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Law regulating the activity of European lawyers in Germany (EuRAG)

This law implements the following Directives:

In Article 1 § 1, § 2 to § 15, § 36 to § 42, 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 EC L077, p. 36); in Article 1 § 1, § 16 to § 24, § 36, § 40, 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 EC L019, p. 16); in Article 1 § 1, § 25 to § 35, § 40, § 42, Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ EC L 78, p. 17).

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Part 1
General provisions

§ 1
Field of application *ratione personae*

This Law regulates professional practice and admission to the profession of *Rechtsanwalt* in Germany with regard to natural persons who are entitled to practice as independent lawyers (European lawyers) under one of the professional titles listed in the annex to this provision.

Part 2
Professional practice as established European lawyer

Section 1
General requirements

§ 2
Establishment

- (1) A European lawyer who, upon application, has been admitted to the Bar¹ having jurisdiction over the place where he is established, is entitled to practice in Germany as a lawyer under the professional title of his home State and in accordance with § 1 to § 3 of the Federal Lawyers' Act² (established European lawyer).
- (2) In order to be admitted to a Bar, the applicant must be registered as a European lawyer with the competent authority in the home State.

§ 3
Application

- (1) Decisions on applications for admission to the Bar are taken by the Bar.
- (2) Applications must include a certificate issued by the competent authority in the home State attesting to the European lawyer's membership of the legal profession. The Bar may require that this certificate not be more than three months old by the date on which it is submitted.
- (3) (repealed)

§ 4
Procedure

- (1) § 6 to § 36 and § 46a to § 46c (1), (4) and (5) of the Federal Lawyers' Act, with the exception of § 12 (4), § 17 and § 46a (1), sentence 1, no. 1, apply analogously in respect of admission to the Bar, as does an ordinance with force of law issued on the basis of § 31c of the Federal Lawyers' Act.
- (2) The admission to the Bar shall also be revoked if the authorisation to exercise the profession in the home State is permanently withdrawn. If the permission to practice in the home State is withdrawn provisionally or temporarily, the admission to the Bar may be revoked.
- (3) The Bar informs the competent authority of the home State about the admission to the Bar as well as the withdrawal and revocation of the admission in order for that authority to be able to exercise its disciplinary control.

Section 2
Professional rights and duties

§ 5
Professional title

- (1) The established European lawyer shall use the professional title he is entitled to use in his home State pursuant to the laws of that State. A lawyer who is entitled to use the professional title of "Rechtsanwalt" shall also indicate the professional body of which he is a member in his home State. Established European lawyers who have been admitted to the Bar in their capacity as in-

¹ Rechtsanwaltskammer

² Bundesrechtsanwaltsordnung

house lawyer shall add the designation “Syndikus” in brackets after their professional title as referred to in sentences 1 and 2.

- (2) The established European lawyer is entitled to use the title of “Mitglied der Rechtsanwaltskammer” (member of the Bar) for professional purposes. The title “Europäischer Rechtsanwalt” must not be used as a professional title or for advertising purposes.
- (3) (repealed)

§ 6

Professional status

- (1) After admission to the Bar, the lawyer’s legal status is subject to Parts 3, 4, 6, 7, 9 to 11 and 13 of the Federal Lawyers’ Act.
- (2) The prohibition to represent clients according to § 114 (1) no. 4, § 150 and § 161a of the Federal Lawyers’ Act shall apply to the entire federal territory. Exclusion from the profession, as provided for by § 114 (1) no. 5 of the Federal Lawyers’ Act, is replaced by the prohibition to take care of another person’s legal matters in Germany; upon entry into force of this decision, the convicted lawyer forfeits his membership of the Bar.
- (3) The established European lawyer shall cease his professional activity in Germany if the competent authority of the home State has provisionally, temporarily or permanently withdrawn his authorisation to exercise the profession.

§ 7

Professional indemnity insurance

- (1) The established European lawyer is exempt from the duty to maintain a professional indemnity insurance as stipulated in § 51 of the Federal Lawyers’ Act if he can prove to the Bar that he has subscribed an insurance or obtained a guarantee pursuant to the law of the home State, which is equal in terms of the conditions and the extent of coverage to the insurance according to § 51 of the Federal Lawyers’ Act. If there is no equivalence, he shall contract additional insurance or guarantee in order to provide the protection which equally satisfies the requirements set out in § 51 of the Federal Lawyers’ Act.
- (2) Where paragraph (1) applies, the established European lawyer shall annually provide the Bar with a certificate of the insurer, attesting to the conditions and the extent of coverage of the insurance. Furthermore, he shall promptly inform the Bar about the termination or cancellation of the insurance as well as any changes made to the insurance contract which affect the insurance cover as required under § 51 of the Federal Lawyers’ Act. If he fails to comply with the duties set out in sentence 1 or in sentence 2, the admission to the Bar may be revoked. § 14 (2) no. 9 of the Federal Lawyers’ Act remains unaffected.
- (3) Paragraphs (1) and (2) apply *mutatis mutandis* to lawyers who were admitted under Part 3 or Part 4 of this Law in conjunction with § 4, sentence 1, no. 2 or 3 of the Federal Lawyers’ Act.

