



30.5.2012

## NOTICE TO MEMBERS

**Subject:** Petition 1000/2011 by G.B (Italian), on advocates established in Spain

### 1. Summary of petition

The petitioner raises the question of non-Spanish ‘self-employed’ Abogados established in Italy and possible discrimination with regard to professional fees.

### 2. Admissibility

Declared admissible on 20 December 2011. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 30 May 2012

The petitioner wishes to know the Commission's views on a possible instance of discrimination between two different categories of lawyers registered both in Spain and in Italy for the purpose of exercising the profession in Italy under the Spanish professional title, in accordance with Directive 98/5/EC. According to the petitioner, lawyers registered in Spain *por cuenta propia* are obliged to pay taxes and social charges in Spain, whereas those registered *por cuenta ajena* are able to avoid paying taxes and social charges in either country. The petitioner questions the legality of the registration of the second category of lawyers suggesting that the declarations referring to their status in Italy made in order to obtain the registration *por cuenta ajena* in Spain are contrary to Italian law and thus invalid.

Article 6 of Directive 98/5/EC<sup>1</sup> provides that lawyers who become established in a Member State other than that in which they acquired their qualifications under the professional title of

<sup>1</sup> 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 L 77, 14.3.1998, p. 36.

their home Member State must comply with the rules of professional conduct of both Member States. The Directive, in Article 13, also requires the competent authority in the host Member State and the competent authority in the home Member State to collaborate closely in order to prevent the Directive's provisions being misapplied for the purpose of circumventing the rules applicable in either country.

However, each Member State is free to establish the rules of professional conduct which should apply on its own territory, as long as they are not contrary to Union law, in particular by creating barriers to the free movement of professionals. It is up to the competent authority of each Member State to ensure compliance with the national law and the applicable rules of professional conduct. Consequently, any instance of breach of the national law or the rules of professional conduct in either Member State should be addressed in accordance with the law of that Member State, as well as communicated to the competent authority of the other Member State where the professional is registered.

Insofar as the petition does not raise any questions as to the conformity of the Spanish or the Italian legislation with Union law, the Commission is not in the position to comment further. The enforcement of their respective national rules is the responsibility of the Spanish and Italian authorities.

#### Conclusion

It is up to the Spanish and Italian authorities to ensure the legality of registration of lawyers in accordance with their respective national laws and rules of professional conduct and to cooperate with each other in case of breach of national law or rules of professional conduct in either Member State in order to avoid instances of tax evasion or avoidance of ethical rules.