

**Präsidentenkonferenz**  
20 February 1998  
Vienna

Interim report of the CCBE on  
harmonisation of the training of lawyers in  
Europe :

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*Quality harmonization:*  
The current situation and the  
ways forward

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## Introduction: Why this report?

At the *Präsidentenkonferenz* in Vienna in February 1997, the CCBE received an official mandate from the conference to propose measures and explore the way forward as regards **the training of lawyers in Europe**.

For this purpose, the CCBE considered that, before undertaking any specific initiatives, it would be useful to supplement the information which it has on the current situation as regards the training of lawyers in the various Member States and especially as regards the organization and funding of such training.

This information was collected on the basis of a brief questionnaire (the abbreviated results of which are in Annex I in the form of tables) and was supplemented by other sources of information (in particular: the report of the European Lawyers' Institute of the CCBE prepared in 1992 by L. Franco and entitled *Legal Education in the EEC*; the proceedings of a symposium on the topic, "Legal training in the Europe of tomorrow" which was organized by the European Commission at the University of Metz in 1994; the ERA report prepared in 1995 by Professor J. Pertek and entitled *Bodies providing legal training (in addition to the law faculties)*; the proceedings of "Meetings concerning the training of lawyers in Europe" organized in 1995 by the "Stage" organization with the assistance of the FBE.) As was to be expected, however, this information gave rise to more questions than answers.

It appeared, in particular, that because of major differences among Member States not only as regards the level of vocational training but especially as regards the method of organizing such training, it would have been premature to venture proposals for harmonization which would have been either too ambitious or would have fallen short of what is required.

That is why the CCBE has opted for an interim report, which is based in part on the still incomplete data collected, with a view to exploring the way forward - and nothing more- in regard to a whole range of issues. It is in this context which is, as it were, an exclusively scholastic one, that it also seemed important to compare the European situation with that of a country of continental size with a federal government, namely, the United States which is also the major competitor of the European Union in the world market for legal services which is now being liberalized. The excellent relations which the CCBE has with the American Bar Association obviously facilitated this enterprise.

Before the respective situations in Europe and the USA are described, it will, however, be necessary to indicate what our vital lead will be, namely, on the basis of training, a search for *harmonized quality* for the European lawyer. But can one or should one speak of a "European lawyer"?

# I. STARTING POINT: THE EUROPEAN LAWYER AND QUALITY

## THE EUROPEAN LAWYER EXISTS

Since the Treaty of Rome was signed in 1957 and even before that date, there have been innumerable meetings, symposiums and seminars which have enquired about the future emergence (considered to be generally far off) of this new breed of lawyer: *the European lawyer*.

The profession as a whole is beset by the same uncertainty. Thus as recently as 1996 the then President of the CCBE, Mr R. Mullerat convened a meeting of the Bar Presidents on the question, "Towards a European Bar?".

It is true that, while the main task of a lawyer is the same everywhere in Europe, the national bars have rightly noted the persistence of their specificities, whether these be the result of history or the specific features of local legal systems.

But may this image which we have of ourselves not be outdated? Not because it is allegedly a false one - as the facts show otherwise - but because there could be a growing discrepancy between this image and an environment which is developing and changing at a different pace?

It is in fact necessary to ask what is the standpoint of those who are the *raison d'être* of a lawyer, i.e., their clients.

Take first the citizens of Europe. They can travel freely and establish themselves and work in another Member State. In so many information campaigns it is explained to them that their rights as consumers or (self-employed) workers are protected in the same way everywhere. They elect in common their representatives in the European Parliament. Soon they will be sharing the same currency. For them, and as far as they are concerned, a united Europe is a fact. And they cannot imagine that a Europe of lawyers is not also a fact. Whether as ordinary tourists or company managers, they expect - and rightly so - that they will find everywhere the service providers whom they need: their French *Rechtsanwalt*, their Danish *advocato* or their Luxembourg *solicitor*.

Then there are the clients from outside the EU. For a Japanese or American company, for Brazilian or New Zealand exporters, Europe is a major single market. Just a large country like the United States. The only borders of which they are aware are those which demarcate the territory of the Union. And they expect a service corresponding to this reality. Like the one which they have at home.

The European and non-European clients of the profession of lawyer therefore have one thing in common, namely that, as far as they are concerned, the "*European lawyer*" exists - for better or for worse. If the European lawyer is

synonymous with quality and efficiency throughout the Union, they will not consider it essential to have recourse to other service providers. If, however, the image of this lawyer is that of a professional who is confined to the national territory and whose competence varies from one country to another and even from one jurisdiction to another, they will turn away from this lawyer.

Is it necessary to stress that the "Establishment directive" and the directives on free provision of services and on recognition of diplomas are the foundations of the European bar?

WHAT KIND OF IMAGE SHOULD THIS LAWYER HAVE? THE NEED FOR A HARMONIZED QUALITY

If the "European lawyer" is to measure up to expectations, this kind of lawyer will have to be really European, that is to say, not constrained in his or her activities by any geographical limitations and possessing a level of quality which is as uniform as it is high.

The adoption of the Directive on freedom of establishment for lawyers on 15 December 1997 removes the remaining obstacles to true mobility for the profession in the European area. It is now up to the profession to take advantage of this, and the CCBE proposes to promote this process by preparing "Guidelines on implementing the Directive".

However the actual mobility now permitted for lawyers under European legislation will to a large extent depend on *mutual trust* between the members of the profession in the various Member States. This is one reason for undertaking *quality harmonization* in the case of European lawyers, namely, to make a success of *our* internal market, build up our "Fortress Europe" of the law and of the professionals of the law.

But this is not the only reason, because, as has already been explained, it is very much in the interest of the profession to build up for the European lawyer an image of excellence which will position such lawyer in a competitive manner in a *world market* which is being increasingly liberalized.

Finally, it goes without saying that in both the internal market and world market for legal services, the profession will be able to protect the preponderant position which it still occupies only by providing services of better quality than its competitors in *other professions* (banks, auditors and accountants, insurance companies etc.). Quality, competence, in a word excellence are the best trumps to emerge as the winner of the contest between "*le chiffre et le droit*".

If, therefore, there is a readiness to acknowledge that all bars and European lawyers have a *common interest* in building up a common image of excellence, it is also all the more necessary to *define* the quality aimed at.

WHICH ARE THE CONSTITUENT ELEMENTS OF QUALITY IN THE LAWYER'S SERVICES?

As applied to legal services, the concept of *quality* is easy to define because it relates to services which are:

- based on *a reliable theoretical legal analysis*;
- *efficiently performed* in such way as to give effect to the legal analysis in the manner required.

Even if one takes into account that numerous bars and lawyers' organizations launch reflections about the application of the ISO 9002 standard to law firms, it appears to be difficult to ensure harmonization of service quality by checking the services themselves. These are not mass-production products, and the "production structures" are also very heterogeneous. Which standard could indeed be defined so as to fit the small as well as the big law firms, the practice of criminal procedures and the practice of business law? Action therefore has to be taken upstream by ensuring the quality of the service provider, and it is obvious that, in the case of services of an intellectual nature, the quality requirement must relate to *training*.

HOW CAN THE TRAINING OF A LAWYER GUARANTEE THIS KIND OF QUALITY?

