JUDGMENT OF THE COURT (Grand Chamber)

19 September 2006 *

In Case C-193/05,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 29 April 2005,

Commission of the European Communities, represented by D. Maidani and A. Bordes, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Grand Duchy of Luxembourg, represented by S. Schreiner, acting as Agent, and L. Dupong, avocat,

defendant,

* Language of the case: French.

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans and A. Rosas, Presidents of Chambers, J.-P. Puissochet, R. Schintgen, K. Lenaerts (Rapporteur), E. Juhász, E. Levits, A. Ó Caoimh and L. Bay Larsen, Judges,

Advocate General: C. Stix-Hackl,
Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 14 March 2006,

after hearing the Opinion of the Advocate General at the sitting on 11 May 2006,

gives the following

Judgment

1 By its application, the Commission of the European Communities has brought an action for a declaration that by maintaining with respect to lawyers having obtained their professional qualification in another Member State and who wish to establish themselves in its territory under their home-country professional title requirements concerning language knowledge, a prohibition on being a person authorised to accept service on behalf of companies, and the obligation to produce each year a certificate attesting to registration with the competent authority in the home

Member State, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ 1998 L 77, p. 36).

Legal background

Directive 98/5

2 The first subparagraph of Article 2 of Directive 98/5 provides: 'Any lawyer shall be entitled to pursue on a permanent basis, in any other Member State under his home-country professional title, the activities specified in Article 5.'

3 Article 3 of Directive 98/5, entitled 'Registration with the competent authority', provides:

'1. A lawyer who wishes to practise in a Member State other than that in which he obtained his professional qualification shall register with the competent authority in that State.

2. The competent authority in the host Member State shall register the lawyer upon presentation of a certificate attesting to his registration with the competent authority in the home Member State. It may require that, when presented by the competent authority of the home Member State, the certificate be not more than three months old. It shall inform the competent authority in the home Member State of the registration.

...'

4 Article 5 of Directive 98/5, entitled 'Area of activity', states:

'1. Subject to paragraphs 2 and 3, a lawyer practising under his home-country professional title carries on the same professional activities as a lawyer practising under the relevant professional title used in the host Member State and may, inter alia, give advice on the law of his home Member State, on Community law, on international law and on the law of the host Member State. He shall in any event comply with the rules of procedure applicable in the national courts.

2. Member States which authorise in their territory a prescribed category of lawyers to prepare deeds for obtaining title to administer estates of deceased persons and for creating or transferring interests in land which, in other Member States, are reserved for professions other than that of lawyer may exclude from such activities lawyers practising under a home-country professional title conferred in one of the latter Member States.

3. For the pursuit of activities relating to the representation or defence of a client in legal proceedings and in so far as the law of the host Member State reserves such

activities to lawyers practising under the professional title of that State, the latter may require lawyers practising under their home-country professional titles to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary, be answerable to that authority or with an "avoué" practising before it.

Nevertheless, in order to ensure the smooth operation of the justice system, Member States may lay down specific rules for access to supreme courts, such as the use of specialist lawyers.'

5 Article 7 of Directive 98/5, entitled 'Disciplinary proceedings', provides in subparagraph 2:

'Before initiating disciplinary proceedings against a lawyer practising under his home-country professional title, the competent authority in the host Member State shall inform the competent authority in the home Member State as soon as possible, furnishing it with all the relevant details.

The first subparagraph shall apply *mutatis mutandis* where disciplinary proceedings are initiated by the competent authority of the home Member State, which shall inform the competent authority of the host Member State(s) accordingly.'

6 Article 10 of Directive 98/5, entitled 'Like treatment as a lawyer of the host Member State', contains the following provisions:

'1. A lawyer practising under his home-country professional title who has effectively and regularly pursued for a period of at least three years an activity in the host

Member State in the law of that State including Community law shall, with a view to gaining admission to the profession of lawyer in the host Member State, be exempted from the conditions set out in Article 4(1)(b) of [Council] Directive 89/48/EEC [of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16]. "Effective and regular pursuit" means actual exercise of the activity without any interruption other than that resulting from the events of everyday life.

...

