeship training period, she brought an action in Federal Court in Germany which referred it to the Court of Justice for a preliminary ruling.\textsuperscript{252} Mrs. Vlassopoulou argued that although Article 52 of the Treaty of Rome grants Member States the discretion to formulate national requirements, these requirements should not hinder non-nationals from establishing themselves by insisting on burdensome and restrictive national rules.\textsuperscript{253}

The Court concurred with Mrs. Vlassopoulou’s argument, however, it stated that Germany could require non-nationals to meet certain qualifications that were necessary for the practice of the profession before being admitted, even if those qualifications hindered the establishment of non-nationals.\textsuperscript{254} The Court also stated that Germany could not ignore the training and educational qualifications that Mrs. Vlassopoulou had achieved when evaluating whether to grant her admission to the legal profession.\textsuperscript{255}

Although the Court upheld the right of France to enforce its own rules qualifying osteopaths, and the Court also upheld the right of Germany to apply its own admission requirements for attorneys, the decisions are still distinguishable with reference to the scope of Article 52. In the \textit{Bouchoucha} case, the Court kept a tight rein on the interpretation of Article 52, and with good reason. The Court had to balance the rights of France to follow its own traditions in formulating national rules to safeguard consumers and the medical profession, against the overlying Community principle of the right of establishment. Had the Court overruled the French provisions, it would have been substituting the national British laws pertaining to the practice of one recognized profession of osteopathy in Britain for the national laws pertaining to the profession of medicine in France. France can certainly justify its interest in maintaining its own practice requirements for a specialty that is not a recognized profession in its territory.

The Court of Justice adopted a more relaxed interpretation of Article 52 in the \textit{Vlassopoulou} case. Here, the Court annunciated the general
principles of the previous case law on Article 52, formulating a compromise between the parties. The decision follows the goals of the Mutual Recognition Directive, allowing for the implementation of national rules that take into account the educational diplomas of the applicant.

This interpretation was reiterated by the Commission of the European Communities in its response to a written question submitted by Mr. Yves Verwaerde, a French attorney. Mr. Verwaerde asked the Commission “what steps it intended to take in response to the joint deliberations of the Paris and Barcelona Bar Councils calling for the adoption of a specific directive for lawyers” that would function in tandem with the Mutual Recognition Directive 89/48/EC allowing for the freedom of establishment for attorneys in the EC. The Commission responded that currently, freedom of movement for lawyers was governed by the Mutual Recognition Directive and the work of the CCBE was being monitored by the Commission.

V. CONCLUSION

The new French legislation complies with the latest case law and the most recent directive recognizing higher education diplomas. Under the current law, national rules and traditions of Member States continue to inhibit the exercise and development of the freedom of establishment. Where previously, individual legal professions within France protected themselves from each other through onerous admission requirements and practice areas, the transformation of the profession into a single entity is reducing the competition intra-state but reinforcing a monopolistic practice inter-state. The recent case law from the European Court of Justice seems to uphold this development.

Despite the current line of case law, the advent of the single integrated European market will continue to chip away at these traditional barriers. As more of France’s societal structures depend less on national law and more on Community law for their implementation, traditional barriers will become irrelevant.

The new French admission requirements consider all of the applicant’s qualifications, following the requirements of the Services Directive 77/249 and the Mutual Recognition Directive 89/48. Since the law evaluates each applicant on a case-by-case basis, it is impossible to determine whether the admission requirements are justified. However, according to the Treaty of Rome, Article 52 allows Member States to

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256 Written Question No. 1608/92 by Mr. Yves Verwaerde to the Commission of the European Communities, 1992 O.J. (c 309) 54.
257 Id.
258 Id.
require foreigners who establish themselves in the host country to meet the same requirements as nationals. The problem of differentiating between the provision of temporary services which requires no additional training, and permanent establishment which may require training of a few months to a few years, will continue to become more hazy as trans-border practices proliferate. Fortunately, the Mutual Recognition Directive will continue to push forward the right of establishment for lawyers as more and more attorneys like Mrs. Vlassopoulou are dual-qualified. However, it seems unlikely that national restrictions will fall in the near future. The legal profession in France is a centuries-old profession and the pride of the French people. To subordinate this profession to the supra-national law of the European Community will take time, unless a directive on establishment is adopted.

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