When it is borne in mind that the quality of a lawyer's services depends on both the quality of the lawyer's theoretical work and on its practical implementation, it is possible to enumerate the *essential elements* of a training system which will guarantee a high level of quality. These are:

- *theoretical training in substantive law*, whether this be regional, national, Community, international or comparative law;
- *practical training*, which covers both a mastery of the procedures in a specific legal context (drafting legal documents, submissions, pleading etc.) and the development of skills which will be termed "paralegal" (negotiating techniques, information technology, management etc.);
- *continuing education*, which aims at updating previously acquired practical and theoretical knowledge.

Even taking into account the fact that numerous bars and professional organizations are starting reflections about quality and the application of the ISO 9002 standard to the lawyers, it seems to be difficult to ensure harmonization of the quality of services, by controlling

These elements are termed essential because everybody understands that the lack of just one of them will be sufficient to endanger the quality of the service subsequently provided.

HOW TO HARMONIZE THE TRAINING SYSTEMS IN THE VARIOUS MEMBER STATES?

According to the dictionary, "harmonize" means to "*bring together*", "*coordinate*" or "*balance*". In order to arrive at a final *harmonized* result, in other words,

training of equivalent quality provided for all European lawyers, coordination can theoretically apply to a variety of elements as follows:

- training *content* (covering theoretical knowledge, practical skills, and updating them);
- *evaluation methods* (level and nature of the evaluation);
- *organization* of training (material and human resources used in the universities, vocational schools, work placements);
- *funding* of training (public, private and mixed);
- *responsibility for organizing training and the training system structure* (distribution of tasks between the universities, institutes of higher education, vocational schools, the bars, the State).

One particular purpose of the examination of the situation in the Member States is to indicate the extent to which any obstacles to harmonization exist in these various areas (e.g. a legislative obstacle to changes in university studies programmes or to changes in the conditions governing access to the bar), and with a view to applying the principle of *subsidiarity* to the means to be used.

#### WORKING METHOD

As this is an interim report limited to the declared aim of prompting reflection, the CCBE will restrict itself mainly to a dual approach consisting:

- on the one hand, of an evaluation of the current situation as regards the training of lawyers in Europe, without, however, entering into detail regarding university education which has already been covered by previous studies (see those cited in the Introduction). It was therefore considered that it would be interesting to present some data in terms of the number of European lawyers and not in terms of the Member States. Even if this number fluctuates and even if the situation of individual lawyers is in fact influenced by generational differences, at the European level this type of presentation nevertheless provides a rough estimate (this is the reason why the proportions are stated in percentage terms and not as units);
- on the other hand, of a description - which will necessarily be brief- of the system for training lawyers in the United States. As will be seen, this widens horizons and at the very least makes it possible to stimulate reflection on the application of the principle of subsidiarity to training.

However, these investigations have not yet been carried out in sufficient detail to permit real conclusions to be drawn from what will follow. This interim

report therefore concludes with a number of questions for the bars and lawyers' organizations - pending the next *Präsidentenkonferenz* in 1999.

## II. THE TRAINING OF THE EUROPEAN LAWYER

### A. PRELIMINARY REMARK

When it comes to analyzing the content of training for lawyers, the option generally chosen is to make the comparisons in terms of educational structures: universities, institutes of higher education, vocational schools etc.

Nevertheless, one should question the adequacy of such a criterium, which depends on the content assigned to the concepts of "*university training*" and "*vocational training*".

Indeed, they can relate to either a category covering educational bodies ("universities" or "vocational schools") irrespective of training content or to a category covering training content but on the basis of the assumption that a university education is necessarily *theoretical* while vocational training is necessarily *practical*.

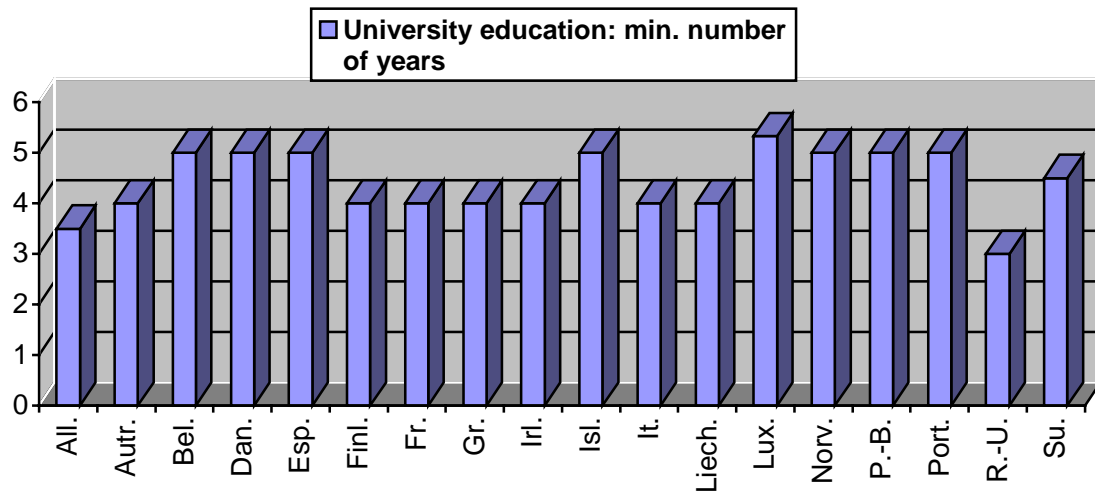
Use of either of the above categories is closely related to the scholastic and educational traditions of the Member States. Some admit that universities prepare a person for the immediate practice of a profession, that they adapt their teaching methods accordingly, and which results in the provision of practical training within the course programmes. Others reserve to the universities a mainly academic task and, on the contrary, wish to avoid the intrusion of vocational and economic objectives.

Thus, in order to compare the content of training given to European lawyers, it appeared preferable not to use these concepts because, while being undoubtedly familiar ones in all Member States, they also cover different kinds of content.

On the other hand, the *training needs* which we deduced at the outset from the definition of *service quality* (see above) provide a clear and generally applicable terminology:

- *theoretical training*, which relates to the rules of national, Community or international positive substantive law or to comparative law (in most cases it is a task devoted to university);

- *practical training* which relates to learning how to apply the rules of substantive law in a concrete environment (i.e. learning procedures and "paralegal" skills); such practical training can be provided by means of courses or work placements, or of course a combination of both (mostly organized by the bars);



- *continuing education*, which aims at ensuring that theoretical knowledge and practical skills will be updated;

This terminology also enables us to draw attention to the limitations of this report, it being only an interim one. It was prepared on the basis of a questionnaire which was completed by the national bars, and this means that it cannot be considered to be completely reliable, as the only way of knowing the exact nature of the education provided by the universities and comparable bodies would be to ask them about their programmes and teaching methods. This aspect should therefore be covered in a later and more detailed report.

## THEORETICAL TRAINING IN SUBSTANTIVE LAW

It appears that in all Member States most of the theoretical training in substantive law - whether this be national, Community, international or comparative law - is provided by the universities and comparable bodies and not by the bars.