§ 8

Joint practice in the home State

- (1) A lawyer carrying on his activities in joint practice in his home State shall inform the Bar of the fact that he is a member of a grouping. He shall state the name and legal form of the grouping. The Bar may require him to provide further relevant information about this particular grouping.
- (2) The personal liability of the established European lawyer for claims made by the client on the grounds of damage caused by negligence will only be excluded or limited on account of the legal form of the grouping he belongs to in his home State, if he has contracted a professional liability insurance or guarantee which satisfies the conditions set out in § 59j of the Federal Lawyers’ Act. § 7 applies *mutatis mutandis*.
- (3) The established European lawyer may employ the name of the grouping he belongs to in his home State in legal transactions. In that case he shall also mention the legal form of the grouping in his home State.

Section 3
Proceedings before the lawyers' disciplinary courts, service of documents

§ 9
**Obligation to furnish information,
hearing in accordance with the law**

- (1) In order to assess if disciplinary measures have to be taken, the investigating public prosecutor's office informs the competent authority in the home State about the ascertained facts after having completed the investigation and before submitting the written accusation to the disciplinary tribunal insofar as this is, in its opinion, necessary in respect of implementation of such measures. Notification is effected by forwarding a copy of the written accusation directly to the competent authority in the home State.
- (2) In order to assess if disciplinary measures have to be taken, the competent authority in the home State shall be informed about:
 1. the decision on the opening of main proceedings
 2. the judgements
 3. the imposition of provisional measures imposed by the disciplinary court, the abrogation and annulment of these measures
 4. the writ of defence
 5. the written appeal
 6. the written appeal on questions of law
 7. the written complaint.

The duty to provide information lies with the court which has taken the decision to be communicated, or to which the document subject to transmission was submitted. Information shall be provided by means of a copy of the decision which is sent directly to the competent authority in the home State.

- (3) If personal data which, according to paragraph (1) or paragraph (2), may be communicated, is connected with further personal data of the person concerned or of a third party in such a way that it cannot - or only with unjustifiable effort - be obtained separately, the transmission of this data is permitted, unless it is obvious that vested interests of the person or third party concerned in keeping this information confidential are stronger. It is not permitted to make use of this data. The recipient shall be advised as to the inadmissibility of the use of data on the third party, and that the data supplied on the person concerned must only be used for the purposes specified in paragraphs (1) and (2).
- (4) In disciplinary proceedings, the court shall give the competent authority of the home State the opportunity to be heard. Representatives of the competent authority in the home State are admitted to in-camera court hearings.

§ 10
Service of documents

Where it is impossible to assure service of documents within Germany in the way prescribed, in disciplinary proceedings and in proceedings according to § 56, § 57, § 74, § 74a of the Federal Lawyers' Act against an established European lawyer, and if it seems impossible or presumably futile to follow the provisions regarding service of documents abroad, the service is considered complete when a copy of the document to be served is sent to the competent authority in the home State and four weeks have passed since the document was posted.

Part 3
Integration into the profession

Section 1
Admission to the legal profession after three years of professional practice

§ 11 Conditions

- (1) A lawyer who can prove that he has effectively and regularly for at least three years pursued an activity as established European lawyer in Germany, practising German law, including Community law, in accordance with § 12, is admitted to the profession of *Rechtsanwalt* according to the provisions of § 6 to § 36 and § 46a to § 46c (1), (4) and (5) of the Federal Lawyers' Act. Effective and regular pursuit means actual exercise of the profession without any interruption other than that resulting from the events of everyday life.
- (2) Interruptions of up to three weeks are usually interruptions resulting from the events of everyday life. Where interruption is longer, the specific circumstances of the individual case are decisive. The Bar takes into account the reasons for, as well as the duration and frequency of the interruption.
- (3) Where an interruption has occurred which is not resulting from the events of everyday life, the activity pursued up to that point will be taken into account in accordance with paragraph (1), sentence 1, provided an overall activity of at least three years can be proven and that the interruption is not a reason to consider that the activity was not effective and regular. The duration of such an interruption will not be taken into consideration for the calculation of the required three years of activity.

§ 12 Proof of professional practice

- (1) The applicant shall provide proof as to the number of matters he has dealt with pertaining to German law and their nature as well as the duration of his activity. He shall provide the Bar with any information and documentation which can be used as evidence. The Bar may request the applicant to provide, orally or in writing, further detail on the information and documentation supplied.
- (2) As evidence proving activity in legal matters pertaining to German law, the applicant shall submit a list of cases which must as a rule include the following information: reference number, subject matter, duration of activity, the nature and scope of the activity, status of the matter. Upon request of the Bar, samples of the applicant's work, in which all data has been rendered anonymous, shall be presented.

Section 2 Admission after professional practice in German law for a lesser period

§ 13 Conditions

- (1) A lawyer who has effectively and regularly for at least three years pursued an activity as established European lawyer in Germany, but has practised German law for a lesser period, is admitted to the profession of *Rechtsanwalt* according to the provisions of § 6 to § 36 and § 46a to § 46c (1), (4) and (5) of the Federal Lawyers' Act, provided he can prove, according to § 14 and § 15, that he has the capacity to continue his activity.
- (2) For its decision, the Bar shall take into account the nature and scope of professional activity as well as any knowledge and professional experience of German law, and any attendance at lectures and seminars on German law, including the rules regulating professional practice and conduct of German *Rechtsanwälte*. § 11 (1), sentence 2, (2) sentence 3 applies *mutatis mutandis*.