3. A lawyer practising under his home-country professional title who has effectively and regularly pursued a professional activity in the host Member State for a period of at least three years but for a lesser period in the law of that Member State may obtain from the competent authority of that State admission to the profession of lawyer in the host Member State and the right to practise it under the professional title corresponding to the profession in that Member State, without having to meet the conditions referred to in Article 4(1)(b) of Directive 89/48 ... under the conditions and in accordance with the procedures set out below:

(a) The competent authority of the host Member State shall take into account the effective and regular professional activity pursued during the abovementioned period and any knowledge and professional experience of the law of the host Member State, and any attendance at lectures or seminars on the law of the host Member State, including the rules regulating professional practice and conduct.

...'

7 Article 13 of Directive 98/5, entitled 'Cooperation between the competent authorities in the home and host Member States and confidentiality', provides in the first subparagraph:

'In order to facilitate the application of this Directive and to prevent its provisions from being misapplied for the sole purpose of circumventing the rules applicable in the host Member State, the competent authority in the host Member State and the competent authority in the home Member State shall collaborate closely and afford each other mutual assistance.'

National law

8 The exercise of the profession of lawyer and the activity of accepting service on behalf of companies are governed in the Grand Duchy of Luxembourg by the Law of 10 August 1991 on the profession of lawyer (*Mémorial* A 1991, p. 1110, 'the Law of 10 August 1991') and the Law of 31 May 1999 on authorising the acceptance of service on behalf of companies (*Mémorial* A 1999, p. 1681, 'the Law of 31 May 1999').

9 Those laws were amended by the Law of 13 November 2002 on the transposition into Luxembourg law of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, amending (1) the amended Law of 10 August 1991 on the profession of lawyer; (2) the Law of 31 May 1999 on authorising the acceptance of service on behalf of companies (*Mémorial* A 2002, p. 3202, 'the Law of 13 November 2002').

10 Article 5 of the Law of 10 August 1991 provides:

'No one may practise as a lawyer if he is not registered in the register of a Bar Association established in the Grand Duchy of Luxembourg.'

11 Article 6 of the Law of 10 August 1991 provides:

'1. In order to be registered on the Bar Register a person must:

(a) satisfy the requirement of good character;

(b) prove that he fulfils the requirements for admission to a traineeship.

By way of exception the Bar Council may exempt applicants who have completed their professional training in their home State and who prove that they have practised the profession for at least five years from certain requirements for admission to a traineeship.

(c) be of Luxembourg nationality or a national of a Member State of the European Communities. An applicant who is a national of a State which is not a Member of the European Community may be exempted by the Bar Council from this requirement after it has consulted the Minister for Justice

and been provided with proof of mutuality on the part of the State in question. The same applies for applicants who have the status of political refugee and who are granted asylum in the Grand Duchy of Luxembourg.

2. Before being registered on the Bar Register, an applicant, on presentation by the President of the Bar Council or his representative, shall swear an oath before the Cour de cassation (Court of Cassation) in the following terms: "I swear loyalty to the Grand Duke, obedience to the Constitution and the laws of the State; I swear to respect the authority of the courts; I swear that I will refrain from giving advice in relation to or defending any cause which I do not believe on my soul and conscience to be just".'

12 The conditions for registration were amended by Article 14 of the Law of 13 November 2002. Inter alia, that law inserted into Article 6(1) of the Law of 10 August 1991 point (d), which lays down the following condition for registration:

'be proficient in the language of statutory provisions as well as the administrative and court languages as provided for by the Law of 24 February 1984 on the language regime'.

13 The language of statutory provisions is governed by Article 2 of the Law of 24 February 1984 on the language regime (*Mémorial* A 1984, p. 196) in the following terms:

'Statutes and their implementing provisions shall be in French. Where statutes and regulatory acts are accompanied by a translation, only the French text is authentic.

If regulations not referred to in the foregoing paragraph are laid down by an organ of the State, by communes or by public bodies in a language other than French, only the text in the language used by that body is authentic.

This article does not derogate from the provisions applicable to international agreements.'

14 The administrative and court languages are governed by Article 3 of the Law of 24 February 1984 on the language regime in the following terms:

'In administrative, contentious or non-contentious proceedings and legal matters, the French, German or the Luxembourg languages may be used, subject to special provisions on certain matters.'

15 In accordance with Article 3(1) of the Law of 13 November 2002, a lawyer who has obtained his qualification in a Member State other than the Grand Duchy of Luxembourg ('a European lawyer') must be registered with one of the Bar Associations of that Member State in order to practise there under his home-country professional title.

