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P6_TA(2006)0108

Legal professions

European Parliament resolution on the legal professions and the general interest in the functioning of legal systems

The European Parliament,

- having regard to the UN's Basic Principles on the Role of Lawyers of 7 September 1990,
- having regard to Council of Europe Recommendation Rec (2000) 21 of 25 October 2000 on the freedom of exercise of the profession of lawyer,
- having regard to its resolution of 18 January 1994 on the profession of notary in the Community¹,
- having regard to its resolution of 5 April 2001 on scale fees and compulsory tariffs for certain liberal professions, in particular lawyers, and on the particular role and position of the liberal professions in modern society²,
- having regard to its resolution of 16 December 2003 on market regulations and competition rules for the liberal professions³,
- having regard to Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services⁴,
- having regard to Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained⁵,
- having regard to Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes⁶,
- having regard to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications⁷,
- having regard to its position of 16 February 2006 on the proposal for a directive of the European Parliament and of the Council on services in the internal market⁸,
- having regard to the Commission communication 'Professional Services - scope for more reform' of 5 September 2005 (COM(2005)0405),

¹ OJ C 44, 14.2.1994, p. 36.



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²OJ C 21 E, 24.1.2002, p. 364.

³OJ C 91 E, 15.4.2004, p. 126.

⁴OJ L 78, 26.3.1977, p. 17.

⁵OJ L 77, 14.3.1998, p. 36.

⁶OJ L 26, 31.1.2003, p. 41.

⁷OJ L 255, 30.9.2005, p. 22.

⁸Texts Adopted, P6_TA(2006)0061.

- having regard to the European Court of Justice jurisprudence on Community competition law and freedom to provide services, with specific reference to national rules on minimum legal fees,

- having regard to Rule 108(5) of its Rules of Procedure,

A. whereas the Court of Justice of the European Communities has recognised that:

- independence, absence of conflicts of interest and professional secrecy/confidentiality are core values of the legal profession that qualify as public interest considerations;

- regulations to protect core values are necessary for the proper practice of the legal profession, despite the inherent restrictive effects on competition that may result from this,

- the purpose of the principle of freedom to provide services as applied to the legal professions is to promote the opening up of national markets through the possibility offered to service providers and their clients to benefit fully from the Community's internal market,

B. whereas any reform of the legal professions has far-reaching consequences going beyond competition law into the field of freedom, security and justice and, more broadly, into the protection of the rule of law in the European Union,

C. whereas the UN's Basic Principles on the Role of Lawyers of 7 September 1990 provide that:

- lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference;

- professional associations of lawyers have a vital role to play in upholding



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professional standards and ethics, protecting their members from prosecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and the public interest;

- disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review,

D. whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons should have effective access to legal services provided by an independent legal profession,

E. whereas the duties of legal professionals to maintain independence, to avoid conflicts of interest and to respect client confidentiality are particularly endangered when they are authorised to exercise their profession in an organisation which allows non-legal professionals to exercise or share control over the affairs of the organisation by means of capital investment or otherwise, or in the case of multidisciplinary partnerships with professionals who are not bound by equivalent professional obligations,

F. whereas unregulated price competition between legal professionals which leads to a reduction in the quality of the service provided operates to the detriment of consumers,

G. whereas the market in legal services is characterised by asymmetry of information between lawyers and consumers, including small and medium-sized enterprises, since the latter do not have the necessary criteria for assessing the quality of the services provided,

H. whereas the importance of ethical conduct, of maintaining confidentiality with clients and of a high level of specialised knowledge necessitates the organisation of self-regulation systems such as those run today by legal professional bodies and orders,

I. whereas civil-law notaries are appointed by Member States as public officials whose tasks include drawing up official documents with special value as evidence and immediate enforceability,

J. whereas civil-law notaries take on extensive investigation and scrutiny work on behalf of the State in matters relating to non-judicial legal protection, particularly in connection



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with company law – under Community law in some cases – and as part of this work they are subject to disciplinary supervision by the relevant Member State that is comparable to that applicable to judges and civil servants,

