

Federal Act 935.61  
on the Freedom of Movement for Lawyers

(Lawyers' Act, FAFML)

of 23 June 2000 (as of 30 July 2002)

*The Federal Assembly of the Swiss Confederation,*

based on Article 95 of the Federal Constitution,

pursuant to the Agreement of 21 June 1999<sup>1</sup> between the Swiss Confederation on the one hand and the European Community together with its member states on the other hand with regard to the freedom of movement,

after the examination of the Report of 28 April 1999<sup>2</sup> as submitted by the Federal Council

*resolves:*

**Section 1: In General**

**Article 1** Object

This Act guarantees the freedom of movement for lawyers and stipulates the conditions governing the practice of the legal profession in Switzerland.

AS 2002 863  
SR 101  
SR 0.142.112.681  
BB 1 1999 6013

**Article 2** Scope of Personal Application

<sup>1</sup> This Act is applicable to persons who are licensed to practice law and who, within the structure of the lawyers' monopoly, represent parties before judicial authorities in Switzerland.

<sup>2</sup> It determines the modalities for the representation of parties before judicial authorities by lawyers who are nationals of member states of the European Union (EU) or European Free Trade Association (EFTA)<sup>4</sup>

<sup>3</sup> The modalities also apply to Swiss nationals who are entitled to practice law in a member state of the EU or EFTAS under one of professional titles listed in the Appendix.

**Article 3** Relationship to Cantonal Law

<sup>1</sup> Within the Scope of the prescrip Act, the cantons shall continuously maintain the right to determine the requirements for obtaining the license to practice law.

<sup>2</sup> The same is applicable to the right of the canton to authorise lawyers, accredited with its cantonal license, to represent parties before its own judicial authorities.

**Section 2: Inter-cantonal Freedom of Movement and the Cantonal Register of Lawyers****Article 4** Principles of the Inter-cantonal Freedom of Movement

All lawyers who are listed in a cantonal register of lawyers can represent parties before judicial authorities in Switzerland without additional authorisation.

<sup>4</sup> Version in accordance with No. 1 of the Federal Act of 22 March 2002, in force since 1 August 2002 (AS 2002 2134 2135; BBl 2002 2637).

<sup>5</sup> Expression added in accordance with No. 1 of the Federal Act of 22 March 2002, in force since 1 August 2002 (AS 2002 2134 2135; BBl 2002 2637). This modification was considered throughout the Act.

**Article 5** Cantonal Register of Lawyers

<sup>1</sup> Each canton shall maintain a register of lawyers who have a business address within the canton and who fulfil the conditions as stated in Articles 7 and 8.

<sup>2</sup> The register shall contain the following personal data:

- a. Name, first name, date of birth, and place of origin or nationality;
- b. Copy of the license to practice law;
- c. Attestations confirming that the conditions according to Article 8 have been fulfilled;
- d. Business addresses, and if applicable, the name of the law offices;
- e. Disciplinary measures that have not been deleted.

<sup>3</sup> It is to be recorded by the cantonal authority responsible for the supervision of lawyers.

**Article 6** Inscription in the Register

<sup>1</sup> Lawyers who have a cantonal lawyer's license and who intend to represent parties before judicial authorities must request inscription in the register of the canton in which they have their business address.

<sup>2</sup> The supervisory authority shall inscribe them in the register when it has been determined that the conditions according to Articles 7 and 8 have been fulfilled.

<sup>3</sup> It shall publish the registration in an official organ of the canton.

<sup>4</sup> Inscriptions in the cantonal register are also subject to the appeal of the bar association of the canton concerned.

**Article 7** Professional Requirements

<sup>1</sup> To be inscribed in the register, the lawyer must be in possession of a lawyer's license that has been granted on the basis of the following conditions:

- a. course of studies in law leading to a graduate degree awarded by a Swiss university or to an equivalent diploma awarded by a uni-

iversity from one of the states that has concluded an agreement of reciprocal recognition with Switzerland;

- b. at least one year of practical experience in Switzerland that has been concluded with an examination of juridical knowledge in theory and in practice.

<sup>2</sup> Cantons in which Italian is the official language may recognise a foreign diploma, acquired in the Italian language, that is equivalent to a graduate degree.

