

# THE EDUCATION, LICENSING, AND TRAINING OF LAWYERS IN THE EUROPEAN UNION, PART II: THE EMERGING COMMON QUALIFICATIONS REGIME AND ITS IMPLICATIONS FOR ADMISSIONS IN EUROPE

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*Editor's Note: This is the second part of a two-part article. The first part, "Cross-Border Practice in the Member States," appeared in the November 2008 issue of the Bar Examiner.\**

## INTRODUCTION

The first part of this article outlined the nature and variety of legal professions active in the European Union (EU) member states. Each legal profession has its own unique education and training pathway to access the profession and a separate procedure for becoming a lawyer, and these vary from country to country and even within some countries.

Part I also explained the structure and nature of the new European legal order that emerged after World War II following the creation of the European Economic Community (EEC), now, since the coming into force of the Treaty of Lisbon, known as EU law. The EEC was an entity that sought to create a common market and provided a set of common European institutions authorized to make the necessary decisions and pass the necessary laws to achieve this objective. The existence of the EEC forced regular meetings between member states; the resultant regulation helped to enmesh their economies. The European Court of Justice (ECJ)<sup>1</sup> declared that the EEC had created a new legal order: European Community law. The new European legal order was designed to reach through national legal systems and had primacy over national laws. For lawyers within

the EU, this means that EU law plays an increasingly important part in their professional lives. The ECJ has also played a significant role in liberalizing legal services in the EU.

Finally, Part I covered how European licensing authorities cope with cross-border practice in the context of the new EU law environment. In the last few decades it has become much easier for a lawyer licensed in his or her home state to enter the legal profession in another state by virtue of the home state license. The development of the EU, two key EU directives (a type of EU secondary law) dealing with lawyers specifically, and ECJ case law have contributed to this change. The options for cross-border practice in a host state include temporary practice, establishing permanent practice (both while retaining the home state professional title), and joining the host state profession while acquiring a new legal professional title in that state. Each option is subject to certain registration and/or regulatory controls.

The EU rules that mandate opening the doors to the legal professions to allow the new EU-authorized pathways have had a large impact on national admission systems and the education and training regimes that lie behind them. This impact on

\*See Julian Lonbay, *The Education, Licensing, and Training of Lawyers in the European Union, Part I: Cross-Border Practice in the Member States*, THE BAR EXAMINER, Nov. 2008, at 6.

admissions and the EU's role in the sphere of education and training are covered in this second part of the article. In the process, the role of the Council of Bars and Law Societies of Europe will be mentioned as appropriate.

## LEGAL EDUCATION AND TRAINING: THE ROLES OF THE COUNCIL OF BARS AND LAW SOCIETIES AND THE EUROPEAN UNION

The Council of Bars and Law Societies of Europe (CCBE), founded in 1960, is a representative body covering more than 1,000,000 European lawyers through its member Bars and Law Societies from 31 full member countries and 10 further associate or observer countries.<sup>2</sup> It acts as a liaison between the EU and Europe's national Bars and Law Societies, whose national delegations represent its members, and is concerned with all European cross-border matters as they affect lawyers.<sup>3</sup> It has no overt regulatory powers of its own (except over its own internal affairs) but seeks out common positions in its representative and consensus-building roles.

In the sphere of legal education and training, achieving common positions has proved, in the past, to be very difficult. The CCBE has agreed that all lawyers should be professionally competent.<sup>4</sup> But what does this mean? As discussed in Part I of this article, there are many separate legal professions in Europe. The national educational requirements for becoming a lawyer vary considerably from country to country and, indeed, within some countries. The CCBE has nevertheless now adopted several measures on the education and training of lawyers in Europe, which I shall explore shortly.

As I noted in Part I, the EU has very limited authority over the laws and regulations of the mem-

ber states relating to the content and organization of education and training. The EU must fully respect the responsibility of the member states for the content of teaching and the organization of education systems and vocational training.<sup>5</sup> However, the EU has managed to adopt several legislative measures that help translate the results of one system of training into those of another system. Recognizing that a common set of educational standards would promote confidence in cross-border recognition of professional licenses, the EU has also been moving toward the establishment of a European Higher Education Area (EHEA, the aim of the Bologna Process described below), including a European Qualifications Framework designed to create transparency and focus on common educational standards. I will also examine these initiatives in this article.