§ 14 Proof

The applicant shall provide proof in accordance with § 12. In addition, he shall furnish the Bar with any information and documents which prove his knowledge and professional experience of German law.

§15 Interview

The Bar assesses in an interview if the applicant has effectively and regularly pursued an activity as established European lawyer in Germany and in German law, and if he has the capacity to continue

this activity. The subjects of the interview shall be chosen on the basis of the evidence of the applicant's professional practice and his other professional experience in the field of German law.

Part 4 Equivalence of professional qualifications

§ 16

Application for confirmation of equivalence of professional qualifications

- (1) A person who has completed a course of training which entitles him to direct access to the profession of European lawyer (§ 1) may apply, for the purpose of being admitted to the legal profession in Germany without integration under Part 3, for confirmation that the professional qualifications he has acquired encompass the knowledge required to exercise the profession of *Rechtsanwalt* in Germany. The application may be submitted to any one of the examination authorities competent in accordance with § 18 (1) and (2), but not to several examination authorities simultaneously.
- (2) If access to the profession of a European lawyer is based on professional qualifications
 1. which were obtained after completing training which was not predominantly conducted in a European Union Member State or another signatory State to the Agreement on the European Economic Area or Switzerland, or
 2. which were not issued in one of the States as referred to in no. 1,

then the applicant must have exercised the profession of European lawyer in that State in which the professional qualifications were issued or recognised for no less than three years and must be in possession of a certificate issued by the competent authority attesting to that fact.

- (3) The following must be included with the application referred to in paragraph (1):
 1. a curriculum vitae in tabular form;
 2. evidence attesting to entitlement to direct access to the profession of European lawyer, either in the original or a copy thereof;
 3. evidence attesting to the fact that more than half of the minimum training period was spent in one of the States as referred to in paragraph (2) no. 1 or, in the cases referred to in paragraph (2), a certificate attesting to the fact that the profession has been exercised for no less than three years;
 4. a statement concerning whether and, if so, to which examination authorities an application pursuant to paragraph (1) has already been submitted or before which an aptitude test has already been taken;
 5. in the event that differences pursuant to § 16a (3), sentence 1, no 1 have been entirely compensated for in accordance with § 16a (3), sentence 1, no. 2, sufficient proof thereof.
- (4) The application and the documents to be included as per paragraph (3) nos. 1 and 4 must be in German.

§ 16a

Decision on application

- (1) The examination authority confirms receipt of the application referred to in § 16 (1) within one month. Within this period it also notifies the applicant whether any documents are missing or whether simple or certified translations of any of the documents need to be submitted. The examination authority decides on the application no later than four months after receipt of all the required documents.
- (2) The examination authority rejects the application if the applicant is not entitled to access to the profession within the meaning of § 16 (1) and (2) or the required documents have not been submitted.
- (3) The examination authority requires the applicant to take the aptitude test if
 1. his training encompassed subjects which differ substantially from those which are required in the exercise of the profession of *Rechtsanwalt* in Germany, and
 2. these differences have not been compensated in another manner, in particular through professional experience or further training courses.

Requiring the applicant to take an aptitude test is regarded as a decision within the meaning of paragraph (1), sentence 3. If the examination authority does not intend to require the applicant to take an aptitude test, then it must first give the Bar in whose district it has its seat the opportunity to comment.

- (4) The examination authority must provide grounds for requiring the applicant to take the aptitude test and must notify the applicant

1. of the level of qualification in accordance with Article 11 of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22; L 271, 16.10.2007, p. 18; L 93, 4.4.2008, p. 28; L 33, 3.2.2009, p. 49; L 305, 24.10.2014, p. 115), as last amended by Directive 2013/55/EU (OJ L 354, 28.12.2013, p. 132; L 268, 15.10.2015, p. 35; L 95, 9.4.2016, p. 20), as amended, to which, first, the professional qualifications he is in possession of and, second, the professional qualifications required to hold judicial office under the German Judiciary Act³ correspond, and
2. of any differences pursuant to paragraph (3), sentence 1, no. 1, and why these cannot be regarded as compensated pursuant to paragraph (3), sentence 1, no. 2.

- (5) Anyone who immediately fulfils the conditions of § 16 or who passes the aptitude test shall be sent a certificate attesting thereto by the examination authority and shall be admitted to the legal profession in Germany by the Bar in accordance with § 6 to § 36 and § 46a to § 46c (1), (4) and (5) of the Federal Lawyers' Act.

- (6) The administrative procedure under this provision and § 16 may be completed electronically and by a single entity pursuant to § 71a to § 71e of the Administrative Procedure Act.⁴

§ 17

Purpose of the aptitude test

The aptitude test is a state examination limited to the professional knowledge and skills of the applicant, with the aim of assessing the applicant's ability to exercise the profession of *Rechtsanwalt* in the Federal Republic of Germany. The aptitude test must take account of the fact that the applicant is qualified to practise the profession of lawyer in another European Union Member State or signatory State to the Agreement on the European Economic Area or Switzerland.