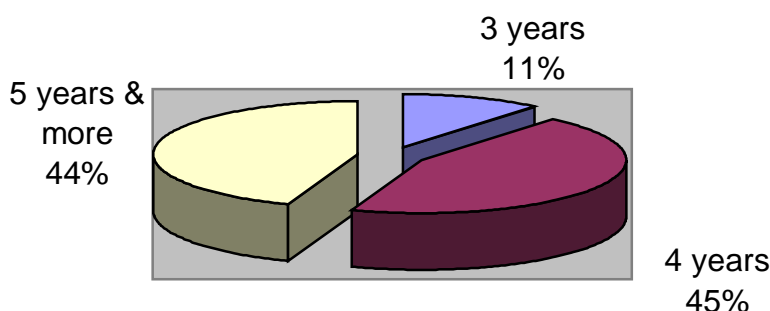
However, as indicated above, an examination of the course programmes of the universities would go beyond the framework of this study. Moreover, the bars generally have little influence over them, as they limit themselves to requiring of a candidate lawyer that the candidate provides proof, by means of a diploma, that he or she has successfully completed a specified (in some cases by law) course of academic legal studies.

The duration of this university or comparable training in each Member State nevertheless provides an indication of the extent to which young lawyers admitted to the bar are prepared as regards *theoretical* training:

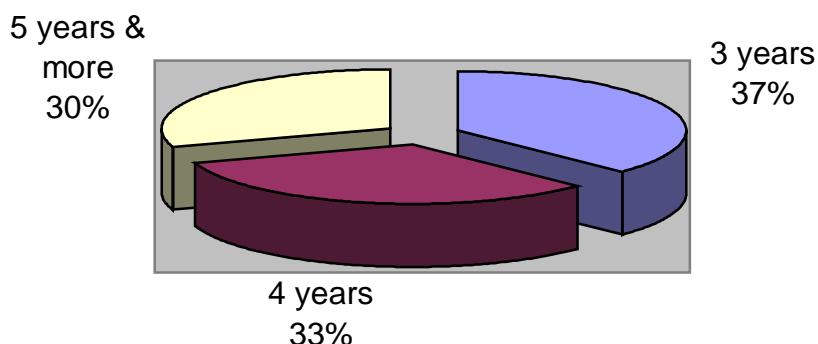
As previously indicated, it appears that the duration of what is in principle the period of *theoretical* training par excellence varies from three to five and a half years depending on the Member State involved.

This information can, however, be interpreted in two ways:

- in terms of Member States:



- in terms of the number of lawyers involved:



A comparison of these two presentations yields an interesting finding: when account is taken of the number of lawyers, it can be seen that most European lawyers receive a university education of short or average duration, while an examination in terms of Member States indicates the opposite.

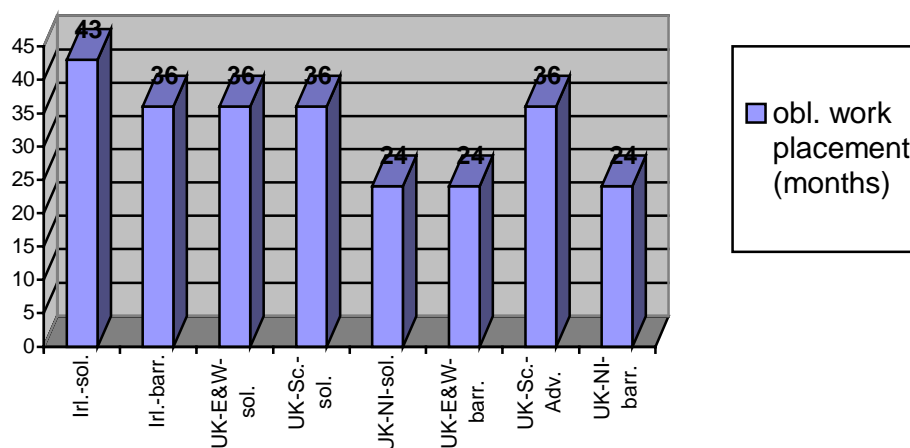
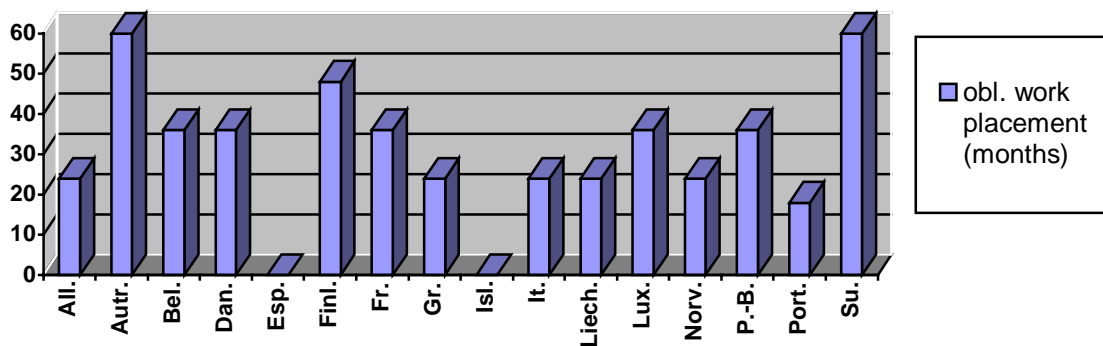
We now halt this examination of university education without deepening about its content in the strict sense of the term or the other characteristics involved (organization, funding, evaluations etc.). However, as will be seen in connection with the examination of the system currently in operation in the United States, the way in which theoretical law is taught in the universities is nevertheless of some interest for a unified Europe as regards access to the profession on the one hand and professional mobility and quality on the other.

## PRACTICAL TRAINING

### 1. THEORETICAL GLOBAL DURATION OF THE PRACTICAL TRAINING IN THE MEMBER STATES

As far as we have defined the practical training as *learning how to apply the rules of substantive law in a concrete environment (i.e. learning procedures and "paralegal" skills)*, this implies the taking into account of the two main existing teaching methods in that respect, courses and work placement, the latter being defined as *engaging in professional activities under the guidance of an established practitioner*.

We will see that both the courses and the work placements require a closer analysis, as far as these notions may cover different realities, in relation with the function that is assigned to them in each Member state. Before analysing is nevertheless interesting to show the apparent situation that is to say the total volume of vocational training in each Member state (thus including both the courses and all types of work placement).



It appears that in all countries except Spain (where the situation is very peculiar, since a large number of young lawyers *de facto* accomplish a work placement) and Iceland, a rather long period of vocational training is put forward (from 2 to... 5 years). This of course may seem reassuring as to the

existence of an acceptable minimum quality level of the vocational training of lawyers in Europe.

Unfortunately it is not that simple, as it appears from the more detailed analyse of the practical courses and of the work placements below.