K. whereas the partial delegation of the authority of the State is an original element inherent in the exercise of the profession of civil-law notary, and whereas it is currently exercised on a regular basis and represents a major part of the activities of a civil-law notary,

1. Recognises fully the crucial role played by the legal professions in a democratic society to guarantee respect for fundamental rights, the rule of law and security in the application of the law, both when lawyers represent and defend clients in court and when they are giving their clients legal advice;

2. Reaffirms the positions taken in its resolutions of 18 January 1994 and 5 April 2001 and its position of 16 December 2003;

3. Notes the high qualifications required for access to the legal professions, the need to protect those qualifications that characterise the legal professions, in the interests of European citizens, and the need to establish a specific relationship based on trust between members of the legal professions and their clients;

4. Reaffirms the importance of rules which are necessary to ensure the independence, competence, integrity and responsibility of members of the legal professions so as to guarantee the quality of their services, to the benefit of their clients and society in general, and in order to safeguard the public interest;

5. Welcomes the Commission's recognition that reforms are best carried out at national level and that the authorities of the Member States, notably the legislative bodies, are in the best position to define the rules that apply to legal professions;

6. Point out that the Court of Justice has allowed national legislators and professional associations and bodies a margin of discretion when deciding what is appropriate and necessary to protect the proper exercise of the legal professions in a Member State;

7. Notes that each type of activity of a professional body must be looked at separately, so that the rules on competition are applied to the association only when it is acting exclusively in the interests of its members and not when it is acting in the general interest;

8. Reminds the Commission that the aims of the rules governing legal services are the protection of the general public, the guaranteeing of the right of defence and access to justice, and security in the application of the law, and that for these reasons they cannot



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be tailored to the degree of sophistication of the client;

9. Encourages professional bodies, organisations and associations of legal professions to establish codes of conduct at European level, including rules relating to organisational matters, qualifications, professional ethics, supervision, liability and communications, in order to ensure that the ultimate consumers of legal services are provided with the necessary guarantees in relation to integrity and experience, and to ensure the sound administration of justice;

10. Invites the Commission to take account of the specific role of the legal professions in a society governed by the rule of law, and to carry out a thorough analysis of how markets in legal services operate when the Commission promotes a 'less regulation, better regulation' principle;

11. Invites the Commission to apply the competition rules, where applicable, in compliance with the case-law of the Court of Justice;

12. Considers that the public interests overriding EU competition principles are to be found in the legal system of the Member State in which the relevant rules are adopted or produce their effects, and that there is no such thing as an EU public-interest test, however defined;

13. Invites the Commission not to apply EU competition law to matters which, under the EU constitutional framework, are left to the jurisdiction of the Member States, such as access to justice, which includes issues such as the fee schedules to be applied by courts to liquidate lawyers' fees;

14. Stresses that previous obstacles to freedom of establishment and the freedom of legal professionals to provide services have, in theory, been effectively removed by Directives 77/249/EEC, 98/5/EC and 2005/36/EC; notes, however, that the review will take place in two years' time and awaits with interest this thorough assessment;

15. Considers that fee scales or other compulsory tariffs for lawyers and legal professionals, even for out-of-court services, do not violate Articles 10 and 81 of the Treaty, provided that their adoption is justified by the pursuit of a legitimate public interest and that Member States actively supervise the involvement of private operators in the decisionmaking process;

16. Considers that Article 49 of the Treaty and Directives 2005/36/EC and 77/249/EEC make provision for the principle of the country of destination to apply to scale fees and



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compulsory tariffs for lawyers and other legal professionals;

17. Considers that Article 45 of the Treaty must be fully applied to the profession of civil-law notary as such;

18. Calls on the Commission to consider carefully the principles and concerns expressed in this resolution when analysing the rules governing the exercise of the legal professions in the Member States;

19. Encourages professional organisations to continue developing their activities in the field of legal aid, in order to ensure that everyone has the right to receive legal advice and representation;

20. Instructs its President to forward this resolution to the Commission.