## WORKING TOWARD THE EUROPEAN HIGHER EDUCATION AREA: THREE KEY STEPS

### **The Bologna Process: A Restructuring of Higher Education and a Focus on Learning Outcomes**

The Bologna Process<sup>6</sup> is most commonly associated with the process of structural realignment of higher education across Europe, which is likely to accelerate cross-border cooperation between European law schools. The common higher education structure sought is a division into bachelor's (undergraduate), followed by master's and doctoral (postgraduate) studies<sup>7</sup>, which is probably the most notable outcome of the Bologna Process.

In order to create a European framework of qualifications for their higher education systems, the member states themselves must devise national frameworks. It is intended that these national frame-

works will, by 2013 (previously 2010), comprise a systematic description of the national regimes for qualifications using learning outcomes. This represents a shift of attention from entry requirements and curriculum to the results of the learning process. The focus is on what (post)graduates can do and on their access to the labor market and their employability. The national learning outcomes will be linked together, thereafter creating an overarching European framework of qualifications for the EHEA.

Learning outcomes are considered to be a set of knowledge, skills, and competencies of the graduate that, in the European educational debate, will substitute for a set of knowledge inputs focusing on curriculum content. The focus instead is on what the graduate is expected to be able to do and may include specific knowledge, skills, and competencies in the specific field of study as well as general competencies obtained by general academic studies.

The goal of identifying the main learning outcomes is to link studies to the labor market and achieve the transparency sought in the Bologna Process, allowing the labor markets to compare outcomes transnationally. This approach also facilitates the creation of the EHEA and the European Qualifications Framework (EQF, discussed later in this article), and the comparison of levels of academic study.

The structural changes to the higher education system mean that for many states, a new three-year undergraduate law degree is being contemplated or created for the very first time.<sup>8</sup> Legal education in many European countries often occurred over a period of four, five, or even six years, depending on the country. So there is a clear, if voluntary, impact on academic legal education. The Bologna Process

also seeks to increase the transparency of qualifications<sup>9</sup> and the mobility of individuals.

### **The Lisbon Strategy: Improving Education and Training**

The Lisbon Strategy<sup>10</sup> set out to transform Europe and enable it, through a series of national actions, to become the world's most competitive, dynamic, and knowledge-based economy.<sup>11</sup> The EU member states recognized that education and training are key elements in the achievement of this goal. The Lisbon presidency (the holder of the presidency of the Council of the EU at the time of the Lisbon summit) called for member states to take the necessary steps within their areas of authority to meet certain educational targets,<sup>12</sup> and the EU education ministers adopted a work program to improve the education and training systems in their countries.<sup>13</sup>

The implementation of the Lisbon Strategy is through the intergovernmental process known as the Open Method of Coordination. Member states' policies in the affected areas are coordinated by EU-level guidelines (which set a course for member states) and timetables, coupled with the establishment of indicators and benchmarks.<sup>14</sup> The guidelines are then translated into national action plans with periodic monitoring of achievements and peer review.<sup>15</sup>

The Lisbon Strategy promotes a plethora of initiatives that impinge, via national implementation steps, on higher education, primarily with the aim of promoting economic growth and jobs. Until the advent of the Lisbon Strategy, the EU, with its very limited education authority,<sup>16</sup> had focused on promotion (funding) measures; now all manner of broader higher education matters are on the table for discussion and adoption of EU-level guidelines, admittedly within a nonbinding context.

## The European Qualifications Framework

The EU itself is creating a European Qualifications Framework (EQF) in a process semi-parallel to the Bologna Process, using the Open Method of Coordination under the Lisbon Strategy.<sup>17</sup> The EQF covers the entire educational spectrum (not just higher education as in the Bologna Process) and will help to create transparency without actually directly changing the national qualification systems. It will provide easily understandable information and will focus on common standards instead of differences among the varied qualification systems, thus improving mobility and recognition of those with qualifications. It will also develop a common language for discussing future developments in training matters.

