



GZ 2022-0.857.448

To the President and the Members of the EFTA Court

WRITTEN OBSERVATIONS OF THE REPUBLIC OF AUSTRIA

according to Article 20 of the Statute and
Article 97 of the Rules of Procedure of the EFTA Court

in

CASE E-12/22

Maximilian Maier

The Republic of Austria, represented by Albert Posch, Julia Schmoll and Elizaveta Samoilova, Director-General, Director and legal expert at the Constitutional Service of the Federal Chancellery respectively, submits the following observations in Case E-12/22, request for an Advisory Opinion from the Administrative Court of the Principality of Liechtenstein (*Verwaltungsgerichtshof des Fürstentums Liechtenstein*), dated 26 September 2022.

I. Background of the Case and Referred Questions

- (1) According to the information given by the Administrative Court of the Principality of Liechtenstein, the request for an Advisory Opinion has the following background:
- (2) The applicant, an Austrian national, is an Austrian lawyer practicing in Austria and the Principality of Liechtenstein. He wants to be authorised to accept mandates as a legal aid lawyer, legal aid defence counsel or public defender by the Liechtenstein courts as well as to assume such mandates as a substitute.
- (3) The Liechtenstein authorities denied his request with reference to a national provision, according to which established European lawyers are not authorised to be appointed as a legal aid lawyer, legal aid defence counsel or public defender (hereinafter: to be appointed as a legal aid representative).

- (4) In the subsequent legal proceedings, the competent Administrative Court has made a request to the EFTA Court for an Advisory Opinion on the interpretation of Directive 98/5/EC¹. The question reads as follows:

Is a national provision, according to which a lawyer, who normally practices his profession in a Member State other than the one in which he obtained his qualification, is not authorised to be appointed as a legal aid lawyer, legal aid defence counsel or public defender, compatible with Directive 98/5/EC?

II. European Legal Framework

- (5) Recitals 6, 7 and 9 of Directive 98/5/EC read [in excerpts]:

“(6) Whereas action is also justified at Community level because only a few Member States already permit in their territory the pursuit of activities of lawyers, otherwise than by way of provision of services, by lawyers from other Member States practising under their home-country professional titles; whereas, however, in the Member States where this possibility exists, the practical details concerning, for example, the area of activity and the obligation to register with the competent authorities differ considerably; whereas such a diversity of situations leads to inequalities and distortions in competition between lawyers from the Member States and constitutes an obstacle to freedom of movement; whereas only a directive laying down the conditions governing practice of the profession, otherwise than by way of provision of services, by lawyers practising under their home-country professional titles is capable of resolving these difficulties and of affording the same opportunities to lawyers and consumers of legal services in all Member States;

(7) Whereas, in keeping with its objective, this Directive does not lay down any rules concerning purely domestic situations, and where it does affect national rules regulating the legal profession it does so no more than is necessary to achieve its purpose effectively; whereas it is without prejudice in particular to national legislation governing access to and practice of the profession of lawyer under the professional title used in the host Member State;

[...]

(9) Whereas lawyers who are not integrated into the profession in the host Member State should practise in that State under their home-country professional titles so as to ensure that consumers are properly informed and to distinguish between such lawyers and lawyers from the host Member State practising under the professional title used there;”

- (6) Articles 1, 3, 4, 5, 6 and 10 of Directive 98/5/EC read [in excerpts]:

“Article 1

Object, scope and definitions

1. The purpose of this Directive is to facilitate practice of the profession of lawyer on a permanent basis in a self-employed or salaried capacity in a Member State other than that in which the professional qualification was obtained.

[...]

Article 3

Registration with the competent authority

¹ 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, 36.

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.

[...]

Article 4

Practice under the home-country professional title

1. A lawyer practising in a host Member State under his home-country professional title shall do so under that title, which must be expressed in the official language or one of the official languages of his home Member State, in an intelligible manner and in such a way as to avoid confusion with the professional title of the host Member State.

[...]

Article 5

Area of activity

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 insofar 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.

Article 6

Rules of professional conduct applicable

1. Irrespective of the rules of professional conduct to which he is subject in his home Member State, a lawyer practising under his home-country professional title shall be subject to the same rules of professional conduct as lawyers practising under the relevant professional title of the host Member State in respect of all the activities he pursues in its territory.

[...]

Article 10

Like treatment as a lawyer of the host Member State

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 Directive 89/48/EEC, 'Effective and regular pursuit' means actual exercise of the activity without any interruption other than that resulting from the events of everyday life.