**2. PRACTICAL COURSES**

a. PRELIMINARY REMARK

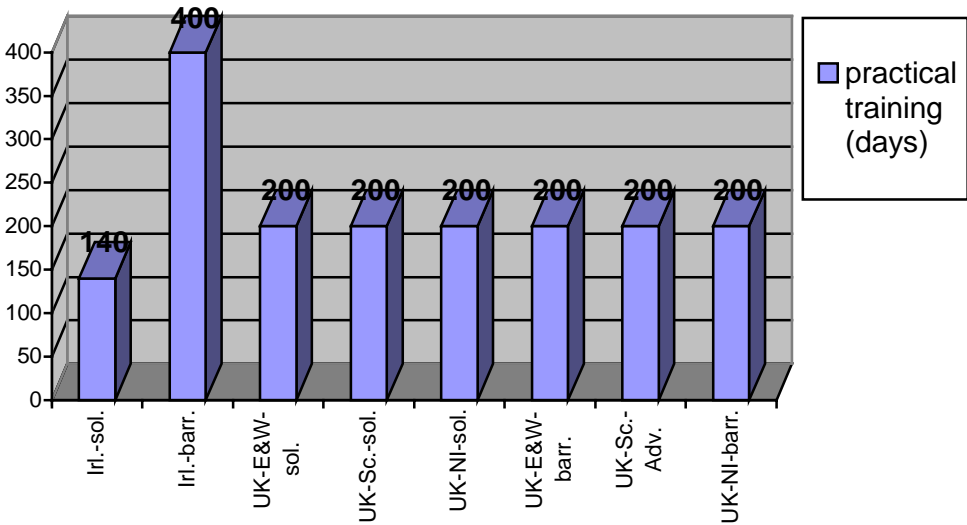
Only practical courses are referred to here. It goes without saying that, by definition, *work placements* constitute also a practical training, although they are more difficult to quantify and thus have to be examined separately (see below).

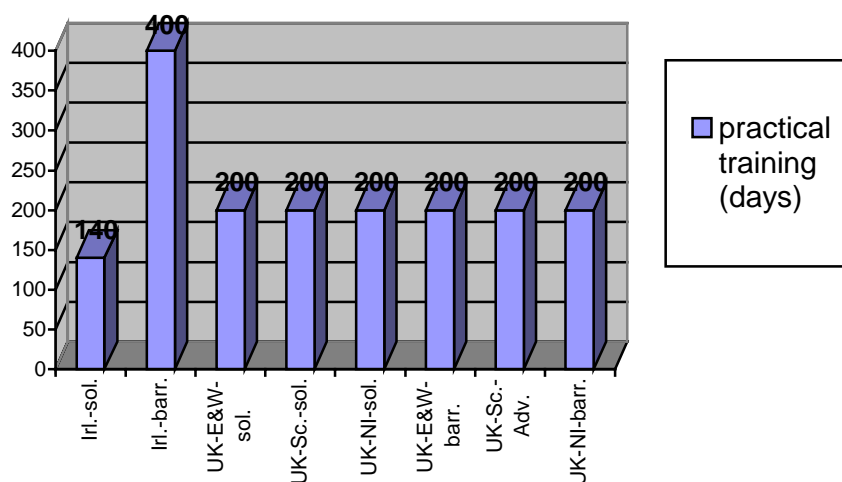
Moreover, even an evaluation of the volume of practical courses is beset by problems, as the data forwarded are in some cases in terms of years, weeks, months, days and hours etc. Some courses also assume the need for additional individual work and this was obviously not quantified.

It is necessary therefore to consider that the data which follow are indicative only, as some data had to be calculated on an average basis of a year of 40 weeks each and on the basis of 5 days involving 7 course hours per week.

III. VOLUME

A presentation based on training volume per Member State also reveals major disparities as follows.





Germany, France, Austria, the Netherlands and the *common law* countries appear to be the only countries organizing a whole range of courses extending over one year or more.

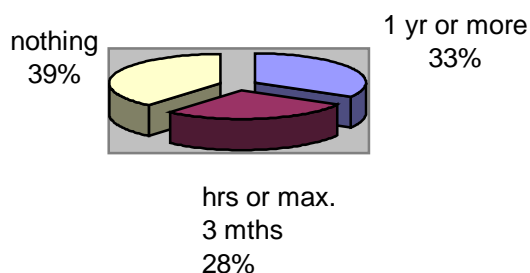
Other countries organize courses but more modestly (some hours to some months): Belgium, Denmark, Luxembourg, Norway and Portugal.

Some states do not provide for a range of compulsory practical courses: Finland, Greece, Iceland, Italy, Liechtenstein, Sweden.

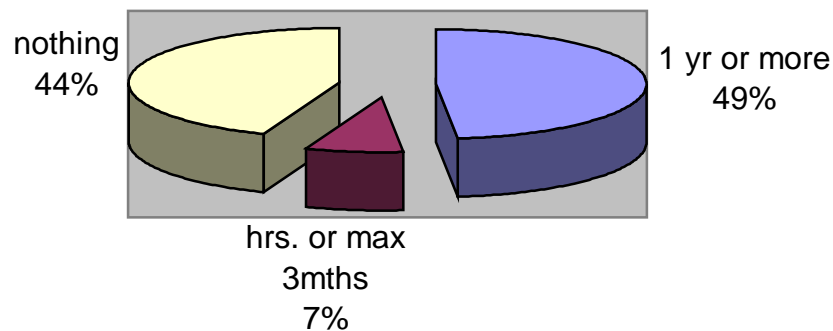
Among the countries in which there is no compulsory practical training, the case of Spain is a special one. Voluminous courses (one or two years depending on location ) are indirectly required of young lawyers who cannot find a tutor and who must resort to the *turno de officio* (legal aid system) in order to complete their training. In the meanwhile the Spanish Bar has prepared a model of a vocational training system which it would like to make compulsory for all lawyers, this objective having not yet been achieved.

Once again, it is interesting to analyze these categories in two ways:

- in terms of Member States:



- in terms of the number of lawyers involved:



It should thus be noted that 44% of European lawyers do not receive any practical training and that nearly half of them do not receive any significant practical training.

#### IV. CONTENT

This heading and the other headings which follow relate, of course, only to those Member States in which practical training is actually organized.

An examination of the replies to the questionnaire shows, first of all, that the distinction between a compulsory course and an optional one does not appear to be a meaningful one. There are optional courses only in Member States in which practical training is compulsory and their function is therefore solely to enable a lawyer to individualize the training received, not to exempt the lawyer from it.

A distinction can be drawn between three types of content in practical training:

- (1) *Practical training relating to procedures and the drafting of documents specific to the legal system of a Member State*

This category is of less interest to the CCBE, not because it may be of secondary importance - as this is an essential element in the quality of certain services - but rather because, by virtue of the principle of subsidiarity, only the national organizations concerned are in a position to evaluate whether such courses are appropriately organized.

- (2) *Practical training relating to supranational subjects*

The CCBE enquired whether there were courses for the following subjects:

- practice in Community law
- Practice in Comparative rules of procedure

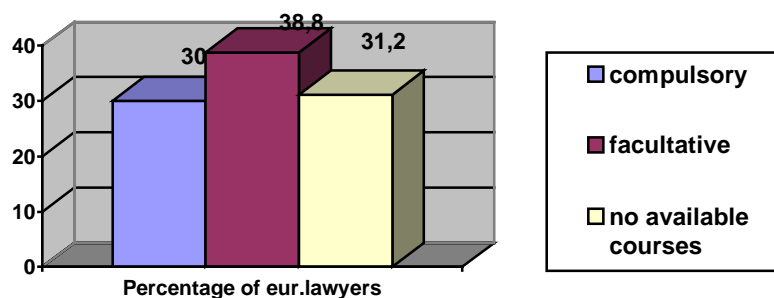
- practice in Human rights defence
- practice in international rules of procedure
- practice in international professional codes of ethics

It appears that only the *solicitors* in the United Kingdom and Ireland, the French and Belgian lawyers (to a lesser extent) receive practical training in some of these subjects, which could be of a major importance in the context of a lawyers's mobility.