#### **Article 8 Personal Qualifications**

<sup>1</sup> To be inscribed in the register, lawyers must fulfil the following personal qualifications:

- a. they must have the capacity to act;
- b. there can be no criminal conviction against them for acts that are incompatible with the legal profession and that have not yet been deleted from the register of convictions;
- c. there can be no deeds of loss;
- d. they must be capable of practising law independently; they may be employed only by persons who themselves are inscribed in one of the cantonal registers of lawyers.

<sup>2</sup> Lawyers who are employed by recognised charitable organisations can be registered as long as conditions, according to paragraph 1, letters a-c, have been fulfilled and their representation of parties is strictly limited to mandates within the context of the purpose as defined by the organisation concerned.

#### **Article 9 Deletion from the Register**

Lawyers who no longer fulfil one of the conditions for registration will be deleted.

#### **Article 10 Examination of the Register**

The following are entitled to examine the register:

- a. Federal and cantonal judicial and administrative authorities before whom the lawyers appear;

- b. Judicial and administrative authorities of member states of the EU or EFTA before whom the registered lawyers appear;
- c. Cantonal authorities with a supervisory function for lawyers;
- d. Lawyers with regard to their own registration.

<sup>2</sup> Every person has the right to know if a lawyer has been inscribed in the register, and if an interdictory order to practice has been issued.

#### **Article 11 Professional Title**

<sup>1</sup> Lawyers shall use their original professional title, or an equivalent professional title as issued by the canton in which they are registered.

<sup>2</sup> Cantonal registration must be indicated in business dealings.

### **Section 3: Rules of Professional Conduct and Disciplinary Supervision**

#### **Article 12 Rules of Professional Conduct**

The following rules of professional conduct are applicable to lawyers:

- a. They shall exercise their profession conscientiously and with diligence.
- b. They shall exercise their profession independently, in their own name and on their own responsibility.
- c. They shall avoid every conflict of interest between that of client and persons with whom they have business or private relations.
- d. They may advertise as long as it remains objective and as long as it corresponds to the public need for information.
- e. There shall be no agreement with the client, prior to the settlement of a dispute, with regard to sharing the gains from litigation as a substitute for professional fees; in case of an unfavourable outcome of the proceedings, there may be no agreement to waive professional fees.
- f. It is mandatory to have professional indemnity insurance in accordance with the type and extent of risks that are associated with their activity.

- g. They are obliged to accept court-assigned defence and gratuitous mandates of judiciary assistance in the canton in which they are registered.
- h. They shall keep the assets that have been entrusted to them separate from their own assets.
- i. At the time of accepting a mandate, they shall inform clients about the conditions and terms of invoicing and shall inform them, periodically or upon request, about the professional fees still owing.
- J. They must notify the supervisory authorities of any change in personal data as indicated in the register. k.

#### Article 13 Professional Secrecy

1 Unlimited in time and applicable to anyone, lawyers must observe professional Secrecy for all information that has been confided to them by their clients as a result of their professional activity. Release from professional Secrecy does not obligate the lawyer to divulge confidential information.

2 They are responsible for seeing that professional Secrecy is observed by their assistants.

#### Article 14 Cantonal Supervisory Authority for Lawyers

Each canton appoints an official authority to supervise the lawyers who are entitled to represent parties before the judicial authorities within the canton.

#### Article 15 Obligation to Report

1 The cantonal judicial and administrative authorities shall immediately report cases, that could violate rules of professional conduct, to the supervisory authority of their canton.

2 The federal judicial and administrative authorities shall immediately report cases, that could violate rules of professional conduct, to the supervisory authority of the canton in which a lawyer is registered.

#### Article 16 Disciplinary Proceedings in Another Canton

1 If a supervisory authority initiates disciplinary proceedings against a lawyer who is not inscribed in that particular cantonal register, it must inform the supervisory authority of the canton in which the lawyer is registered.

2 If it intends to impose disciplinary measures, it shall allow the supervisory authority of the canton in which the lawyer is registered to voice an opinion on the result of the investigation.

3 The results of the disciplinary proceedings shall be reported to the supervisory authority of the canton in which the lawyer is registered.

#### Article 17 Disciplinary Measures

If the present Act is violated, the supervisory authority can impose the following disciplinary measures:

- a. warning;
- b. reprimand;
- c. fine of no more than 20'000 francs;
- d. temporary interdiction to practice for a maximum of two years;
- e. permanent interdiction to practice.