It shall be for the lawyer concerned to furnish the competent authority in the host Member State with proof of such effective regular pursuit for a period of at least three years of an activity in the law of the host Member State. To that end:

(a) the lawyer shall provide the competent authority in the host Member State with any relevant information and documentation, notably on the number of matters he has dealt with and their nature;

(b) the competent authority of the host Member State may verify the effective and regular nature of the activity pursued and may, if need be, request the lawyer to provide, orally or in writing, clarification of or further details on the information and documentation mentioned in point (a).

Reasons shall be given for a decision by the competent authority in the host Member State not to grant an exemption where proof is not provided that the requirements laid down in the first subparagraph have been fulfilled, and the decision shall be subject to appeal under domestic law.

2. A lawyer practising under his home-country professional title in a host Member State may, at any time, apply to have his diploma recognised in accordance with Directive 89/48/EEC with a view to gaining admission to the profession of lawyer in the host Member State and practising it under the professional title corresponding to the profession in that Member State.

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/EEC, 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.

(b) The lawyer shall provide the competent authority of the host Member State with any relevant information and documentation, in particular on the matters he has dealt with. Assessment of the lawyer's effective and regular activity in the host Member State and assessment of his capacity to continue the activity he has pursued there shall be carried out by means of an interview with the competent authority of the host Member State in order to verify the regular and effective nature of the activity pursued.

Reasons shall be given for a decision by the competent authority in the host Member State not to grant authorisation where proof is not provided that the requirements laid down in the first subparagraph have been fulfilled, and the decision shall be subject to appeal under domestic law.

[...]"

III. Legal Observations

- (7) By its question, the referring court essentially wants to know whether a national provision, which precludes lawyers practicing under their home-country professional title in the host Member State (hereinafter: European lawyers) who have not yet achieved full equality with lawyers of the host Member State from being eligible to be appointed as legal aid representatives, is compatible with Directive 98/5/EC.
- (8) In this regard, the Republic of Austria points to Article 10 of Directive 98/5/EC, according to which a European lawyer may achieve full equality with lawyers of the host Member State either after effectively and regularly pursuing an activity in the law of that state for a period of

three years pursuant to Article 10(1) of Directive 98/5/EC, or, where the period is shorter, by way of an assessment of his or her professional activity as well as knowledge and professional experience of the law of the host Member State in accordance with Article 10(3) of Directive 98/5/EC.²

- (9) In the view of the Republic of Austria, the question of the referring court should be answered in the positive for the following reasons:
- (10) The Republic of Austria will first comment on the compatibility with Directive 98/5/EC and second on the compatibility with the Agreement on the European Economic Area (hereinafter: EEA Agreement), specifically Article 31 thereof.

1. As to Directive 98/5/EC

- (11) Pursuant to Article 1(1) of Directive 98/5, the purpose of that directive is “*to facilitate practice of the profession of lawyer on a permanent basis [...] in a Member State other than that in which the professional qualification was obtained.*” In that regard, the European Court of Justice (hereinafter: ECJ) has already held that Directive 98/5 establishes a mechanism for the mutual recognition of the professional titles of lawyers who migrate and wish to practise under the professional title obtained in the home Member State³ (hereinafter: European lawyers).
- (12) With regard to recital 6 of Directive 98/5/EC, the ECJ has further held that by that directive the EU legislature sought, *inter alia*, 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 the freedom of movement.⁴
- (13) In that context the ECJ has pointed to Article 3 of Directive 98/5/EC. The ECJ held that it **harmonises fully** the preconditions for exercise of the right of establishment conferred by that directive, laying down that a lawyer who wishes to practise in a Member State other than that in which he obtained his professional qualification is obliged to register with the competent authority of that Member State, which must effect that registration “*upon presentation of a certificate attesting to his registration with the competent authority of the home Member State.*”⁵

² According to the information given by the Administrative Court of the Principality of Liechtenstein, the corresponding Liechtenstein provisions can be found in Article 68 et seq. and Article 74 et seq. of the Liechtenstein Lawyers Act: A European lawyer established in Liechtenstein may be entered in the register of Liechtenstein lawyers either after three years of professional activity or by completing an aptitude test.

³ ECJ judgment of 17 July 2014, C-58/13 and C-59/13, *Torresi*, paragraph 36 and the case-law cited.

⁴ ECJ judgement of 7 May 2019, C-431/17, *Monachos Eirinaios*, paragraph 25 and the case-law cited.

⁵ ECJ judgement of 7 May 2019, C-431/17, *Monachos Eirinaios*, paragraph 26 and the case-law cited.