The national and European qualification frameworks will create platforms for debate and agreement about the various qualifications. They will also help to develop tools for increased shared understanding about the various systems and become in themselves a method for consensus building in relation to the Bologna Process goals.

## A SECTORAL FRAMEWORK FOR LEGAL QUALIFICATIONS?

In the context of the national and European qualification frameworks, there is talk of creating a specific framework for legal qualifications. This, though, is very much in its early days.<sup>18</sup> Initially the European Law Faculties Association (ELFA)<sup>19</sup> considered that in some cases a three-year undergraduate law degree in one country would be followed by an LL.M. in

another jurisdiction, encouraging cross-border training of law students (this consideration is currently in abeyance). Legal academics from ELFA<sup>20</sup> participated in a research project, Tuning Legal Studies in Europe, which yielded some initial agreement on the competencies gained from legal studies across Europe.<sup>21</sup> So far, there is not full agreement on academic learning outcomes for law across Europe.

## IDENTIFYING OUTCOMES FOR LEGAL EDUCATION AND TRAINING

With cross-border legal practice a reality, with a renewed common code of conduct<sup>22</sup> for such practice, and with “integrated” lawyers (lawyers who have cross-qualified from one jurisdiction to another)<sup>23</sup> now also a reality, it was timely for the CCBE to begin to consider a common minimum standard for lawyers’ training<sup>24</sup> and to recognize those elements of national training that are indeed already common. Diversity in the legal knowledge, skills, and competencies achieved is an asset, but in an era of globalization, the CCBE recognized the need to avoid unnecessary barriers to free movement and the importance of promoting a transparent set of training regimes for lawyers in Europe.

This ambition conveniently fits in with current attempts to create the EHEA and the EQF discussed above. In light of these factors, the CCBE Training Committee decided to look at the outcomes of the legal training process in terms of knowledge, skills, and competencies expected from members of the legal professions in its member states.<sup>25</sup> The

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committee hoped this would help to highlight some of the commonalities in existing training regimes, rather than the differences that were all too easily seen.<sup>26</sup>

The result was a CCBE agreement on the main outcomes for training of lawyers across Europe.<sup>27</sup> There is a strong emphasis in this agreement on the ethical obligations that are the basis of legal practice. The competency-based approach<sup>28</sup> helped the CCBE reach agreement on at least some of the outcomes of the training for all European lawyers, which will help make it easier for lawyers to be recognized throughout the European Economic Area<sup>29</sup> via the EU directive mechanisms (as explained later in this article), and also through use of the new *Morgenbesser* route. (The *Morgenbesser* route, also explained later in this article, allows an individual who is in the middle of legal training to switch states halfway through the training in order to become a lawyer under a different state's training regime.) This might prove helpful in relation to Directive 2005/36/EC, which allows for the creation of pan-European "common platforms" as a mechanism for facilitating the free movement of professionals.<sup>30</sup> It can also enable the CCBE Training Committee to focus its attention on gaining a better understanding of the access rules for the legal professions as well as possible future CCBE resolutions or recommendations in this field.

## TWO RECENT DIRECTIVES: IMPLICATIONS FOR ADMISSION TO THE LEGAL PROFESSION

In terms of the actual changes that are now in operation, there are several areas where EU rules impinge

on admission practices, mainly through two key EU directives.

### Directive 2005/36/EC: The Mutual Recognition of Qualifications

One very important piece of EU legislation is Directive 2005/36/EC on the mutual recognition of qualifications.<sup>31</sup> The directive consolidates 15 previous directives and incorporates in legislative form several case law developments. The scope of Directive 2005/36/EC is enormous, covering over 800 professions across Europe. The EU's initial forays in this

area were led first by a series of limited directives that enabled the recognition of experience in trade sectors where qualifications, in those days, were not necessary.

This early set of 35 transitional directives<sup>32</sup> was followed by a second phase involving

a series of profession-specific directives, particularly for the health-related professions. By this vertical approach (i.e., rules applying to specific professions as opposed to "horizontally" to all), the EU mandated a set of training requirements for the medical, nursing, and allied professions. Relevant national training had to meet this European standard. The national diplomas awarded were listed in a parallel EU directive, and EU nationals holding such diplomas had their qualifications automatically recognized in all the other member states.