2 In addition to the interdiction to practice, a fine may also be imposed.

3 If necessary, the supervisory authority can provisionally rescind the authorisation to practice.

#### Article 18 Interdiction to Practice

1 The interdiction to practice is applicable throughout Switzerland.

2 It shall be reported to the supervisory authorities of the other cantons.

#### Article 19 Statute of Limitations

1 Disciplinary prosecution shall come under the statute of limitations after one year has elapsed from the time that the incriminating act was first known by the supervisory authority.

<sup>2</sup> The time limitation is to be interrupted by any inquiry of the supervisory authority.

<sup>3</sup> Disciplinary prosecution comes under the statute of limitations in any case after ten years have elapsed from the time of the incriminating act.

<sup>4</sup> If the violation of the rules of professional conduct constitutes a criminal act, the longer statute of limitations, as provided by criminal law, is applicable.

#### Article 20 Deletion of Disciplinary Measures

<sup>1</sup> Warnings, reprimands and fines shall be deleted from the register five years after the decision has been rendered.

<sup>2</sup> A temporary interdiction to practice shall be deleted from the register ten years after it has been rescinded.

#### Section 4: Practice of Law by Lawyers from Member States of the EU or EFTA According to the Freedom to Provide Services

##### Article 21 Principles

<sup>1</sup> Nationals from member states of the EU or EFTA, who are entitled to practice the legal profession in their home member states under one of the professional titles listed in the Appendix, may represent parties before judicial authorities in Switzerland according to the freedom to provide services.

<sup>2</sup> Lawyers providing services shall not be inscribed in the cantonal registers.

##### Article 22 Evidence of Lawyer's Qualifications

The federal and cantonal judicial authorities, before whom the Lawyers providing services appear, as well as the supervisory authority for lawyers, have the right to request evidence of a lawyer's qualification.

#### Article 23 Obligation to Work in Accord with a Registered Lawyer

In the case of proceedings for which legal representation is mandatory, the Lawyer providing services is obliged to work in accord with a Lawyer who has been inscribed in the cantonal register.

#### Article 24 Professional Title

Lawyers providing services shall use the professional title as stated in one of the official languages of their home member state, including the name of the professional organisation from which they derive their competence or the name of the court of law or tribunal to which they have been admitted according to the legislation of the state.

#### Article 25 Rules of Professional Conduct

The rules of professional conduct according to Article 12 are applicable to Lawyers providing services with the exception of those relating to court-assigned defence and mandates of judiciary assistance (letter g) as well as registration (letter j).

#### Article 26 Information with Regard to Disciplinary Measures

The supervisory authority shall inform the competent authority in the home member state about any disciplinary measures that it has imposed against Lawyers providing services.

**Section 5: Permanent Exercise of the Legal Profession by Lawyers from Member States of the EU or EFTA using their Original Professional Title**

**Article 27 Principles**

1 Nationals of states belonging to the EU or EFTA, who are entitled to practice the legal profession in their home member states or under one of the professional titles listed in the Appendix, can permanently represent parties before judicial authorities in Switzerland if they are registered with the cantonal supervisory authority for Lawyers

2 Articles 23-25 are also applicable to three Lawyers.

**Article 28 Registration with the Supervisory Authority**

1 The supervisory authority shall maintain an official list of nationals of member states of the EU or EFTA who, using their original professional titles, are allowed to permanently represent parties before judicial authorities in Switzerland.

2 Lawyers shall register with the supervisory authority of the canton in which they have their business address. They shall provide evidence of their professional qualifications with an attestation issued by the competent authority in their home member state; this attestation may not be older than three months.

The supervisory authority shall inform the competent authority in the home member state with regard to the inscription in the list.

**Article 29 Co-operation with the Competent Authority in the Home Member State**

1 Before the supervisory authority initiates disciplinary proceedings against a lawyer who is a national of a member state of the EU or EFTA, and who is representing parties before judicial authorities in Switzerland on a permanent basis, it shall inform the competent authority of the home member state.

2 The supervisory authority of the home member state for the duration of the disciplinary proceedings and, in particular, shall accord it the possibility to state its position.