- (14) However, in its case-law, the ECJ has drawn a distinction between the **registration** of a European lawyer with the competent authority of the host Member State in accordance with Article 3(2) of Directive 98/5/EC on the one hand, and the **practice itself** of the profession of lawyer in that Member State on the other hand.⁶ According to the ECJ, Directive 98/5/EC does neither regulate access to the profession of lawyer nor the practice of that profession under the professional title issued in the host Member State.⁷
- (15) The Republic of Austria emphasises that **Directive 98/5/EC also does not provide for an absolute equality** of European lawyers (practising under their home-country professional title) in the host Member State and lawyers practising under the professional title of the host Member State:
- (16) In that regard, the ECJ has already held that these two groups of lawyers are not comparable; whereas the latter may undertake all the activities open or reserved to the profession of lawyer by the host Member State, the former may be forbidden to pursue certain activities and, with regard to the representation or defence of clients in legal proceedings, may be subject to certain obligations.⁸
- (17) In this respect, the Republic of Austria wishes to first point to Article 4 of Directive 98/5/EC, which provides that a European lawyer is required to practice under his home-country professional title. This provision serves to ensure that consumers are informed that the professional to whom they entrust the defence of their interests has not obtained his qualification in the host Member State and that his initial training did not necessarily cover the host Member State's national law.⁹
- (18) Secondly, the Republic of Austria points to Article 5(2) and (3) of Directive 98/5/EC, authorising the host Member State, subject to certain conditions, to forbid European lawyers to undertake certain activities and to impose certain obligations on them in connection with the representation or defence of a client in legal proceedings.¹⁰
- (19) Thirdly, the Republic of Austria emphasises that, as the ECJ has already held, by way of Directive 98/5/EC, the Union legislator *“has not abolished the requirement that the lawyer concerned should know the national law applicable in the cases he handles, but has simply released him from the obligation to prove that knowledge in advance. It has thus allowed, in*

⁶ ECJ judgement of 7 May 2019, C-431/17, *Monachos Eirinaios*, paragraph 30.

⁷ ECJ judgment of 17 July 2014, C-58/13 and C-59/13, *Torresi*, paragraph 56. See also recital 7 of Directive 98/5/EC.

⁸ ECJ judgement of 7 November 2000, C-168/98, *Luxemburg v. Parliament and the Council*, paragraph 24 et seq.

⁹ ECJ judgement of 7 November 2000, C-168/98, *Luxemburg v. Parliament and the Council*, paragraph 34. See also recital 9 of Directive 98/5/EC.

¹⁰ ECJ judgement of 7 November 2000, C-168/98, *Luxemburg v. Parliament and the Council*, paragraph 35.

some circumstances, gradual assimilation of knowledge through practice, that assimilation being made easier by experience of other laws gained in the home Member State.”¹¹

- (20) To that end Article 10 of Directive 98/5/EC provides that a European lawyer who wishes to achieve full equality with lawyers of the host Member State is required to prove that he or she has effectively and regularly pursued for a period of at least three years an activity in the law of that Member State or, where the period is shorter, that he has other knowledge, training or professional experience relating to that law.¹²
- (21) Fourthly, the Republic of Austria notes that the ECJ has already held that – unlike the rules concerning the preconditions for registration pursuant to Article 3 of Directive 98/5/EC – the rules of professional conduct pursuant to Article 6 of Directive 98/5/EC have not been harmonised by Directive 98/5/EC and may therefore differ considerably from those in force in the home Member State.¹³
- (22) In light of the above, it is clear that Directive 98/5/EC **does harmonise fully** the preconditions for exercise of the European lawyers’ right of establishment.¹⁴ However, Directive 98/5/EC **does not harmonise fully** the powers and the area of activity of European lawyers in the host Member State. In particular, Article 5 of Directive 98/5/EC does not provide an exhaustive regulation of the professional activities of a European lawyer.
- (23) Thus, in the absence of a full harmonisation by Directive 98/5/EC in that regard, Member States are **free to impose national measures** pursuing a legitimate aim compatible with the Treaties and justified on overriding public interest grounds, which include the protection of consumers. As the ECJ already held the Member States may thus, in certain circumstances, adopt or maintain measures constituting a barrier to freedom of movement as long as they pursue a legitimate aim compatible with the Treaties and the measure serves overriding requirements in the public interest.¹⁵ As will be shown in the section below, this is the case in the present case.
- (24) The Republic of Austria, therefore, takes the view that Directive 98/5/EC does not preclude a Member State from barring European lawyers who have not yet achieved full equality with lawyers of the host Member State from being eligible to be appointed as legal aid representatives.

¹¹ ECJ judgement of 7 November 2000, C-168/98, *Luxemburg v. Parliament and the Council*, paragraph 43.

¹² Cf. ECJ judgement of 19 September 2006, C-506/04, *Wilson*, paragraph 76.