Advisory committees were set up to enable the maintenance and updating of the EU requirements for agreed-upon training levels. However, it soon became apparent that there would be considerable difficulties maintaining a profession-by-profession approach. European engineers, for

example, discussed a draft directive for over 18 years. They could not agree on the definition or functions of an engineer. The Architects' Directive took 19 years to agree upon, and it does not fully cover the architectural professions, as architectural education is not coordinated (that is, there are no EU rules defining it). Lawyers were not covered by these initial legislative acts, as the varied European legal professions could not be made to fit into the vertical sectoral system.

Realization of the limits of the vertical approach came in the 1980s during the push for finalization of the single European market. So the European Commission changed tack and switched from a vertical system to a horizontal system, comprising the third phase of activity in this area. The result was Directive 89/48/EEC, now subsumed in the new all-combining Directive 2005/36/EC.<sup>33</sup>

#### **Directive 89/48/EEC: Comparison of Qualifications and Compensation Measures**

The mechanisms set up by the new horizontal regime were groundbreaking. Essentially, the regime created a two-pronged approach. First, all member states' competent authorities (normally those designated by member states as gatekeepers of a profession) may not disallow admission to the profession by an EU national solely on the ground of lack of a national qualification. Instead, they must compare the qualifications held by the migrant to those required for entry into the profession.<sup>34</sup>

If the comparison shows that the migrant has the knowledge and skills required by the national

set of qualifications, he or she must be permitted entry. If there are gaps or substantial differences in the set of competencies held by the migrant, then compensation measures are permitted, as explained below. The substantial differences may consist of number of years needed for training, substantially different matters covered in the training, or activities regulated by the host state profession which are not regulated or do not exist in the home state.

The permitted compensation measures allow either a content-based aptitude test<sup>35</sup> or an adaptation period to compensate for training durational shortfalls of over one year.<sup>36</sup> The compensation measures cannot be cumulative. Normally the migrant can choose either an adaptation period or an aptitude test if those are the compensation measures in question,<sup>37</sup> except where the pursuit

of the profession requires "precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of professional activity."<sup>38</sup> In these cases the competent authority can decide whether to enforce either an aptitude test or an adaptation period. All the member states except Denmark<sup>39</sup> have exercised their right to insist on an aptitude test for migrating lawyers under this directive.<sup>40</sup>

Directive 2005/36/EC imposes a strict timetable for handling applications. Migrants must have their applications acknowledged, and if any documents are missing they must be informed within one month.<sup>41</sup> The whole process can take no longer than three months, although a one-month extension is

possible.<sup>42</sup> Any decision made must be reasoned and reviewable by a court of law.

The directive meant that the competent authorities for all the affected professions immediately had to learn more about the training that existed in neighboring states.<sup>43</sup> They also had to work out the essence of their own training requirements, for they could only select topics for an aptitude test that were essential for legal practice. The directive also introduced in every member state a coordinator to oversee and assist in its implementation and to be a repository of advice for administrators struggling to implement it. This administrative measure helped to ensure the success of the system.

In principle, the directive allowed member states to retain their professions' specificities but opened a new mode of access for EU lawyers who had qualified through their own professional regimes and who then succeeded in passing the relevant aptitude test (or fulfilling the required adaptation period). Some of these tests are difficult, but the process is much easier than totally requalifying in a new country. Having passed the test, the migrant becomes a member of the local profession with all the attendant obligations and rights, without having to repeat the apprenticeship or other stages of training which would otherwise be required of a candidate for admission in that country.

### THE MORGENBESSER ROUTE: APPLYING EU LAW TO QUALIFICATIONS IN PROGRESS

The directive system covers those who are already qualified to practice law in one country, but recently

the case law has been interpreted to allow those who have not finished qualifying to take advantage of the principle of mutual recognition. In *Morgenbesser*,<sup>44</sup> a French law school graduate sought access to the training regime for Italian lawyers. She was initially rebuffed for lack of an Italian law degree. Directive 2005/36/EC did not apply to her, as she was not a qualified lawyer in France, and the Italian trainee lawyers (*praticanti*) were not considered to be a regulated profession by the ECJ (therefore not a profession

allowed entry under the directive). However, the ECJ nevertheless applied the *Vlassopoulou* principle of mutual recognition in *Morgenbesser*, meaning that the obligation of assessment of qualifications now also applies to semi-trained professionals.