To be sure, other Member States organize such courses, although on an optional basis (in many cases in the context of continuing education which is never compulsory for these specific subjects).

Some Member States report some of these subjects as being taught in the context of university training. It would appear, however, that in these cases the teaching is not of a practical nature.

To sum up on this question, it could be interesting to show the percentage of European lawyers who do not receive any *compulsory* practical training in any of these subjects ( %), the percentage of those who can receive it on an optional basis (e.g. in the context of continuing education), and the percentage of those who cannot receive it at all because such courses have not been organized:



### (3) *Practical training relating to "parajudicial" skills*

The CCBE enquired about courses for the following subjects:

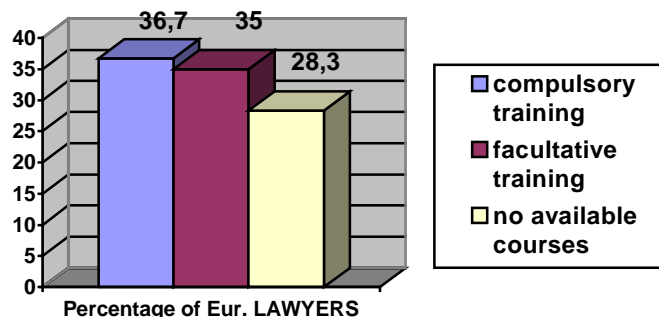
- 1) New technologies
  - office computerization
  - the Internet
  - databases
  - automation techniques
  - other ...
- 2) Foreign legal terminology
- 3) Negotiations
- 4) Conciliation and mediation
- 5) ADR use
- 6) Communications/media
- 7) Pleading

- 8) Advocacy
- 9) Meeting techniques
- 10) Drafting of documents
- 11) Drafting of legal opinions
- 12) Drafting of submissions
- 13) Professional liability
- 14) Managing an individual office
  - general organization
  - personnel management
  - taxation aspects
  - accounting aspects
  - management of clients
  - taxation of fees
- 15) Association management
- 16) General accounting
- 17) Time management
- 18) Quality standards
- 19) Marketing and advertising.

It is obviously impossible to draw detailed conclusions regarding such a large number of subjects. Nevertheless, some salient features emerge:

- Only Portugal, solicitors in the United Kingdom and Ireland, France, the Netherlands and Belgium (to a lesser extent) make provision for compulsory practical courses designed to develop "paralegal" skills.
- A larger number of Member States provide optional courses, mainly in the context of continuing education.
- No Member State makes provision for really *complete* compulsory practical training designed to develop "paralegal" skills.

The situation regarding the population of European lawyers can therefore be shown as follows:



On the whole, it has to be concluded at the very least that as regards the areas which are of particular interest to the CCBE, namely, practical training in what are called the "supranational" subjects, the situation varies greatly in the various Member States.

Moreover, not only is the number of Member States which make provision for compulsory practical training in these subjects very small, but a detailed examination of the replies (see Annexe 1) reveals that even in this case these subjects are covered only in part.

This finding should, however, be tempered by the consideration that in many Member States there are compulsory *work placements* in the offices of practising members of the profession (see below). It goes without saying that during these work placements some practical skills can be acquired without this necessarily having to take the form of a course. On the other hand, the actual usefulness of teaching certain subjects in the context of basic practical training is open to discussion (e.g. in some Member States, the structure of the profession does not perhaps require that association management be taught to young lawyers, just as advertising continues to be prohibited by most bars).

#### V. TEACHING METHODS

Quite apart from course content, it appeared that it would not go amiss to enquire about teaching methods adopted in the various Member States with a view to ascertaining to what extent lawyers have actually had to get down to practice or have been limited to collecting additional practice-oriented information.

It appears that in nearly all the Member States which organize practical training the courses are given orally and are accompanied by oral practical exercises.

On the other hand, only the Anglo-Saxon professions, Germany, France and Norway have recourse to written practical exercises. This has to be related, of course, to the (lack of) teaching of drafting techniques in the context of development of "parajudicial" skills on the one hand and of the teaching of procedure and the drafting of documents on the other.

It also appears that in all cases the courses are given by practitioners who are in most cases lawyers, but they are also by given by judges and members of other branches of the legal profession. In some cases university lecturers or professors (whether practitioners or not) provide assistance. These elements are also an indication of teaching which is really practice-oriented. However, the questionnaire did not aim at verifying to which extent the quality of the trainers is guaranteed (e.g. by training the trainers). This is of course an aspect of things that may not be neglected (also in relation with the work placements – see *infra*).

#### VI. EVALUATION

In all Member States which organize practical training for lawyers (apart from Austria, Sweden and the barristers of Northern Ireland in the UK), its successful completion is validated by an evaluation which generally takes the form of a written and/or oral examination which is sometimes accompanied by

a practical exercise.

The fact that the principle of an evaluation is generally accepted (as in the case of university studies) is, of course, of some importance, as this both attests to the genuineness of the courses given and makes it possible to establish a basis of comparison. It is in fact difficult to evaluate the consistency of a course (which can develop over time and also depends on the teacher). But it is possible to indicate the knowledge and skills validated by an examination. This is confirmed by the fact that in some countries, the vocational training organized – and financed- by the bar are so highly-regarded by the business world that some trainees only stay at the bar the time necessary to go through the vocational training.

To that end, a more detailed investigation would, however, have to be carried out.

## VII. ORGANISATION

The questions of organizing and funding training for lawyers are obviously closely connected. In the case of theoretical training provided in the universities and comparable institutions, the system is generally the same as the one prevailing for this type of education in all disciplines in each Member State. The profession generally has rather little to say in this field, and this is an aspect which goes beyond the framework of this report.

On the other hand, insofar as we were able to ascertain (see above) that, wherever it exists, *practical* training is provided in nearly all cases *after* basic theoretical legal training, it was important to determine who is charge of organizing such education in each Member State.

Indeed, if the CCBE or any other European body should ever decide to take an initiative in this matter, the type of action to be chosen will depend mainly on the people and institutions for whom it is intended (just as any financial or legal implications - see below). It would appear from the results of the questionnaire that in nearly all cases the bar is mentioned as the organizer or co-organizer. On the other hand, training in Luxembourg is organized by a university centre, while in Germany and Denmark this is done by the State.

This aspect of the question needs, however, to be examined in detail insofar as, due to the paucity of information available to date, it is not possible to determine with real certainty the location of the decision-making centre of gravity in terms of organization. (Organization by the State can in fact be mainly inspired by an influential profession, while organization by the bar can depend on the goodwill of the State exercised, for example, by means of legal and financial constraints - see below.)

## VIII. FINANCING

In addition to knowledge of the body which organizes training, knowledge of its financing also makes it possible to understand:

- the degree of autonomy of any organizing bar (in the case of State funding);
- the relative importance to be assigned to the financial health of the bar or individual lawyers (in the case of private funding).

Moreover, financial assistance from the State can also be interpreted as recognition by the public authorities of the Member State concerned that the quality of training for lawyers is in the general interest and not solely in the interest of the profession itself (which is the sole standpoint intentionally adopted in this report, as explained in the Introduction - see above).

Generally speaking, any idea of reform or any recommendation which would not take account of the financial constraints in each Member State would be doomed to failure.