16 Article 3(2) of that law provides:

'The Bar Council of the Grand Duchy of Luxembourg, when considering a European lawyer's application to practise the profession of lawyer under his home-country

professional title, shall register him in the Bar Register of the Bar Association following a hearing enabling the Bar Council to verify whether the European lawyer is proficient in at least the languages specified in Article 6(1)(d) of the Law of 10 August 1991, and upon presentation of the documents specified in Article 6(1)(a), (c), first sentence, and (d) of the Law of 10 August 1991, and the certificate of registration of the European lawyer in question with the competent authority of his home Member State. That certificate from the home Member State shall be submitted of new each year in January and shall not be more than three months old.

...'.

17 In its original version, Article 1(1) of the Law of 31 May 1999 stated:

'Where a company establishes an official address with a third party in order to pursue activities within the scope of its business from that address, and that third party provides any services connected with that activity, the company and the third party, called the domiciliataire (the person authorised to accept service on behalf of the company), shall conclude a written agreement called a domiciliation agreement.

Only a registered member of one of the following regulated professions, established in the Grand Duchy of Luxembourg, may be a person authorised to accept service: credit institution or other professional in the financial and insurance sectors, lawyer, company auditor, accountant.'

18 The second subparagraph of that provision was amended as follows by Article 15 of the Law of 13 November 2002:

'Only a registered member of one of the following regulated professions, established in the Grand Duchy of Luxembourg, may be a person authorised to accept service: credit institution or other professional in the financial and insurance sectors, lawyer registered in List I of the Bar Register referred to by Article 8(3) of the amended Law on the profession of lawyer, company auditor, accountant.'

19 Under Article 8(3) of the Law of 10 August 1991, as amended by Article 14(V) of the Law of 13 November 2002, the register of lawyers comprises four lists:

'1. List I: lawyers who satisfy the requirements of Articles 5 and 6 and who have passed the examination at the end of the traineeship provided for by law;

2. List II: lawyers who satisfy the requirements of Articles 5 and 6;

3. List III: non-practising lawyers;

4. List IV: lawyers who practise under their home-country professional titles.'

Pre-litigation procedure

20 In 2003, the Commission received a complaint concerning the existence of obstacles to European lawyers practising the profession of lawyer on a permanent basis under their home-country professional titles in the Grand Duchy of Luxembourg. The obstacles complained of arose, first, from the fact that the Law of 13 November 2002 makes the registration of European lawyers on the register of one of the Bar Associations in Luxembourg subject to a language test, second, that the law makes the maintenance of that registration subject to the production each year of a certificate of registration with the competent authority of the home Member State and, third, from the prohibition on European lawyers being persons authorised to accept service on behalf of companies in Luxembourg.

21 On 17 October 2003, the Commission sent a letter of formal notice to Luxembourg, requesting a reply within two months. The Luxembourg Government replied by letter of 23 December 2003.

22 On 9 July 2004, the Commission sent that Member State a reasoned opinion under Article 226 EC which also laid down a period of two months within which the latter was to comply therewith. The Member State replied to the reasoned opinion by letter of 23 September 2004.

23 Since the Commission considered the explanations given by the Grand Duchy of Luxembourg in its reply to the reasoned opinion to be unsatisfactory it decided to bring the present action.

The action

The first complaint, relating to the prior language test

Arguments of the parties

24 The Commission submits that under Article 3(2) of Directive 98/5 the registration of a European lawyer with the competent authorities of the host Member State may be subject only to administrative formalities and not, as also provided in Article 3(2) of the Law of 13 November 2002, a prior language test.

25 The Commission refers in that connection to the judgment in Case C-168/98 *Luxembourg* v *Parliament and Council* [2000] ECR I-9131, particularly paragraph 43 thereof.

26 The Commission further submits that the registration of European lawyers who wish to practise under their home-country professional title cannot be subject to the same conditions, and linguistic conditions in particular, as the registration of lawyers who wish to practise under the professional title of the host Member State.

27 Finally, it points out that, given the nature of the cases usually dealt with by European lawyers, it is not necessary for them to have knowledge of the languages of the host Member State.

28 The Grand Duchy of Luxembourg submits, first of all, that the language requirements apply to all lawyers wishing to register with one of the Bar Associations in its territory. It adds that a lawyer cannot rely on the fact that he is a foreigner to claim the right to address the administration or a Luxembourg court in a language other than the administrative and court languages in force in the Grand Duchy of Luxembourg.

29 Next, referring to the judgment in Case C-424/97 *Haim* [2000] ECR I-5123, relating to the profession of dentist, the Grand Duchy of Luxembourg submits that the grounds put forward in that judgment, relating to the need for reliability of communication with clients, administrative authorities and professional bodies of the host Member State, militate in favour of language requirements for European lawyers.