The ECJ here, through its interpretation of the EC Treaty (as it was then known) mandating free movement, is destabilizing national training regimes, which often have required stages resulting ultimately in access to the profession itself. In effect, EU nationals can bulldoze in halfway through the qualification process and make up for deficits in ways that traditionally are unavailable to nationals who have to follow the prescribed orthodox training route(s). Moreover, the directive regime contains administrative support structures that are lacking in the *Morgenbesser* route.

This is made worse by the ECJ's refusal to allow Bars and Law Societies to delegate to universities the task of assessing the merits and compatibility of a migrant's previous law degree. The ECJ emphasizes that academic equivalence is not the issue here; since Bars and Law Societies may only insist on knowledge that is essential for the practice of the

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profession, they have to make this assessment themselves. In jurisdictions where admission under the directive has been centralized (Italy) or semi-centralized (Germany) to ensure consolidation of expertise and uniformity in application of the EU law, it is, under the *Morgenbesser* route, still left to local admitting authorities to handle such applicants. This is the case because, unless legislation or other regulatory steps are taken to implement administrative procedures to assist professions handling *Morgenbesser* applications (by whatever entity has the authority to do so, which varies from state to state), there is not necessarily in national law any procedure to follow. In the case of Italy, for example, *Morgenbesser* applicants apply using the case law of the ECJ as authority, which indicates that the admitting authority (i.e., the regional bar) should be approached.

### EXPLOITATION OF THE DIRECTIVE SYSTEM

The *Morgenbesser* decision opens the door for forum-seeking trainees to find the weakest link and exploit it. This fear has been partially realized under the directive itself. Only one jurisdiction in Europe—Spain—has no compulsory legal training after the academic stage. This is due to change in 2011, but in the meantime, a steady stream of law school graduates—especially from Italy, but also from Austria—have used their home state law degrees, academically homologated in Spain, to gain access to the Spanish legal profession without further ado. They then return home as Spanish *abogados* and utilize their rights under Directive 98/5/EC to enable themselves to practice automatically in their home states, thus evading several years of training that

their less adventurous (or rash) colleagues must undergo before being licensed.

Naturally this state of affairs has led to litigation.<sup>45</sup> This makes one reflect on the difficulties imposed by this rule on admissions teams. The EU has well over 27 different systems, in a bewildering array of languages, for qualifying as a lawyer. As the rule resulting from *Morgenbesser* is case-made, there is no very clear guidance, though the CCBE has set out guidelines for Bars and Law Societies.<sup>46</sup>


### THE EVOLUTION OF EUROPEAN ADMISSION ROUTES IN LIGHT OF THE DIRECTIVE SYSTEM

The difficulty is that the home routes are typically not flexible enough to cope with semi-trained graduates, who anyway may show that they have acquired the necessary knowledge, skills, and competencies by new and unorthodox methods, not being constrained by national routes. The fact that two member states (Cyprus and Luxembourg) until very recently relied on non-national law degrees as part of their national routes of entry makes one consider whether there might not be some elements of legal abilities that are anyway transnational. In England and Wales, the creation of the Qualified Law Transfer Test by the Law Society, as a result of the original mutual recognition Directive 89/48/EEC, was intended to make this new route available also to non-EU lawyers (e.g., those from the United States, who in many ways were more familiar with the common law system than continental European lawyers), and now roughly 20% of new entrants are coming in through this route.

WILL IT BE LONG BEFORE A NATIONAL, FOLLOWING HIS OR HER COUNTRY'S ADMISSION ROUTE, ASKS WHY HE OR SHE SHOULD BE REQUIRED TO FOLLOW THESE ADMISSION PROCEDURES IF NON-NATIONALS CAN COME IN WITHOUT HAVING DONE SO?