§ 18

Examination authority

- (1) The aptitude test is carried out by the examination authority competent for the Second State Examination.⁵
- (2) Several *Länder* may agree to set up a joint examination authority. By agreement, the competence of an examination authority may be limited to carrying out aptitude tests for applicants from certain home States only.
- (3) Unless otherwise provided under this Law or on the basis of an ordinance with the force of law issued under this Law, the provisions applicable to the Second State Examination in that *Land* in which the examination authority has its seat apply *mutatis mutandis* to the aptitude test.
- (4) The aptitude test is administered by an examining board consisting of at least three examiners. In the event of a tie, the Chairman shall have the casting vote. The law of the individual *Land* may provide that instead of by the board, written performances are assessed by two examiners which need not necessarily be members of the board. If the two examiners cannot reach an agreement as to whether the written examination meets the requirements, a third examiner, who is appointed by the examination authority, shall make the decision.
- (5) The examiners are independent in the performance of their duties.

§ 19

(repealed)

³ Deutsches Richtergesetz

⁴ Verwaltungsverfahrensgesetz

⁵ Zweite Juristische Staatsprüfung

§ 20

Examination subjects

- (1) Examination subjects are one compulsory subject, which is civil law, two optional subjects and the legal provisions on the professional conduct of lawyers. The applicant chooses one optional subject in each of the two following groups:
 1. public law or criminal law,
 2. commercial law, labour law, areas of civil law which are not covered by the compulsory subject, public law or criminal law.

The applicant must not choose the same optional subject in both groups.

- (2) The examination covers certain areas of the compulsory subject and of both optional subjects, which are to be determined in greater detail by an ordinance with the force of law, as well as the respective procedural law, including the fundamentals of the laws on the constitution of the courts and courts, on executions and on insolvency law.

§ 21

Examination elements

- (1) The examination consists of a written and an oral test. The examination is taken in German.
- (2) The examination authority shall, upon request, exempt the applicant from elements of the examination, either in full or in part, if he can furnish proof that on account of his professional training or other circumstances, in particular professional experience or further training courses, he has acquired knowledge in a particular subject of those substantive and procedural aspects of German law which are required in the exercise of the profession of *Rechtsanwalt* in Germany. The application as referred to in sentence 1 is to be submitted together with the application in accordance with § 16 (1). The examination authority may, before exempting the applicant from specific elements of the examination, give the Bar in whose district it has its seat the opportunity to comment.
- (3) The written test consists of two papers written under supervision. One paper relates to the compulsory subject, the other to the optional subject chosen by the applicant.
- (4) The applicant is only admitted to the oral test, if at least one written test paper satisfies the requirements; otherwise the applicant is considered to have failed the examination. Sentence 1 does not apply if the applicant was exempt from taking a paper written under supervision in accordance with paragraph (2).
- (5) The oral test consists of a presentation and an interview. The oral test covers the rules governing the professional conduct of lawyers, the optional subject, in which the applicant has not taken a written examination and, if one of the written examinations is unsatisfactory, the oral test will also cover the subject of that examination.

§ 22

Decision on the test result

The examining board decides on the basis of the overall performance in the written and oral examinations and by a majority vote, if the applicant possesses the knowledge required under § 17.

§ 23

Objections

- (1) The applicant may object in writing or in electronic form to the assessment of his performance.
- (2) If the applicant is admitted to the oral examination, he has to put forward his objections to the examination authority (§ 18): to the assessment of the written examinations no later than one month after the publication of the test result; to the assessment of the oral performance immediately after the publication of the result. Further details to substantiate his objections to the result of the written examinations shall be provided no later than two months after the publication of the written test result, and no later than one month after publication of the oral assessment.
- (3) If the applicant is not admitted to the oral examination, he has to put forward his objections to the assessment of the written examinations to the examination authority no later than one month after the publication of the test result and has to provide further details to substantiate his objections in writing no later than two months after the publication of the test result.

- (4) If the objections are not in conformity with paragraphs (1) to (3), they will be rejected by the examination authority. In all other cases they will be transmitted to the respective examiners for them to evaluate their assessment.

§ 24

Repetition of the examination

It is possible to repeat the examination.

Part 5

Temporary provision of services

§ 25

Temporary activity

- (1) A European lawyer may perform the activities of a lawyer in Germany on a temporary or occasional basis (European lawyer providing services) in accordance with the following provisions. Whether the activities are exercised on a temporary or occasional basis is, in particular, to be assessed in relation to the duration, frequency, regularity and continuity of those activities.
- (2) Paragraph (1) does not apply to European lawyers who must not exercise the profession of lawyer because
1. they are not admitted to the profession for one of the reasons set out in § 7 nos. 1, 2, 4 to 6 of the Federal Lawyers' Act and there is no possibility of appeal; or, the admission has been revoked for one of these reasons and in accordance with § 14 (2) no. 1 of the Federal Lawyers' Act and the revocation is incontestable, as long as the reason for the non-admission or the revocation persists,
 2. the admission has been revoked in accordance with § 14 (2) nos. 1 and 2 of the Federal Lawyers' Act, and the revocation is incontestable,
 3. they have been sanctioned, with final and binding effect, with exclusion from the legal profession in accordance with § 114 (1) no. 5 of the Federal Lawyers' Act.