30 The Luxembourg Government states in that regard that, since European lawyers are authorised to give advice on Luxembourg law, it is reasonable to require them to be proficient in the languages that enable them to read and understand Luxembourg legal texts.

31 The Luxembourg Government stresses that, in criminal matters, penalty notices issued by the police following road traffic accidents are generally written in German, as are the tax laws in force in Luxembourg, which require reference to case-law and commentaries written in German.

32 The Luxembourg Government also states that before the lower courts where representation by a lawyer is not required the Luxembourg language is generally used by a Luxembourg party who appears in person, and that many Luxembourg nationals speak only in their mother tongue when they consult a lawyer.

33 It also observes that the rules of professional conduct in force in Luxembourg are written in French.

Findings of the Court

34 As is clear from recital (6) in the preamble to Directive 98/5, by that directive, the Community legislature sought to put an end to the differences in national rules on the conditions for registration with the competent authorities which gave rise to inequalities and obstacles to freedom of movement (see also, to that effect, *Luxembourg* v *Parliament and Council*, paragraph 64).

35 In that context, Article 3 of Directive 98/5 provides that a lawyer who wishes to practise in a Member State other than that in which he obtained his professional qualification must register with the competent authority in that State, which must register him 'upon presentation of a certificate attesting to his registration with the competent authority in the home Member State'.

36 Given the objective of Directive 98/5, set out in paragraph 34 of this judgment, it must be held that the Community legislature undertook, in Article 3, a complete harmonisation of the preliminary conditions required for the exercise of the right it confers.

37 It is thus apparent that presentation to the competent authority of the host Member State of a certificate attesting to registration with the competent authority of the home Member State is the only condition to which registration of the person

concerned in the host Member State may be subject, enabling him to practise in the latter State under his home-country professional title.

38 That analysis is confirmed by the Explanatory Memorandum on the Proposal for a European Parliament and Council Directive to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (COM(94) 572 final), in which, in the comments on Article 3, it is stated that '[r]egistration [with the competent authority of the host Member State] is an automatic entitlement where the applicant furnishes proof of his registration with the competent authority in his home Member State'.

39 As the Court has already noted, the Community legislature, with a view to making it easier for a particular class of migrant lawyers to exercise the fundamental freedom of establishment, did not opt for a system of prior testing of the knowledge of the persons concerned (see *Luxembourg* v *Parliament and Council*, paragraph 43).

40 Thus Directive 98/5 does not allow the registration of a European lawyer with the competent authority of the host Member State to be conditional on a hearing designed to enable that authority to determine whether the person concerned is proficient in the languages of that Member State.

41 As the Commission submits, the exclusion of a system of prior testing of the knowledge, particularly of languages, for European lawyers is, however, accompanied in Directive 98/5 by a set of rules intended to ensure, to a level acceptable in the Community, the protection of consumers and the proper administration of justice (see *Luxembourg* v *Parliament and Council*, paragraphs 32 and 33).

42 Thus, the purpose of the obligation imposed by Article 4 of Directive 98/5 on European lawyers to practise under their home-country professional title in the host Member State is, according to recital (9) in the preamble to that directive, to make clear the distinction between such lawyers and lawyers from the host Member State, so that clients are aware that the professional to whom they entrust the defence of their interests has not obtained his qualification in that Member State (see, to that effect, *Luxembourg* v *Parliament and Council*, paragraph 34) and does not necessarily have the knowledge, in particular of languages, which is adequate to deal with the case.

43 As regards activities relating to representation and defence of a client in legal proceedings, Member States are permitted, in accordance with Article 5(3) of Directive 98/5, to require European lawyers practising under their home-country professional title to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary, be answerable to that authority, or with an 'avoué' practising before it. That option, which the Grand Duchy of Luxembourg has exercised in respect of acts and procedures which according to the laws and regulations of that Member State must be dealt with by a lawyer, as is clear from Article 5(4) of the Law of 13 November 2002, compensates for any lack of proficiency on the part of the European lawyer in the court languages of the host Member State.