So one can see that national qualification routes have now been supplemented by alternative European routes. This has led to ever-increasing flexibility in the national routes in order to try to accommodate the new, small but important influx of EU lawyers (and non-EU lawyers, as in the case of the United Kingdom), as well as the smaller influx of *Morgenbesser* applicants. Will it be long before a national, following his or her country's admission route, asks why he or she should be required to follow these admission procedures if non-nationals can come in without having done so? European law on equal treatment of EU citizens might assist by providing a legal basis in EU law.

What then is likely to happen, in my view, is the improvement and remodeling of assessment methods and a rethinking about what is actually necessary knowledge and competence for a lawyer. The potential fragmentation of legal services through reforms in how legal services are delivered also encourages that atomistic thinking about legal tasks—whereby legal functions are commoditized, enabling the outsourcing of legal functions and also allowing the possibility of nonlawyers under-taking legal functions. And, of course, the rethinking of lawyer competencies dovetails neatly into the debate over learning outcomes taking place in the Bologna and Lisbon Processes. 

## NOTES

1. The Court of Justice of the European Union is the highest court in the European Union. It was created as part of the initial conception of the European Union and consists of one judge from each member state in the Court of Justice as well as eight Advocates General, and also comprises several other courts.
2. Associate members are “the organisations which are representative of the profession of lawyer recognised as such and designated by the authorities of each State, member of the Council of Europe, which is in official negotiations in view of its accession to the European Union, and which have been admitted as such by the Plenary Session according to article VIII b).” Observer members are “the organisations which

are representative of the profession of lawyer in a Member State of the Council of Europe and which have been admitted as such by the Plenary Session according to article VIII b).” Associate and observer members may attend meetings of the CCBE Plenary Session without a right to vote, represented by no more than one individual for each state; they may also attend meetings of the CCBE Standing Committee. Statutes of the Council of Bars and Law Societies of Europe, as adopted at the CCBE Plenary Session on Nov. 28, 2009, available at [http://www.ccbe.eu/fileadmin/user\\_upload/document/statuts/statutes\\_en.pdf](http://www.ccbe.eu/fileadmin/user_upload/document/statuts/statutes_en.pdf).

3. See <http://www.ccbe.eu> for general information about the CCBE's role.
4. See CCBE Charter of Core Principles of the European Legal Profession, adopted at the CCBE Plenary Session on Nov. 25, 2006, as updated in 2008, available at <http://www.ccbe.eu/index.php?id=32&L=0>.
5. See Articles 165 and 166 TFEU Treaty.
6. The Bologna Process, sometimes referred to as the Sorbonne-Bologna Process, commenced with a series of ministerial announcements, initially from just four EU education ministers at the Sorbonne University in Paris. Now there are 49 members involved in the process. See <http://www.ehea.info/>.
7. This higher education structure is sometimes referred to by the number of years allocated to each phase (i.e., 3-1-3 or 3-2-3).
8. See, for example, Hege Braekhus and Olaug Husaboe, *The Impact of the Sorbonne-Bologna Declaration on Legal Education in Norway*, EJLE 43 (2004).
9. The Lisbon Convention on the Recognition of Qualifications Concerning Higher Education in the European Region 1997 introduced the Diploma Supplement for this purpose.
10. The Lisbon Strategy, sometimes referred to as the Lisbon Agenda or Lisbon Process, was formally started in 2000 by the EU heads of state and government. In 2002, the European Council set the objective of “making [European] education and training systems a world quality reference by 2010” (COM[2007] 61). The timetable has now shifted to 2020.
11. In a midterm review that recognized the failure to surge ahead, the target was slightly adjusted to a more social dimension aiming at economic growth and jobs. European Commission, Communication to the Spring European Council: Working Together for Growth and Jobs: A New Start for the Lisbon Strategy, COM(2005) 24 final, [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type\\_doc=COMfinal&an\\_doc=2005&nu\\_doc=24](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2005&nu_doc=24) (last visited Oct. 21, 2010).
12. The relevant Lisbon Presidency Conclusions are available at [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/00100-r1.en0.htm](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00100-r1.en0.htm). The European Commission provides regular reports on Lisbon Strategy progress. (The European Commission is one of the principal organs of the EU and has many functions in the legislative process as well as an executive and guardianship role, with legal powers to enforce EU law.)
13. The Education and Training 2010 Work Programme (ET 2010) is now revised and known as ET 2020. Joint Interim Report of the Council and the Commission, Education & Training 2010: The Success of the Lisbon Strategy Hinges on Urgent