The replies to the questionnaire on this point are, however, sometimes evasive or non-existent, and this undoubtedly reveals less knowledge of this aspect which, while relating, as it were, to "the sinews of war", is nevertheless a matter for the internal management of the bars. This implies that the study should examine this point in detail, in particular from a dynamic standpoint (impecuniousness of the bars, of the young lawyers, budgetary problems of the public authorities... or the converse).

It can, however, be noted already that all varieties of funding exist: by the bar, by the trainee, by the State and by the tutor (Denmark) or a combination of some of these methods.

#### IX. LEGAL ASPECTS

The question of the legal framework of the national training systems (in some cases linked to the funding aspect) is mentioned here only as a reminder, although it is clearly of major importance (in particular because the existence of obstacles could motivate a demand for European legislation).

This is a question which is so sensitive that it should be dealt with in a separate study.

### **3. THE WORK PLACEMENTS**

#### A. PRELIMINARY REMARK

A work placement - in other words engaging in professional activities under the guidance of an established practitioner - is in principle the safest method of providing training with a view to the provision of quality services, as it is the only way in which theoretical training can be ideally (as it involves a real situation) combined with nearly all aspects of practical training. There are also, however, some drawbacks involved in the specific organization of such training.

- Depending on the Member State and traditions involved, the concept can cover different situations, involving as it does a more or less major contribution or more or less strict monitoring on the part of the tutor. In some cases the work placement is not solely accomplished in a lawyer's office, and other work placements have to be taken. This therefore makes it difficult to assess the volume.
- As the trainee generally represents a cost for the tutor, there can be a conflict of interest between training needs and a legitimate concern relating to profitability.
- The quality of a work placement depends to a large extent on the actual skills of the tutor, and these, of course, are not checked in advance. This also implies that a work placement alone does not make it possible to improve training quality in certain areas which are new ones for practising members of the profession (e.g. a knowledge of Community legislation, which is lacking among many practising members of the profession, as was shown by a study carried out under the aegis of the European Commission with the assistance of the CCBE); that brings us back to the reflection about the "training of trainers", which should probably be bound with the reflection about the volume and content of the work placements (and of the practical courses).

It will be understood that a very detailed study would be required to make work placements a basis of comparison in the context of harmonization. Nevertheless, to the extent that it is an important element in the system governing access to the profession in many Member States, a description of the situation in Europe - which will necessarily be in general terms - will not be superfluous in this respect.

While reading the comments hereunder, attention should be paid to the following possible distinction between three types of work placement:

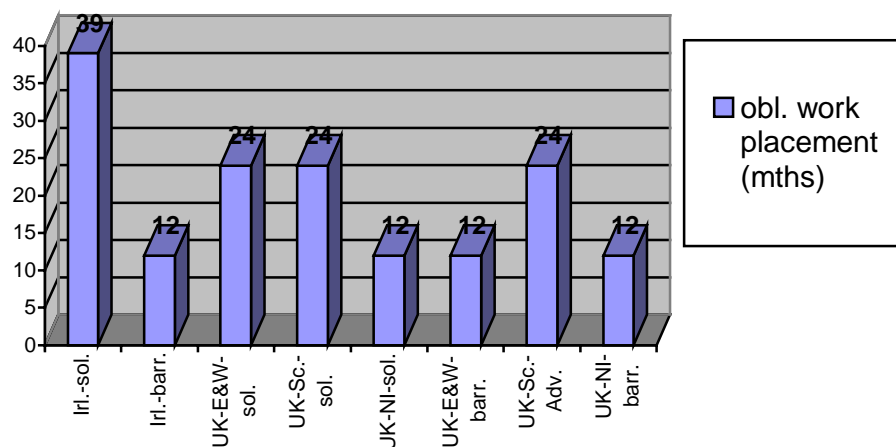
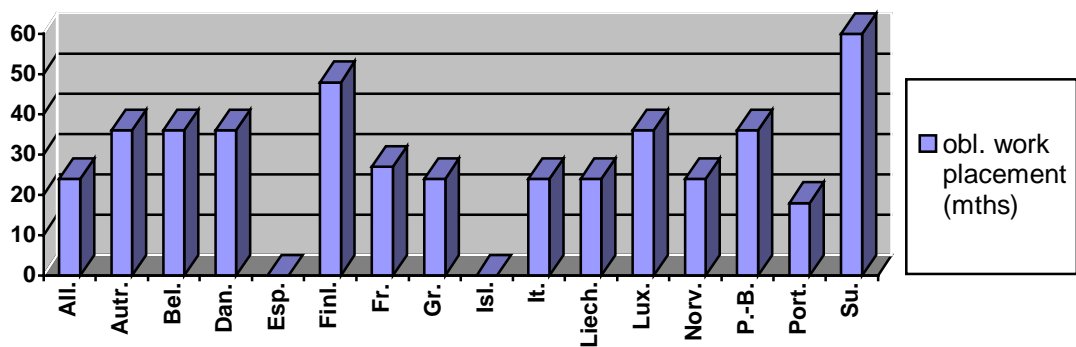
- "post-university" work placement, organised by the bar or by the vocational school, where the trainee does not have any specific status linking him with the profession or its exercise (he is not yet a lawyer nor even a "trainee lawyer") (Germany, a part of the French work placement period, Sweden);
- work placement in a position of trainee, this status implying limitations to the accomplishment of professional activities (a part of the Austrian work placement period, Denmark, Finland, Greece, a part of the Italian work placement period, Liechtenstein, Norway);
- the exercise of the profession (under one or another title) under the supervision of an established practitioner, but without major limitations to the professional activities: in fact, this work placement should be considered mainly as a probationary period before the definitive admission to the bar (Belgium, a part of the French, Italian

and Austrian work placement period, Luxembourg, The Netherlands and Portugal).

The answers to the questionnaire are however not detailed enough to determine accurately in which category the work placement periods mentioned by the member states should be classified, the more because multiple potential criteria for distinction exist (authorized activities, title, organization...). One should thus bear in mind that again a more thorough study should be realised and that one have to limit ourselves to approximations for the time being.

#### B. VOLUME

The minimum duration of a work placement (subject to the reservations stated above regarding its specific content) in the Member States can be shown as follows:



Not shown here are the opportunities for work placements in the context of university training or continuing education, as they do not appear to be significant (they are not provided with a view to access to the profession of lawyer and should be seen as forming part of the general context of initial legal training).

Moreover, it can be noted that in some Member States a work placement is not taken solely from a lawyer but also, for example, in a court or from another profession or institution (in Germany, Liechtenstein and Austria in particular), sometimes on a voluntary basis (Belgium, Finland, Sweden).

It can be noted that all Member States apart from Iceland provide for a relatively long work placement. Spain has not yet introduced an *obligation* as regards work placements, although the practice exists in most bars.

### c. EVALUATION

For reasons which have to do with the specific features and even the nature of work placements, as indicated above, their evaluation generally takes the form of a report drawn up by the tutor. In some cases, however, the knowledge and skills considered to have been acquired during a work placement are evaluated indirectly in the context of the final bar examination.

#### 1. REMUNERATION OF THE TRAINEE

Apart from the case of Germany, where trainees are paid by the State as if they were officials during their training period, the question of remuneration of trainees by their tutors has not always been answered clearly, especially as regards the amount involved. Two systems exist:

- no mandatory remuneration: in most cases (the remuneration is set by voluntary agreement between the parties);
- minimum remuneration scale: solicitors in England and Wales; some bars in Belgium.