44 Under Articles 6 and 7 of Directive 98/5, a European lawyer must comply not only with the rules of professional conduct applicable in his home Member State but also with those of the host Member State, failing which he will incur disciplinary sanctions and exposure to professional liability (see *Luxembourg* v *Parliament and Council*, paragraphs 36 to 41). One of the rules of professional conduct applicable to lawyers is an obligation, like that provided for in the Code of Conduct adopted by the Council of Bars and Law Societies of the European Union (CCBE), breach of which may lead to disciplinary sanctions, not to handle matters which the professionals concerned know or ought to know they are not competent to handle, for instance owing to lack of linguistic knowledge (see, to that effect, *Luxembourg* v *Parliament and Council*, paragraph 42). Communication with clients, the administrative authorities and professional bodies of the host Member State, like

compliance with the rules of professional conduct laid down by the authorities of that Member State, requires a European lawyer to have sufficient linguistic knowledge or recourse to assistance where that knowledge is insufficient.

45 It is also important to point out, as the Commission did, that one of the objectives of Directive 98/5, according to recital (5) in the preamble, is, 'by enabling lawyers to practise under their home-country professional titles on a permanent basis in a host Member State, [to meet] the needs of consumers of legal services who, owing to the increasing trade flows resulting, in particular, from the internal market, seek advice when carrying out cross-border transactions in which international law, Community law and domestic laws often overlap'. Such international cases, like those to which the law of a Member State other than the host Member State is applicable, may not require a degree of knowledge of the languages of the latter Member State as high as that required to deal with matters in which the law of that Member State is applicable.

46 Finally, it must be observed that like treatment of European lawyers and lawyers of the host Member State, which Directive 98/5 is designed to facilitate, according to recital (14) in the preamble, requires, under Article 10, that the person concerned proves that he has effectively and regularly pursued for a period of at least three years an activity in the law of that State or, where the period is shorter, that he has other knowledge, training or professional experience relating to that law. Such a measure enables European lawyers wishing to integrate into the profession of the host Member State to become familiar with the language(s) of that Member State.

47 In light of the foregoing, it must be held that, by making the registration of a European lawyer with the competent national authority subject to a prior language test, the Luxembourg law is contrary to Article 3 of Directive 98/5.

48 It follows that the first complaint raised by the Commission is well founded.

The second complaint, concerning the prohibition on European lawyers acting as persons authorised to accept service on behalf of companies in Luxembourg

Arguments of the parties

49 The Commission submits that the prohibition on European lawyers being persons authorised to accept service on behalf of companies is contrary to Article 5 of Directive 98/5.

50 It adds that European lawyers cannot be compared to Luxembourg lawyers in List II of the Register of lawyers, in respect of whom the exercise of those activities is also prohibited. Whereas that list concerns lawyers who have been admitted to a legal traineeship and whose final qualification depends on success in the examination at the end of the legal traineeship, European lawyers are fully qualified lawyers.

51 The Commission also states that the requirement of knowledge of Luxembourg national law cannot justify a restriction on the activities of European lawyers.

52 The Grand Duchy of Luxembourg argues that in the Law of 31 May 1999 the Luxembourg legislature, wishing to put an end to certain abuses harmful to the

reputation of the Luxembourg market, related to the use of fictitious company addresses, sought to reserve, on grounds of public policy, the activity of accepting service on behalf of companies to professionals familiar with national law and practice in that field.

53 Emphasising that, under the Law of 31 May 1999, the person authorised to accept service has the task of supervising compliance by the company on whose behalf he acts with the legal requirements for access to business professions and the national provisions on registration for social security purposes and calling general meetings, the Grand Duchy of Luxembourg claims that pursuit of the activity of accepting service on behalf of companies requires professional experience and a good knowledge of company law, which is why the Luxembourg legislature excluded trainee lawyers registered on List II of the Register of lawyers and European lawyers from that activity.

54 The Luxembourg Government also argues that, as long as they practise under their home-country professional title, lawyers who are fully qualified in their home State are not treated in the same way as those in the host Member State, but that it is possible for them, pursuant to Directive 98/5, to be integrated into the profession in the latter State after a period deemed necessary for the acquisition of professional experience in that Member State and under the conditions provided for in Article 10.

Findings of the Court

55 As is clear from recital (6) in the preamble to Directive 98/5, one of the objectives of that directive is to lay down the conditions governing practice of the profession by

lawyers practising under their home-country professional title as regards, in particular, the area of their activities, so as, first, to put an end to the diversity of national situations in that field and the inequalities and obstacles to freedom of movement which result, and, second, to afford the same opportunities to lawyers and consumers of legal services in all Member States.