If a European lawyer is forbidden, in accordance with § 70 of the Criminal Code,⁶ § 132a of the Code of Criminal Procedure⁷ or § 150 of the Federal Lawyers' Act, to exercise the legal profession, paragraph (1) shall not apply for the duration of the prohibition. If a person is forbidden to represent clients as provided for by § 144 (1) no. 4, § 150 or § 161a of the Federal Lawyers' Act, paragraph (1) shall not apply to the activities covered by the prohibition to represent.

§ 26

Professional title, proof attesting status of lawyer

- (1) Regarding the use of the professional title, § 5 (1) sentences 1 and 2 and (2) sentence 2 shall apply *mutatis mutandis*.
- (2) Upon request, the European lawyer providing services shall furnish the Bar which is competent according to § 32 (4), the court or authority before which he appears, with proof that he is entitled to exercise the profession in the home State. If this request is made, he may pursue the activities covered in this Part of the Law only after proof has been provided.

§ 27

Rights and duties

- (1) In the context of the representation or defence of a client in legal proceedings or before an administrative authority, the European lawyer providing services has the status of *Rechtsanwalt* and in particular the same rights and duties, insofar as these are not related to Bar membership or to the lawyer's office. Limitations of the authority to represent clients which result from the requirement of admission to the Federal Court of Justice⁸ remain unaffected.
- (2) A lawyer pursuing other activities shall comply with the rules applicable to a German

⁶ Strafgesetzbuch

⁷ Strafprozeßordnung

⁸ Bundesgerichtshof

Rechtsanwalt; he shall in particular fulfil the professional duties ensuing from § 43, § 43a, § 43b, § 43d, § 43e and § 45 of the Federal Lawyers' Act. These rules are applicable only insofar as they are not inseparably linked with the establishment as a lawyer in Germany, insofar as they are of general importance and can therefore be adhered to, and insofar as the requirement to respect these rules is justified with a view to ensuring the proper exercise of a lawyer's activities and to safeguarding the reputation and position of trust, which the status of lawyer requires.

- (3) European lawyers providing services are obliged to conclude professional indemnity insurance to cover liability for financial losses resulting from the exercise of the legal profession in Germany, such insurance cover being appropriate, as regards its nature and extent, to the risks arising from such professional activity. Where it is impossible or unreasonable for the lawyer to conclude such insurance, he shall notify his clients, in text form, of this fact and of the consequences thereof before accepting them as clients. Sentences 1 and 2 do not apply if the activity is that of an in-house lawyer.

§ 27a

Special electronic legal mailbox

- (1) European lawyers providing services may apply to the Bar competent pursuant to § 32 (4) for a special electronic legal mailbox⁹ to be set up. Where the conditions are met, he shall be entered in the register of the Bar and in the Central Register of the Bundesrechtsanwaltskammer for that sole purpose. § 31 (1), sentences 3, 5 and 6, (3) nos. 1, 2 and 5, (4), sentences 1 and 2, and (5), sentences 1 and 2, of the Federal Lawyers' Act apply analogously in respect of entry in these registers, with the proviso that loss of admission to the legal profession in the home State or an application for deletion of the special electronic legal mailbox takes the place of termination of membership of the Bar. Further, an ordinance with the force of law issued on the basis of § 31c of the Federal Lawyers' Act applies in respect of entry in these registers.
- (2) Following entry in the Central Register, the Bundesrechtsanwaltskammer sets up a special electronic legal mailbox for the European lawyer providing services. § 31a (1), sentence 2, (2) to (4) and (6) of the Federal Lawyers' Act applies analogously, with the proviso under paragraph (1), sentence 3. In addition, an ordinance with the force of law issued on the basis of § 31c of the Federal Lawyers' Act applies.
- (3) A Bar may charge European lawyers providing services fixed-rate fees as well as expenses to cover the administrative costs of setting up and maintaining the special electronic legal mailbox. The Bar determines the items for which fees and expenses are to be charged, as well as the amount of and the due date for those fees and expenses by way of by-laws; § 192, sentence 2, of the Federal Lawyers' Act applies *mutatis mutandis*. The fees and expenses may not exceed the contributions levied from members of the Bar for the setting up and maintenance of their special electronic legal mailboxes. The amount of the fees is to be regularly reviewed. The by-laws are to be reported to the supervisory authority. § 84 of the Federal Lawyers' Act applies *mutatis mutandis* in respect of the collection of outstanding fees and expenses. As from the point in time stipulated in § 84 (2) of the Federal Lawyers' Act, § 31 (5), sentences 1 and 2, and § 31a (4) of the Federal Lawyers' Act apply analogously.

§ 28

Representation and defence in legal proceedings

- (1) In proceedings before the courts as well as in administrative proceedings relating to criminal offences, breaches of administrative regulations, misfeasance in office or professional misconduct, in which the client cannot conduct his case or defend himself, the European lawyer providing services may act as representative or as defending counsel only in conjunction with a *Rechtsanwalt*.
- (2) The *Rechtsanwalt*, in conjunction with whom he must act, must be authorised to represent or defend clients before the court or administrative authority in question. It is the *Rechtsanwalt's* duty to use his influence so that the European lawyer providing services fulfils the requirements of proper administration of justice when acting as representative or defending counsel.
- (3) There is no contractual relationship between the *Rechtsanwalt* and the client, unless the parties involved decide otherwise.
- (4) (repealed)

⁹ besonderes elektronisches Anwaltspostfach

§ 29

Proof of work in conjunction, revocation

- (1) Proof of work in conjunction shall be submitted in writing when the first step before the court or the administrative authority is taken.
- (2) A revocation of the conjunction shall be declared in writing to the court or the administrative authority. It has effect only for the future.
- (3) Any steps in respect of which conjunction is not proved at the time when they are taken, have no effect.