- Reforms (2004), available at [http://ec.europa.eu/education/policies/2010/doc/jir\\_council\\_final.pdf](http://ec.europa.eu/education/policies/2010/doc/jir_council_final.pdf). The 2007 progress report Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Delivering Lifelong Learning for Knowledge, Creativity and Innovation, is available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0703:FIN:EN:PDF>. The most recent restatement is the Council Conclusions of May 12, 2009, on a Strategic Framework for European Cooperation in Education and Training (ET 2020), OJ C 119/2 (2009). For information about the work program, see [http://europa.eu/legislation\\_summaries/education\\_training\\_youth/general\\_framework/ef0016\\_en.htm](http://europa.eu/legislation_summaries/education_training_youth/general_framework/ef0016_en.htm).
14. The indicators and benchmarks were adopted in 2003 (Council Conclusions on Reference Levels of European Average Performance in Education and Training (Benchmarks) of May 7, 2003, available at [http://ec.europa.eu/education/policies/2010/doc/after-council-meeting\\_en.pdf](http://ec.europa.eu/education/policies/2010/doc/after-council-meeting_en.pdf)). They are regularly reviewed and revised. See, more recently, the European Commission's proposals, A Coherent Framework of Indicators and Benchmarks for Monitoring Progress Towards the Lisbon Objectives in Education and Training, COM(2007) 61 final (Feb. 21, 2007).
  15. See paragraph 37 of the Lisbon Presidency Conclusions, available at [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/00100-r1.en0.htm](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00100-r1.en0.htm).
  16. See Part I of this article.
  17. Creation of the EQF was strongly supported by the European Commission and the EU education ministers at their meeting in November 2006. European Commission Education & Training, the European Qualifications Framework, [http://ec.europa.eu/education/policies/educ/eqf/index\\_en.html](http://ec.europa.eu/education/policies/educ/eqf/index_en.html) (last visited Oct. 21, 2010).
  18. See Julian Lonbay, *A European Qualification Framework for Social Sciences: How Does Law Fit In?*, in DIRECTIONS IN LEGAL EDUC. (2009), available at <http://www.ukcle.ac.uk/resources/directions/previous/issue19/eqf/>.
  19. The European Law Faculties Association (ELFA) was founded in 1995 in Leuven, Belgium, by more than 80 faculties of law located in different universities across Europe. The organization now has more than 180 members from countries within the EU and beyond. It acts as an international forum for the discussion of many legal topics related to legal education. See <http://elfa-afde.eu/aboutelfa.aspx>.
  20. See [http://elixir.bham.ac.uk/quaacas/Quaacas\\_Committee.htm](http://elixir.bham.ac.uk/quaacas/Quaacas_Committee.htm) (last visited Oct. 21, 2010).
  21. See Julian Lonbay, *Tuning Legal Studies in Europe: Initial Findings*, 4 EJLE 171 (2007), available at [http://elixir.bham.ac.uk/menu/quaacas\\_frameset.htm](http://elixir.bham.ac.uk/menu/quaacas_frameset.htm).
  22. CCBE Code of Conduct, <http://www.ccbe.eu/index.php?id=32&L=0> (last visited Oct. 21, 2010).
  23. Directive 98/5/EC, 77 OJ L 36–43 (1998), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:077:0036:0043:EN:PDF>.
  24. CCBE Resolution on Training for Lawyers in the European Union (Nov. 2000), available at [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/form\\_enpdf1\\_1183977205.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/form_enpdf1_1183977205.pdf).
  25. The benchmarks for academic legal studies applicable in England and Wales might be of interest, available at [http://www.qaa.ac.uk/academicinfrastructure/benchmark/state\\_ments/Law07.pdf](http://www.qaa.ac.uk/academicinfrastructure/benchmark/state_ments/Law07.pdf).
  26. See JULIAN LONBAY, *Differences in Legal Education in the Member States of the European Community*, in THE COMMON LAW OF EUROPE AND THE FUTURE OF LEGAL EDUCATION (De Witte and Forder, eds., Kluwer, 1992).
  27. CCBE Recommendation on Training Outcomes for European Lawyers (Nov. 2007), available at [http://www.ccbe.eu/index.php?id=94&id\\_comite=13&L=0](http://www.ccbe.eu/index.php?id=94&id_comite=13&L=0). A training outcome can be considered to be a set of knowledge, skills, and competencies of the trainee lawyer immediately before admission to the Bar or Law Society.
  28. As the Law Society of England and Wales declared, "It is expected that from the first day in practice, every lawyer should meet the professional standards expected by the public." The Law Society of England and Wales Training Framework Review consultation paper is available at <http://www.lawsociety.org.uk>. The statement on the Training Framework Review (May 2004) is also of interest, as is the Scottish Law Society's Lawyers of the Future, available at <http://www.lawsot.org.uk/>.
  29. The European Economic Area was created in 1994 and includes all the EU member states plus Norway, Iceland, and Liechtenstein. These states must comply with most of the EU single-market laws by adopting appropriate national measures, and they have access to the benefits of the single market, including the rules on free movement of lawyers.
  30. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, Article 15.
  31. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255/22 (2005).
  32. These early directives were consolidated by Directive 1999/42/EEC of the European Parliament and of the Council of 7 June 1999, establishing a mechanism for the recognition of qualifications with respect to the professional activities covered by the directives on liberalization and transitional measures, and supplementing the general systems for the recognition of qualifications. OJ L 201/77 (1999).
  33. 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 L 019/16 (1989); Directive 2005/36/EC (see note 29 above).
  34. Sanctioned result mandated by the European Court of Justice in the famous Vlassopoulou case, Case C-340/89 *Vlassopoulou v. Ministerium for Justiz, Bundes- und Europaangelegenheiten Baden-Worttemberg* ECR I-2357 (1991), with an eye on the draft (at the time of the ruling) Directive 89/48/EEC legislation.
  35. An aptitude test, as was defined by Directive 89/48/EEC, is "a test limited to the professional knowledge of the applicant, made by the competent authorities of the host Member State with the aim of assessing the ability of the applicant to pursue a regulated profession in that Member State." Directive 89/48/EEC, Article 1g.

36. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, Article 14(1a).
37. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, Article 14(2) Paragraph 1.
38. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, Article 14(3).
39. Article 135a of the Administration of Justice Act.
40. A European Commission attempt to remove this exception during the process of adoption of the directive was thwarted by the member states.
41. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, Article 51(1).
42. Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, Article 51(2).
43. The author carried out research on this for the four Law Societies of the United Kingdom and Ireland, resulting in the publication of JULIAN LONBAY ET AL., TRAINING LAWYERS IN THE EUROPEAN COMMUNITY (The Law Society 1990).
44. Case C-313/01 *Christine Morgenbesser v. Consiglio dell'Ordine degli avvocati di Genova*, ECR I-13467 (2003); see also Julian Lonbay, *Have Law Degree—Will Travel*, EJLE (2004).
45. See Julian Lonbay, *Who Holds the Key to the Door? Diminished National Access Controls to Legal Practice in Europe and Its Implications for Legal Practice in Europe*, FORDHAM INTERNATIONAL LAW JOURNAL (forthcoming).
46. CCBE Chronology (I), Analysis (II) and Guidance (III) to Bars and Law Societies Regarding Case C-313/01 *Christine Morgenbesser v. Consiglio dell'Ordine degli avvocati di Genova*, 5th Chamber (13 November 2003), available at [http://www.ccbe.org/fileadmin/user\\_upload/NTCdocument/morgenbesser\\_guidanc1\\_1183976940.pdf](http://www.ccbe.org/fileadmin/user_upload/NTCdocument/morgenbesser_guidanc1_1183976940.pdf).



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