56 For that purpose, Directive 98/5 lays down, in Articles 2 and 5, the principle that European lawyers are entitled to pursue the same professional activities as lawyers practising under the professional title of the host Member State, subject to the exceptions laid down in Article 5(2) and (3).

57 In those circumstances, as the Commission submits, the Member States are not authorised to provide in their national law for any exceptions to that principle other than those set out expressly and exhaustively in Article 5(2) and (3) of Directive 98/5.

58 It is common ground that the activity of accepting service on behalf of companies is not capable of falling within either the exception in Article 5(2) or that in Article 5(3) of Directive 98/5.

59 As regards the risk of abuse mentioned by the Luxembourg Government, such factors cannot be relied on in order to confer legitimacy on the introduction or retention of national provisions which prejudice the principle laid down in Article 5(1) of Directive 98/5, the exceptions to which have been specified in the harmonised rules laid down by Article 5(2) and (3) (see, by way of analogy, Case C-59/01 *Commission* v *Italy* [2003] ECR I-1759, paragraph 38).

60 It should be observed, moreover, that Directive 98/5 provides, inter alia, for a combination of the professional rules of conduct to be observed by the European lawyer, for compulsory professional liability insurance or membership of a professional guarantee fund, and for a disciplinary system involving the competent authorities of both the home Member State and the host State (see, to that effect, *Luxembourg* v *Parliament and Council*, paragraph 43).

61 Consequently, it must be held that, inasmuch as they prohibit European lawyers from being persons authorised to accept service on behalf of companies in the Grand Duchy of Luxembourg, the Luxembourg provisions are contrary to Article 5 of Directive 98/5.

62 It follows that the Commission's second complaint is well founded.

The third complaint, relating to the obligation to produce every year a certificate of registration with the competent authority in the home Member State

Arguments of the parties

63 The Commission states that although the Grand Duchy of Luxembourg indicated in its response to the reasoned opinion that it had taken note of the arguments set out therein, according to which that requirement constitutes an unjustified administrative burden, the requirement remains part of the Law of 13 November 2002.

64 On this issue the Grand Duchy of Luxembourg simply refers to that response.

Findings of the Court

65 In its response to the reasoned opinion and in the proceedings before the Court, the Luxembourg Government has not put forward any matter capable of casting doubt on the merits of the third complaint.

66 In its letter of 23 December 2003 in response to the letter of formal notice from the Commission of 17 October 2003, the Luxembourg Government stated that the contested measure is necessary to ensure continuing compliance by the European lawyers with the condition of registration with the competent authority of the home Member State.

67 As the Commission stated in the course of the pre-litigation procedure, Directive 98/5 provides, in Article 7(2), first, that the competent authority in the home Member State is to inform the competent authority in the host Member State(s) when disciplinary proceedings are initiated against a lawyer practising outside the former Member State under his home-country professional title.

68 Furthermore, Article 13 of Directive 98/5 requires the competent authorities in the home Member State and the host Member State to collaborate closely and afford each other mutual assistance.

69 Such measures enable the authority of the host Member State to ensure continuing compliance by the European lawyer with the condition of registration with the competent authority of the home Member State.

70 The formality imposed by Luxembourg law is thus an administrative measure which is disproportionate to its objective, and therefore unjustified under Directive 98/5.

71 In light of the foregoing, it must be held that, inasmuch as they impose on European lawyers the obligation to produce each year a certificate of registration with the competent authority of his home Member State, the Luxembourg provisions are contrary to Directive 98/5.

72 It follows that the Commission's third complaint is well founded.

73 In light of all of the foregoing considerations, it must be held that, by making registration with the competent national authorities subject to a prior language test for European lawyers wishing to practise under their home-country professional title in Luxembourg, by prohibiting those lawyers from being persons authorised to accept service on behalf of companies, and by requiring them to produce each year a certificate of registration with the competent authority of their home Member State, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Directive 98/5.

Costs

74 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's

pleadings. Since the Commission has applied for costs and the Grand Duchy of Luxembourg has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **By making registration with the competent national authorities subject to a prior language test for lawyers who have obtained their qualification in a Member State other than the Grand Duchy of Luxembourg and who wish to practise under their home-country professional title in the latter Member State, by prohibiting those lawyers from being persons authorised to accept service on behalf of companies, and by requiring them to produce each year a certificate of registration with the competent authority of their home Member State, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.**

2. **The Grand Duchy of Luxembourg is ordered to pay the costs.**

[Signatures]