§ 30

Special rules for defence cases

- (1) A European lawyer providing services may not visit a client held in custody following a court order or an order of an administrative authority in criminal proceedings, unless accompanied by the *Rechtsanwalt* with whom he is working in conjunction in accordance with § 28 (1), and cannot correspond with that client except through that German *Rechtsanwalt*. An agreement shall be established with the *Rechtsanwalt* concerning visits and correspondence.
- (2) The court or the administrative authority may allow unaccompanied visits or direct correspondence, provided this does not constitute a security risk.
- (3) § 138a to § 138d, § 146, § 146a and § 148 of the Code of Criminal Procedure as well as § 26, § 27 (3), §29 (1) and § 31 (4) of the German Law on the Execution of Custodial Sentences¹⁰ apply *mutatis mutandis* to the *Rechtsanwalt* working in conjunction.

§ 31

Service of documents in administrative and judicial proceedings

- (1) The European lawyer providing services shall designate a *Rechtsanwalt* authorised to accept service who is resident or has his offices in Germany as soon as he starts acting in proceedings before the courts or administrative authorities. The designation is effected with respect to the administrative authority or the court. Service of documents intended for the European lawyer providing services shall be effected to the authorised *Rechtsanwalt*. Service may also be effected to him by way of service from one lawyer to another (§ 174 and § 195 of the Code of Civil Procedure¹¹).
- (2) Where there is no designated *Rechtsanwalt* authorised to accept service of documents, the *Rechtsanwalt* working in conjunction with the European lawyer providing services in the proceedings mentioned in § 28 (1) is considered to be the authorised lawyer; if documents cannot be served to a lawyer authorised to accept service within the area of application of this Law, service may be made by way of mailing (§ 184 of the Code of Civil Procedure).
- (3) Paragraphs (1) and (2) do not apply where a court or an authority dispenses with the need to appoint a *Rechtsanwalt* authorised to accept service where a European lawyer providing services has made available a secure means of transmission for the service of electronic documents.

§ 32

Disciplinary control, competent Bar

- (1) European lawyers providing services are subject to the disciplinary control of the competent Bars. In particular, it is incumbent on the Council of the competent Bar:
 1. to advise and instruct lawyers in questions relating to their professional duties;
 2. to control that professional rules are complied with and to exercise the right to reprimand a lawyer;
 3. to inform the competent authority in the home State about decisions taken with respect to the European lawyer providing services;
 4. to gather the necessary professional information concerning European lawyers providing services;
 5. to mediate, upon request, in cases of dispute between European lawyers providing services and *Rechtsanwälte*; this encompasses the authority to make settlement proposals;

¹⁰ Strafvollzugsgesetz

¹¹ Zivilprozessordnung

6. to mediate, upon request, in cases of dispute between European lawyers providing services and their clients; this encompasses the authority to make settlement proposals.
- (2) The Council may transfer the tasks enumerated in paragraph (1), nos. 1 and 3 to 6 to individual Council members.
- (3) § 56, § 57, § 73 (3) as well as § 74, § 74a, § 195, § 197a to § 199, § 205 and § 205a of the Federal Lawyers' Act apply *mutatis mutandis*.
- (4) Competence of a Bar in disciplinary matters according to paragraph (1) is assigned depending on the State where the European lawyer providing services is established. Disciplinary control regarding European lawyers providing services is assigned as follows:
 1. lawyers from Belgium and the Netherlands are subject to the Rechtsanwaltskammer Düsseldorf in Düsseldorf,
 2. lawyers from France and Luxembourg are subject to the Rechtsanwaltskammer Koblenz in Koblenz,
 3. lawyers from the United Kingdom, Ireland, Finland and Sweden are subject to the Hanseatische Rechtsanwaltskammer in Hamburg,
 4. lawyers from Italy and Austria are subject to the Rechtsanwaltskammer für den Oberlandesgerichtsbezirk München in Munich,
 5. lawyers from Denmark, Norway and Iceland are subject to the Schleswig-Holsteinische Rechtsanwaltskammer in Schleswig,
 6. lawyers from Liechtenstein and Switzerland are subject to the Rechtsanwaltskammer in Freiburg,
 7. lawyers from Greece and the Republic of Cyprus are subject to the Rechtsanwaltskammer in Celle,
 8. lawyers from Spain and Estonia are subject to the Rechtsanwaltskammer Stuttgart in Stuttgart,
 9. lawyers from Portugal are subject to the Rechtsanwaltskammer Oldenburg in Oldenburg.
 10. lawyers from the Czech Republic and Slovakia are subject to the Rechtsanwaltskammer Sachsen in Dresden,
 11. lawyers from Poland are subject to the Rechtsanwaltskammer des Landes Brandenburg in Brandenburg an der Havel,
 12. lawyers from Latvia and Lithuania are subject to the Rechtsanwaltskammer Mecklenburg-Vorpommern in Schwerin,
 13. lawyers from Hungary are subject to the Rechtsanwaltskammer Nürnberg in Nuremberg,
 14. lawyers from Malta are subject to the Rechtsanwaltskammer des Landes Sachsen-Anhalt in Magdeburg,
 15. lawyers from Slovenia are subject to the Rechtsanwaltskammer Thüringen in Erfurt,
 16. lawyers from Bulgaria are subject to the Rechtsanwaltskammer Berlin in Berlin,
 17. lawyers from Romania are subject to the Rechtsanwaltskammer Frankfurt am Main in Frankfurt am Main,
 18. lawyers from Croatia are subject to the Rechtsanwaltskammer Tübingen in Tübingen.