¹³ ECJ judgement of 7 May 2019, C-431/17, *Monachos Eirinaios*, paragraph 31.

¹⁴ Cf. Article 3 of Directive 98/5/EC and the case-law cited above in footnote 6.

¹⁵ Cf. ECJ judgement of 7 November 2000, C-168/98, *Luxemburg v. Parliament and the Council*, paragraph 32.

2- As to Article 31 of the EEA Agreement

- (25) Article 31 of the EEA Agreement requires the elimination of restrictions on the freedom of establishment.
- (26) According to ECJ case law regarding the corresponding provision of Article 49 TFEU, all measures which prohibit, impede or render less attractive the exercise of such freedom must be regarded as constituting such restrictions.¹⁶
- (27) However, it is also clear from settled ECJ case-law, that where such restrictions apply to any person or undertaking carrying on an activity in the territory of the host Member State, they may be justified where they serve overriding requirements in the public interest, are suitable for securing the attainment of the objective which they pursue and do not go beyond what is necessary in order to attain it.¹⁷
- (28) The ECJ has already held that, first, the **protection of consumers**, in particular recipients of legal services provided by persons involved in the administration of justice and, second, the **proper administration of justice** are objectives which feature among those which may be regarded as overriding requirements in the public interest.¹⁸
- (29) For the reasons set out below, a national provision which bars European lawyers who have not yet achieved full equality with lawyers of the host Member State from being eligible to be appointed as legal aid representatives serves precisely these objectives:
- (30) The right to legal aid as part of an effective judicial protection is a fundamental part of the European legal order. Article 47(3) of the Charter of Fundamental Rights of the European Union (hereinafter: Charter) specifically provides that legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. Likewise, Article 6(1) of the European Charter of Human Rights (ECHR) may compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court;¹⁹ Article 6(3)(c) ECHR entails a specific right to legal aid for everyone charged with a criminal offence.²⁰ Similar provisions can be found in Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR) and the United Nations

¹⁶ See, for example, ECJ judgement of 17 October 2002, C-79/01, *Payroll and Others*, paragraph 26 and case-law cited.

¹⁷ See ECJ judgement of 31 March 1998, C-19/92, *Kraus*, paragraph 32; ECJ judgement of 30 November 1995, C-55/94, *Gebhard*, paragraph 37.

¹⁸ See, mutatis mutandis, ECJ judgment of 5 December 2006, C-94/04 and C-202/04, *Cipolla and Others*, paragraph 64; ECJ judgement of 18 May 2017, C-99/16, *Lahorgue*, paragraph 34.

¹⁹ Cf. ECtHR judgement of 9 October 1979, Appl. 6289/73, *Airey v Ireland*, paragraph 26.

²⁰ Cf. ECtHR judgement of 24 May 1991, Appl. 12744/87, *Quaranta v Switzerland*, paragraph 27.

resolution No. 67/187 (2012) on the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

- (31) Article 7 of Directive (EU) 2016/1919²¹ specifies in more detail the requirements for the quality of legal aid services and training. In particular, Article 7(1) provides that *“Member States shall take necessary measures [...] to ensure that [...] there is an effective legal aid system that is of an adequate quality; [...] and that legal aid services are of a quality adequate to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession.”*²²
- (32) Against this backdrop, Member States have – under certain conditions – a **positive obligation to provide legal aid** where the absence of such aid would make it impossible to ensure an effective remedy.²³ They must also ensure that the legal aid provided is **effective and adequate**, in order to safeguard individuals’ rights of access to justice and effective legal protection in accordance with the requirements of European and international law cited above.
- (33) In order to comply with these obligations, every Member State must ensure that the lawyers who are eligible to be appointed as legal aid representatives have the necessary qualifications to provide effective and adequate legal aid in the given Member State.
- (34) By barring European lawyers who have not yet achieved full equality with lawyers of the host Member State from being eligible to be appointed as legal aid representatives, a national measure like the one in question serves the objective of ensuring that the legal aid provided is effective and of adequate quality. By this, it is guaranteed that only those lawyers who have the necessary knowledge of the law and the legal system of the host Member State are eligible to provide legal aid.
- (35) Furthermore, a national measure like the one in question is also suitable for securing the attainment of the objectives which it pursues:
- (36) Pursuant to Directive 98/5/EC, a European lawyer registered in the host Member State may practice on a permanent basis under his home-country professional title in the host Member

²¹ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ 2016 L 297, 1.

²² Directive (EU) 2016/1919 merely lays down minimum rules (cf. Article 1 of Directive (EU) 2016/1919). Apart from these minimum rules, Member States are free to decide how to establish an effective and adequate legal aid system compatible with the requirements of Article 47 of the Charter and Article 6 ECHR.