This question, which is clearly a crucial one in the context of equal access to the profession, is a matter for a detailed study which should focus on the respective economic situations of the bars and young lawyers.

#### 2. ORGANISATION AND FINANCING

The replies to the questionnaire regarding this aspect are not sufficiently complete to permit a useful comparison to be drawn. An additional study could therefore be undertaken which would take account in particular of:

- any aid schemes which make it possible to ensure a sufficient income for the trainee and to distribute the burden of training among the members of the bar;

- any work placements for tutors: these courses could obviously promote uniformity in the content and quality of work placements;
- effective schemes for evaluating training periods and the courses provided.

### 3. LEGAL ASPECTS

Completion of a work placement period may be linked by law to the (definitive) award of the degree or qualification of lawyer or to being given the opportunity of engaging in professional activities in whole or in part (e.g. beginning some appeals or pleading before some courts). However, it is not possible to deal with this question within the framework of this report, as this would require an analysis of the judicial system of each Member State and this in turn would require more precise information than what has been requested at this stage.

## 4. TYPOLOGY OF THE GLOBAL VOCATIONAL TRAINING

Even if this report is only an intermediate one, based upon fragmentary information, it is already possible to take stock of the situation of the European lawyers' education by trying to work out a typology of the national vocational training systems, allowing to understand better the analyses described above.

### a. Mixed systems

No country (except Iceland, and to a certain extent Spain, the situation of the latter being peculiar as already mentioned above) seems to have found adequate not to resort to the guidance of an established practitioner in a view to accompanying the young lawyers in the early years of their professional life. Even when the work placement reveals to have, compared to more demanding training systems, a predominant probationary character, that element is still present.

However many Member states consider that such "on the job" transmission of practical knowledge should be completed by practical work placements, which of course may compensate possible lacks of the trainer himself (which jurist can claim to be a specialist in every field of the law?). Among these countries, some have virtually developed a full vocational training degree course: France, Germany, Austria, the United Kingdom and Ireland.

### b. Quasi-exclusively "work-placement" systems

In that category we find the countries where the greater part of the vocational training hinges mainly on the transmission of a practical knowledge by an established practitioner in the framework of a working relationship. Of course such type of training is not *ipso facto* inferior to the one mentioned earlier, but it is more difficult to quantify its quality. This is the situation of Belgium, Denmark, Finland, Greece, Italy, Iceland, Liechtenstein, Luxembourg, Norway, Portugal and Sweden. Even if some of them organise compulsory courses, their

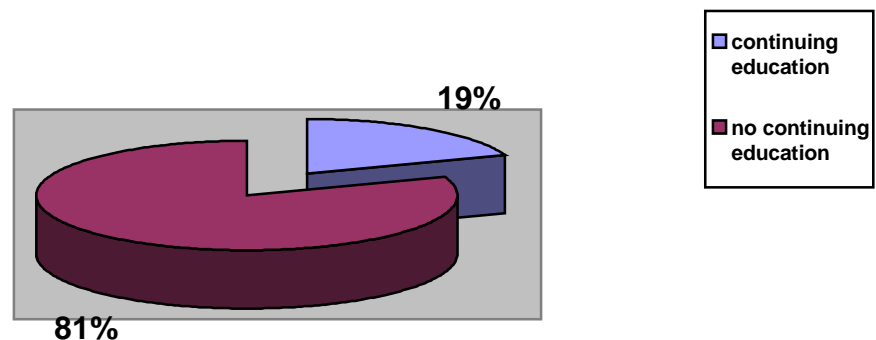
volume cannot be compared to the one of the really "mixed" systems described above.

## D. CONTINUING EDUCATION

### a. EXTENT

Only in four cases are lawyers under an obligation to complete a course of continuing education: Finland (3 days annually); solicitors in Scotland, England and Wales; and the Netherlands (12 h annually). In Germany, only specialized lawyers have to take a 10-hour course annually.

In relation to the total number of European lawyers, these lawyers constitute a minority:



### b. ORGANISATION AND FINANCING

The number of cases in which continuing education is compulsory is obviously too small to permit a useful comparison on a European scale.

We can, however, note the originality of the Dutch system which enables a lawyer to choose between attending courses (a list of which is provided), teaching and the drafting of specialized legal publications in order to comply with the obligation of continuing education.

### c. LEGAL ASPECTS

Only Germany makes provision for a legal obligation as regards updating knowledge. (While there are no checks on this, if the lawyer does not furnish proof that courses were taken, a penalty can be incurred under the professional code of ethics following imposition of damages and interest on grounds of professional liability).

## E. CONCLUSION

The following findings may be inferred from the preceding description of different aspects of the European lawyers' education, which was necessarily concise:

- Considering the *university education*, a more thorough study would be necessary in order to determine to which extent it effectively comprises, in some Member States, a preparation to the exercise of the profession of lawyer; one should among other things determine whether the differences in duration that have been noticed above (from 3 to 5 years) could be justified by the dedicating of supplementary time to a more practice-oriented education (practical exercises, etc.), or should be considered as the result of a difference in the understanding of the goals of studying at university (the will of teaching an encyclopaedical knowledge having as a necessary consequence that the volume of the courses increase at the same pace as the volume of the legislation);
  - About the *practical education* provided for in the scope of the access to the bar, one should notice that beyond an impression of relative equivalency of the global theoretical volume of the practical training, substantial differences appeared as soon as the elements of that training (courses and work placements) are examined in detail; it is obvious that this finding in particular is a potentially harmful for the mutual confidence between the European professions, and presents to the public a variegated image instead of a guarantee of uniform quality in the whole Union; here again, supplementary investigation should be lead in order to apprehend the exact range of the differences;
  - One should admit that very few Member states impose *continued education*, which means that the perennality of the quality after the initial theoretical and practical education is mostly not guaranteed; now it is obvious that such perennality is also a condition for mutual confidence and the image of quality that the profession wishes to offer;
  - Overall, the questionnaire also highlighted (however not in a very workable way, due to the smallness of the data which has been collected yet) the fundamental stake of the *organization, the financing and the legal issues* in the prospect of a willingness of harmonization: any recommendation should take into account the different situations of the member states in that respect.

For now the problems have been stated, still could be examined which rôle the official representative body of the European lawyers could take on for the common good.

Therefore a glance in a foreign country may not be uninteresting.

### **III. COMPARISON: THE SITUATION IN THE UNITED STATES**

#### **1. PRELIMINARY REMARK**

Comparison is a very difficult exercise, especially when the elements that are the subject of such comparison are rather dissimilar, and one readily incurs the reproach of approximation and of conceptual vagueness. We however have just noticed that this is not useless exercise, since it at least allows, by pointing out that some things are comparable while others are not, to open pointers for reflection.

It is with this spirit in mind that it did not appear incongruous, within the framework of a preliminary report on the organisation of the training of lawyers in Europe, to draw a general picture of the situation in another State-continent : the United States.

Indeed, if it is true that this country presents particularities unknown within the European Union (such as the community of languages and the homogeneity of the legal tradition (common law)), it still remains that solutions have had to be sought to a problem similar to the one which pierces the European profession and is the subject of the present report: how to ensure a real mobility of lawyers and an image of quality of the profession by using the lever of training. Indeed, the fifty American federate entities also present big differences in their respective legislation and institutional organisation: the difficulties posed by the harmonisation thus are partly similar.