§ 33

Disciplinary jurisdiction regarding lawyers, service of documents

- (1) Regarding the fulfilment of his professional duties, the European lawyer providing services is subject to the jurisdiction of the disciplinary courts for the legal profession. The competent local disciplinary court is the court at the seat of the Bar exercising disciplinary control in accordance with § 32.
- (2) § 10 applies *mutatis mutandis*.

§ 34

Sanctioning of professional misconduct by the disciplinary courts, provisional measures taken by the disciplinary courts

Regarding sanctions applied by the disciplinary courts in the event of professional misconduct and provisional measures taken by these courts, the European lawyer providing services is subject to the provisions of Part 6 and Part 7, Part 10 Division 3 and Part 11 of the Federal Lawyers' Act and the following provisions:

1. the prohibition according to § 114 (1) no. 4 and the provisional measures according to § 150 (1) and § 161a must only apply to the territory of the Federal Republic of Germany;
2. exclusion from the legal profession is replaced in § 114 (1) no. 5 by the prohibition to provide services in Germany;
3. notification as provided for by § 160 (1), sentence 1, § 161a (2) shall be made to all Bars;
4. § 161 shall not apply.
5. the Bar competent in accordance with § 32 of this Law takes the place of the Bar referred to in § 198.

§ 34a

Obligation to furnish information

Courts and authorities are required to transmit to the authorities competent to institute reprimand proceedings or disciplinary proceedings against a lawyer those personal data which are necessary, in the eyes of the transmitting authority, in order to institute such proceedings, unless this interferes with the data subject's interests worth protecting or the public interest prevails over the data subject's interest in confidentiality. § 36 (2), sentence 2, of the Federal Lawyers' Act applies *mutatis mutandis*.

Part 6

Legal recourse in administrative matters pertaining to lawyers and general provisions relating to administrative proceedings

§ 35

Legal recourse in administrative matters pertaining to lawyers

The provisions of the Federal Lawyers' Act concerning administrative matters pertaining to lawyers apply *mutatis mutandis* to public-law disputes under Parts 2, 3, 5 and 6 of this Law or under an ordinance with the force of law issued under those Parts, unless they are proceedings before a lawyers' disciplinary court or have expressly been assigned to another court.

§ 36

Certificates issued by the State which the foreign national comes from or by the State of origin

Where, in relation to a decision concerning admission to a Bar under Part 2 or concerning admission to the legal profession under Part 3 or Part 4 of this Law,

1. certificates attesting to the fact that no serious professional misconduct, criminal offences or other reasons are known which make the applicant's suitability for the profession of lawyer questionable,
2. certificates attesting to the fact that no insolvency proceedings have been opened against the person concerned's assets and that person has not been declared insolvent,
3. certificates attesting to the person concerned's physical or mental health,
4. certificates attesting to the existence and extent of indemnity insurance

are necessary, then certificates issued by the home State or State of origin which meet the conditions of Article 50 § 1 in conjunction with Annex VII point 1 (d) to (f) of Directive 2005/36/EC suffice.

§ 37

European administrative cooperation; certificates

- (1) § 8a to § 8e of the Administrative Procedure Act apply to European administrative cooperation, with the proviso that outgoing requests may also be written in other languages and incoming requests may be dealt with even if the files are not kept in German.
- (2) If a *Rechtsanwalt* requires a certificate from the Bar in order to be able to engage in his activities in another State on the basis of a legal act of the European Union, the Bar shall issue such certificate within one month.

§ 38

Obligations to furnish information to other States

- (1) Where a *Rechtsanwalt* is also engaged in his activities in another European Union Member State, in another signatory State to the Agreement on the European Economic Area or in Switzerland,

the Bar notifies the following to the competent authority in the other State via the Internal Market Information System (IMI) of the European Union:

1. sanctions under professional law,
2. criminal sanctions or sanctions imposed in regulatory offence proceedings which may have an influence on the exercise of the activities of a lawyer, and
3. other serious matters which may have an influence on the exercise of the activities of a lawyer.

Sentence 1 also applies to established European lawyers, unless notification has already been made pursuant to § 9. Where a decision has been sent to the Bar in accordance with § 112h of the Federal Lawyers' Act, then it shall, within three days after the decision becomes final and binding, notify the other European Union Member States, the other signatory States to the Agreement on the European Economic Area and Switzerland via the Internal Market Information System (IMI) of the European Union of the particulars of the lawyer's identity and of the fact that he used falsified evidence of professional qualifications.