²³ Cf. ECJ judgement of 22 December 2010, C-279/09, *DEB*, paragraphs 36 et seq. with reference to the Explanation relating to Article 47 of the Charter as well as the ECtHR judgment of 9 October 1979, Appl. 6289/73, *Airey v. Ireland*.

State without any further conditions.²⁴ Hence, he or she can practice in the host Member State without having any knowledge of or any experience in the law of the host Member State. Accordingly, he or she **has not yet provided any evidence of his or her sufficient knowledge and experience in the law and the legal system of his host Member State.** Therefore, one cannot safely assume that an individual who has been granted legal aid would receive effective and adequate legal representation in the host Member State if he or she was represented by a European lawyer.

- (37) The Republic of Austria further notes that in many Member States' legal systems – as is the case in the Principality of Liechtenstein – individuals who have been granted legal aid do not have the right to choose or actively decide against an appointed legal aid representative. Thus, it must be ensured all the more that the lawyers eligible for legal aid representation are familiar with the legal system of the respective Member State.
- (38) With this in mind, a national measure like the one in question is designed to prevent lawyers with insufficient knowledge and experience in the law of the host Member State from being appointed as as a legal aid lawyer, legal aid defence counsel or public defender.
- (39) Moreover, a national measure like the one in question does not go beyond what is necessary in order to attain its objectives, having regard to the fact that the restriction in question is (time-)limited:
- (40) A European lawyer may be admitted to the profession of lawyer in the host Member State by way of an **assessment** of his or her professional activity as well as knowledge and professional experience of the law of the host Member State in accordance with Article 10(3) of Directive 98/5/EC.²⁵ Thereby, a European lawyer can achieve full equality with the lawyers of the host Member State, thus becoming eligible to be appointed as a legal aid representative.
- (41) In any event, an established European lawyer may obtain the professional title of the host Member State after effectively and regularly pursuing an activity in the law of that state for a **period of three years** pursuant to Article 10(1) of Directive 98/5/EC.²⁶ Therefore, the restriction in question is always limited in time.
- (42) Finally, a national measure like the one in question is also the least restrictive means of achieving the above-mentioned objectives, as can be seen from a comparison with other conceivable options:

²⁴ Cf. ECJ judgment of 17 July 2014, C-58/13 and C-59/13, *Torresi*, paragraph 39 and the case-law cited.

²⁵ In the present case: A European lawyer may be entered in the register of Liechtenstein lawyers after completing an aptitude test pursuant to Article 68 et seq. of the Liechtenstein Lawyers Act.

²⁶ In the present case: A European lawyer may be entered in the register of Liechtenstein lawyers following three years of professional activity pursuant to Article 74 et seq. of the Liechtenstein Lawyers Act.

- (43) As regards first the option to permit European lawyers to be eligible to be appointed as legal aid representatives and to then examine on a case-by-case basis whether they possess the necessary qualifications, e.g. by the means provided for in Article 10 of Directive 98/5/EC, the Republic of Austria notes that this would result in significant delays in the appointment of legal aid representatives. This would in turn contradict the Member States' duty to grant legal aid without undue delay²⁷ as well as the individual's right to a speedy trial pursuant to Article 47 of the Charter and Article 6(1) ECHR.
- (44) As regards second a requirement for each European lawyer who has taken on legal aid to work in conjunction with a lawyer who practices before the judicial authority of the host Member State, the Republic of Austria points to the fact that this would lead to an unnecessary doubling of the costs of legal aid. Moreover, it would entail a considerably higher administrative burden, since for every European lawyer who has taken on legal aid one would also have to appoint a lawyer with whom he would have to work in conjunction.
- (45) In the light of the above, the Republic of Austria takes the view that a national provision barring European lawyers who have not yet achieved full equality with lawyers of the host Member State from being eligible to be appointed as legal aid representatives is compatible with Article 31 of the EEA Agreement.

IV. Proposal for answering the referred questions

- (46) In the light of the above observations the Republic of Austria proposes to answer the referred question as follows:

Directive 98/5/EC and Article 31 of the EEA Agreement must be interpreted as not precluding a national provision which bars European lawyers who have not yet achieved full equality with lawyers of the host Member State from being eligible to be appointed as legal aid representatives.

Vienna, 20th December 2022

For the Republic of Austria:

Dr. Albert Posch, LL.M.

Dr. Julia Schmoll

Dr. Elizaveta Samoilova

²⁷ Cf. e.g. Article 4(5) of Directive (EU) 2016/1919 with regard to criminal proceedings.