**Section 6: Inscription of Lawyers from Member States of the EU or EFTA in the Cantonal Register of Lawyers**

**Article 30 Principles**

1 Lawyers from member states of the EU or EFTA may be listed in the cantonal register of Lawyers without fulfilling the requirements according to Article 7, letter b, if they:

- a. have passed an aptitude test (Article 31), or
- b. have been registered for at least three years as Lawyers practising under their original professional title, and can prove that they:
  1. were effectively and regularly active in the area of Swiss law during this period, or
  2. were active in the area of Swiss law for a shorter period of time and that they have successfully evidenced their professional competence in a discussion (Article 32).

2 They therefore have the same rights and obligations as Lawyers who hold a cantonal license and who are inscribed in the cantonal register of Lawyers.

**Article 31 Qualifying Examination**

1 Lawyers who are nationals of member states of the EU or EFTA shall be admitted to a qualifying examination, if they:

- a. have successfully completed a course of studies of at least three years at a university and, if need be and in addition, have also completed the requisite professional training; and
- b. have a diploma that entitles them to practice the legal profession in one of the member states of the EU or EFTA.

<sup>1</sup> The qualifying examination shall be given by the lawyers' examining commission of the canton in which the lawyer seeks to be registered.

<sup>3</sup> The qualifying examination refers to the material that is covered in the cantonal lawyers' examination and that differs substantially from the subject matter included, and examined, in the course of study in the home member state. The content is also determined by the professional experience of the candidate.

The qualifying examination may be repeated twice.

#### Article 32 Discussion to Verify Professional Competence

<sup>1</sup> The discussion to verify professional competence is conducted by the lawyers' examining commission of the canton in which the lawyer seeks to be registered.

<sup>2</sup> It is based, in particular, on information and supporting documents submitted by the lawyer and relating to his or her professional activity in Switzerland.

<sup>3</sup> It takes into consideration both the lawyer's knowledge and professional experience in the field of Swiss law as well as participation in courses and seminars devoted to Swiss law.

#### Article 33 Professional Title

In addition to the professional title of the canton in which they are registered, lawyers may also use their original professional title.

#### Section 7: Procedure

##### Article 34

<sup>1</sup> The cantons determine the procedure.

<sup>2</sup> They provide for a simple and rapid procedure for examining the conditions necessary to be inscribed in the cantonal register.

### Section 8: Final Provisions

#### Article 35 Amendment of the Previous Law

The Federal Act on Judicial Organisation of 16 December 1943<sup>6</sup> shall be modified as follows:

##### *Preamble*

##### *Article 29. Section 2*

##### *Article 29, Section 3*

##### *Repealed*

#### Article 36 Transitional Law

Persons who have a lawyer's license, based on the previous law of the canton, shall be inscribed in the cantonal register if they would have obtained authorisation to practice law in the other cantons according to Article 195, no. 5 of the Federal Constitution.

#### Article 37 Referendum and Enactment

<sup>1</sup> This Act is subject to a facultative referendum.

<sup>2</sup> The Federal Council shall determine the date of enactment. Article 2, paragraphs 2 and 3, and Article 10, paragraph 1, letter b as well as Sections 4, 5 and 6 will enter into force only if the Agreement of 21 June 1999<sup>1</sup>, between the Swiss Confederation on the one hand and the European Community together with its member states on the other hand, with regard to the freedom of movement also enters into force.

<sup>6</sup> SR 173.110. The modifications mentioned hereafter are implemented in the mentioned Federal Act.

<sup>1</sup> SR 0.142.112.681

Art. 37

<sup>3</sup> For nationals of the member states of the EFTA, Article 2, paragraphs 2 and 3, and Article 10, paragraph 1, letter b as well as Sections 4, 5 and 6 shall enter into force only if the Federal Act of 14 December 2001 <sup>8</sup> on the regulations of the freedom of movement in the Agreement of 21 June 2001 regarding the modification of the Treaty of 4 January 1960 that established the European Free Trade Association (EFTA) will enter into force.<sup>9</sup>

Date of enactment: 1 June 2002<sup>10</sup>

<sup>8</sup> AS 2002 685. This Federal Act became effective on 1 June 2002. Added in accordante with No. 1 of the Federal Act of 22 March 2002, in force since 1 August 2002 (AS 2002 2134 2135; BB12002 2637).

<sup>10</sup> Federal Council Decision as of 24 April 2002 (AS 2002 872).