Three information elements can at this stage hold our attention: the role of law schools in the theoretical and practical training, the teaching method of material law, as well as the role of the American Bar Association in the harmonisation of quality.

#### **2. GENERAL ORGANIZATION OF THE PROFESSION**

The general organisation of the training and the right to practice the profession appears as follow:

- Undergraduate studies of 4 years duration on average, providing access to a law school (college course): these four years of study can be connected with any discipline (of exact sciences or social sciences), and is not related with the law;
- Law degree (J.D. or Juris Doctor) of a three years duration in a law school;

- Entrance examination to the bar (or, in the States where the registration with a bar is not compulsory, examination allowing to go to court and requires by these): in almost all cases it is advisable to have a “J.D.” from a local law school or recognised by the ABA to be gaining a place in this examination;
- As a general rule there is no compulsory practical training organised by the bars, nor required training periods (even if in most cases novice lawyers often work under the supervision of an established colleague);
- The continuing legal education (or CLE) is imposed by some States or Bars, encouraged by others.

The main characteristics of training of American lawyers thus are a great multidisciplinary (they are trained beforehand to a non-legal discipline) and by the absence (as a general rule) of practical courses or work placements organised by the Bars or jurisdictions, the latter thus limiting themselves most of the time to require to have successfully passed the entrance examination.

### **3. ORGANISATION OF THE STUDIES AND ACCESS TO THE PROFESSION: ROLE OF THE ABA**

#### a. PRELIMINARY REMARK ABOUT THE ABA

The American Bar Association is an organisation based on voluntary participation of individual lawyers, at the level of the whole of the United States. It is not the only association of that type, but its rather large number of members and its ancientness provide it with a very important consultative role, up to the point – as we will see – of having an almost regulatory function in some fields such as training.

#### b. CERTIFICATION OF THE LAW SCHOOLS

##### (1) History

From the years 20', the ABA was faced with an increasing need from the Bars and jurisdictions (when the belonging to a bar is not compulsory to go to court): the provision of standard admission criteria to have access to the profession.

Such criteria in fact only indirectly focus on the admission itself (subject to what will be pointed out infra), but rather on the initial training provided by law schools. Such “interference” with the professional world in the content of university education, which is unknown to most European countries where the scientific vocation of university is put forward, is justified – according to the terms of the ABA – considering that the profession is the best and ultimate judge of the quality of the training.

Thus, since the years 50', the Council of the Section of Legal Education and Admissions to the Bar of the ABA acts as the national certification body

recognised by the Ministry of Education of the Federal government. Certification criteria have of course been updated, the last time was in 1996.

## (2) Criteria

Of course it is not possible within the framework of the present report to analyse the certification criteria defined by the ABA, but we just need to enumerate some of the elements to which they refer to understand the impact of the harmonisation that they imply:

### (i) organisation and administration of the establishment:

- financial resources
- regular self-evaluation
- organisation of the administration of the establishment
- availability of documentary sources
- non-discrimination and equality of chances
- positive discrimination of minorities
- employment services for diploma holders

### (ii) programme of studies

the aim of studies is the preparation to the admission to the bar  
the curriculum must train students:

- to basic material law
- to legal analysis and reasoning
- to research
  - to problem-solving
  - to written and oral communication
  - to scientific writing
  - to professional practice
- to the background, the aims, the structure, the duties, the values, the responsibilities and the deontological rules of the profession

as far as teaching methods are concerned:

study and work in small groups

- training periods and other modes of real experience
- optional participation to voluntary activities
- banning of correspondence course

as far as the volume of courses is concerned:

- minimum 1.120 hours of courses spread over a period of maximum 3 years (or 4 years for a part-time student);

- minimum 140 days for each academic year
  - control of a minimum attendance to courses
  - possibility to take into account part of the studies accomplished in a foreign country according to specific criteria
- (iii) Trainer: number and competence criteria
- (iv) Admissions: compulsory diploma and entrance examination
- (v) Library: content and organisation
- (vi) Conveniences offered to students

One will have understood that in reality almost the entire organisation of the training is the subject of ABA standards. However, it is advisable to point out that they do not all content specific and detailed standards, what implies an assessment margin which sometimes appears to be rather wide.

(3) Certification procedure and verification

A procedure was established in order to allow a law school to obtain (with the beforehand respect of standards of course) certification.

Likewise, law schools regularly are the subject of thorough verifications by a college of experts, and must keep the Council of the Section of Legal Education and Admissions to the Bars informed via a questionnaire.

c. STANDARDISED "MULTISTATE BAR EXAMINATION"

As a complement to law schools certification and thus indirectly of J.D. law degrees, the ABA has elaborated a standardised examination system, used by many bars as compulsory entrance examination.

d. EFFECTIVITY OF THE SYSTEM

It appears that almost all the American States recognise diplomas delivered by the 175 law schools recognised by the ABA.

This still does not guarantee a total mobility of the young American lawyers, since in most cases they still have to have successfully passed an examination entrance, which is not the case for a confirmed lawyer. However, the standardised examination (of course elaborated according to criteria also valid for the training provided by the law schools) is applied to an increasing number of bars.

**4 SIMULTANEOUS THEORETICAL AND PRACTICAL EDUCATION IN THE LAW SCHOOLS**

A first important observation of the training system that is at present in force in the United States of America in respect of the role played by the American Bar Association (ABA) in the definition of the contents of legal studies ( see below), is that they are strongly focusing on the practical side. Such practice does not only concern strictly law-related skills but also the aptitudes that have been labelled before as para-judicial.

Apart from this, even the theoretical teaching of law is bearing traces of this harmonisation : it is hardly aimed at encyclopaedic knowledge as this is still the case in many of the European Universities.

Confronted with that same problem of the existence of multiple legal systems in their own national territory – in fact, the laws and institutions may vary considerably from one federal entity to another – have the law schools made the choice to allow the multivalence and the mobility of its lawyers in teaching in the first instance the general common principles of law with the help of concrete examples in force in the federal entities. Additionally, the teaching is also more oriented towards an acquisition of aptitudes in the legal reasoning and in the research of relevant information.

## **5 CONCLUSION**

Without wanting to draw conclusions after this brief overview, it is still allowable to observe that in the United States of America the problem (for the profession treated as one entity) of the co-existence of different legal systems within one national territory seem to have been surmounted by the conjunction of two interacting elements :

- Teaching that turns towards the practical and towards the acquiring of good legal reasoning in view of the general common law principles
- A harmonisation of this teaching according to common criteria of quality but without any compulsory framework

Nevertheless, one must bear in mind that this harmonisation situation of the quality and mobility is the result of an evolution that started around the year 1920.

## 6 CONCLUSION : TRACKS FOR REFLECTION

It would be premature to formulate a precise and detailed evaluation within the framework of this report that understands itself to be intermediate and exploratory

However, one must at least note that two questions impose themselves at this stage in bringing together the two main parts of this paper:

- will the European profession be able to continue to offer its European and foreign clients a variegated and balkanised appearance as far as the quality of the training of its members and their ability for action in terms of mobility are concerned ?
- could the route that has been taken by the American bars, one that represents a progressive harmonisation on the basis of non-constraining criteria but supported by a policy of certification and mutual recognition, equally be followed by their European peers who have the chance to possess a supranational institutional representation ?

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