- (2) Promptly after making the notification in accordance with paragraph (1) notification shall be made in accordance with § 8d (2) of the Administrative Procedure Act. Reference shall be made to the legal remedies admissible against the decision to have the notification pursuant to paragraph (1) issued. If legal remedy is sought against the decision, the Bar adds the relevant information to the notification pursuant to paragraph (1).
- (3) The provisions of § 9 shall apply *mutatis mutandis* to lawyers admitted to practice in Germany using their original professional title and who are established in another State as referred to in paragraph (1), sentence 1. In such cases, paragraph (1), sentence 1, only applies where notification has not already been made pursuant to sentence 1.
- (4) Paragraph (1), sentence 1, applies *mutatis mutandis* to European lawyers providing services.
- (5) Where the competent authority in another State as referred to in paragraph (1), sentence 1, has notified the Bar about sanctions or other matters imposed on a *Rechtsanwalt* within the meaning of paragraph (1), sentence 1, the Bar shall notify that authority of any measures taken on the basis of the notification.

§ 38a Statistics

Federal statistics are to be collated concerning proceedings pursuant to Part 4 of this Law. § 17 of the Professional Qualifications Assessment Act,¹² with the exception of paragraph (2) no. 4, shall apply.

§ 39 Fees and expenses

The provisions of the Federal Lawyers' Act concerning the levying and collection of fees and expenses for official acts under this Law shall apply *mutatis mutandis*.

Part 7 Authorisation, delegation of powers

§ 40 Authorisation

- (1) The Federal Ministry of Justice and Consumer Protection is authorised to adapt the annex to § 1 by way of an ordinance with the force of law, which does not require the consent of the *Bundesrat*, if there are changes relating to the circle or the titles of the enumerated professions, or relating to the number of European Union Member States or the signatory States to the Agreement on the European Economic Area.
- (2) The Federal Ministry of Justice and Consumer Protection is authorised to make provisions by way of an ordinance with the force of law subject to the consent of the *Bundesrat*, regarding the details of the aptitude test, in particular with respect to
 1. compulsory and optional subjects,
 2. the examinee,

¹² Berufsqualifikationsfeststellungsgesetz

3. the examination procedure,
4. performance of the examinee,
5. consequences of behaviour contrary to regulations,
6. waiving certain parts of the examination,
7. repeating the examination and the number of possible repetitions,
8. levying a fee.

§ 41

Delegation of powers

- (1) The governments of the *Länder* are authorised to delegate to subordinate authorities, by ordinance with the force of law, the tasks and powers which the *Land* administrations of justice have been given under this Law. The governments of the *Länder* may delegate this authorisation, by ordinance with the force of law, to the *Land* administrations of justice.
- (2) The governments of the *Länder* are authorised to delegate to the Bars, by ordinance with the force of law, the processing of applications and the aptitude test pursuant to Part 4 of this Law either in full or in part. The governments of the *Länder* may delegate this authorisation, by ordinance with the force of law, to the *Land* administrations of justice. In such cases, § 73 (1), sentence 2, and (3) of the Federal Lawyers' Act applies *mutatis mutandis*.

Part 8

Transitional and final provisions

§ 42

Application of provisions of the Criminal Code

- (1) With respect to the application of the provisions contained in the Criminal Code regarding exemption from punishment in the event of failure to report planned criminal activity (§ 139 (3) sentence 2), violation of private secrets (§ 203 (1) no. 3, (3) to (6), § 204, § 205), excessive levying of fees (§ 352) and betrayal of clients (§ 356), European lawyers are treated like *Rechtsanwälte*.
- (2) For the protection of the professional titles enumerated in the annex to § 1, the provision on the protection of the professional title "Rechtsanwalt" contained in § 132 a (1) no. 2, (2) of the Criminal Code shall apply *mutatis mutandis*.

Annex to § 1

The profession of lawyer in European Union Member States and other signatory States to the Agreement on the European Economic Area and Switzerland

- Austria: Rechtsanwalt
- Belgium: Avocat/Advocaat/Rechtsanwalt
- Bulgaria: АДВОКАТ (Advokat)
- Croatia: Odvjetnik
- Cyprus: Δικηγόρος (Dikigoros)
- Czech Republic: Advokat
- Denmark: Advokat
- Estonia: Vandeadvokaat
- Finland: Asianajaja/Advokat
- France: Avocat
- Greece: Δικηγόρος (Dikigoros)
- Hungary: Ügyvéd
- Ireland: Barrister/Solicitor
- Italy: Avvocato
- Iceland: Lögmaur
- Latvia: Zverinats advokats
- Liechtenstein: Rechtsanwalt
- Lithuania: Advokatas
- Luxembourg: Avocat

- Malta: Avukat/Prokuratur Legali
- Netherlands: Advocaat
- Norway: Advokat
- Poland: Adwokat/Radca prawny
- Portugal: Advogado
- Romania: Avocat
- Sweden: Advokat
- Switzerland: Advokat, Rechtsanwalt, Anwalt, Fürsprecher, Fürsprech/Avocat/Avvocato
- Slovakia: Advokat/Komerčný právnik
- Slovenia: Odvetnik/Odvetnica
- Spain: Abogado/Advocat/Avogado/Abokatu
- United Kingdom: Advocate/Barrister/Solicitor