

Recognition of Diplomas: The Free Movement of Lawyers

Hildegard Schneider

Faculty of Law

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1974

- Reyners:
- => right of establishment (art. 43 ECT)
- => lawyers (art. 45 ECT not applicable)

- Van Binsbergen
- => free movement of services (art.49 ECT)

- Service: temporal and occasional cross-border professional activity (Art. 49 ECT)
- Establishment: full integration in the host MS profession and settlement in another MS (Art .43)

Lawyers ???

- Advocaat
- Rechtsanwalt
- Solicitor, Barrister, Advocate
- Avocat
- Avvocato
- Abogado
- Advogado
- Advokat
- Adwokat
- Dikigoros
- Avukat
- Odvetnik
- Ügyvét

1977

- Lawyers Service Directive 77/249
- Legal advice
- Present clients before the court in another MS

- Professional versus Academic recognition
- Problem of legal basis and competence

Professional recognition via European legislation

- Transitional Directives
- Sectoral Directives → vertical approach
- General Directives → horizontal approach
- Directives 89/48, 92/51, 99/42
- now (20 October 2007): 2005/36/EC

Sectoral Directives

- Doctors
- Nurses
- Dentists
- Vets
- Midwives
- Pharmacists

- Architects
- Lawyers (services) 1977
- Lawyers (establishment under home title) 1998

European Court of Justice

- Cassis de Dijon 1981
- Mutual recognition based on mutual trust
- => Internal Market Philosophy 1985

Relevant Case Law I

- Reyners 1974
- Van Binsbergen 1974
- Klopp
- Vlassopoulou !!! 1991
- Hoczman
- Luxembourg v. Council

Directive 89/48 (now: Directive 2005/36)

- Article 1
 - Diploma
 - Regulated Profession/Regulated Professional Activity
 - Third Country Diploma
- Article 3
 - Principle of Mutual Recognition
- Article 4
 - Compensatory Instruments
 - Length: Professional Experience
 - Content: Aptitude Test or Adaptation Period
- Article 7
 - Professional Title of Host State

Three Lawyers Directives

- Service Directive 77/249
 - General System Directive 89/48
 - Articles 3, 4 and 7:
 - now (20 October 2007) Directive 2005/36
 - Articles 12, 13, 14 (3) and 52
 - Establishment Directive 98/5
- „Final product“ : fully qualified lawyer

Directive 98/5

- Article 2: right to practice under the home-country professional title
- Article 5: area of activity
- Article 10: treatment as a lawyer of the host state

→ Alternative Routes to Directive 89/48

Article 10 (1) Directive 98/5

- „A lawyer practicing under his home-country professional title who has effectively and regularly pursued for a period of at least three years an activity in the host MS in the law of that State including Community law, with a view of gaining admission to the profession of lawyer in the host MS, be exempted from the conditions set out in Art. 4 (1) (b) of Directive 89/48...”
- → no aptitude can be required anymore if one can prove an „effective and regular pursuit“ of law practicing concerning host State law

Directive 2005/36

- Legislative Consolidation aimed at combining the three General System Directives with twelve Sectoral Directives
- Repeal of the 15 old Directives on Expiry of the Transposition Deadline
- → 20 October 2007
- Excluded are Service and Establishment Directives of Lawyers (77/249 and 98/5)

Lawyers (advocates) in 2008

- If they want to operate internationally can choose between:
- Service Directive 77/249
- Lawyers Home Title Directive 98/5
- Recognition Directive 2005/36

Condition:

- Fully qualified lawyer (advocate) according to the educational system of one MS
- → mobility in all MS

Consequences for law students

- Qualification according to the national system of one Member State

⇒ Academic qualification with „civiel effect“

And

⇒ Professional qualification

⇒ „Final product“

Netherlands

- University education with „civiel effect“: => bachelor and master
- Bar training in the NL/advocaat stagaire
- Advocaat
- Directive 98/5 „establishment under home title“ =>advocaat
- Directive 89/48 (now Directive 2005/36)
- recognition procedure,
- Dir. 89/48:Articles 3 and 4, => Article 7 professional title of the host member state, e.g. Rechtsanwalt
- Now => Dir. 2005/36: Art. 13, 14 (3),52

Relevant Case Law II

- Beutenmüller
- Morgenbesser
- Commission v. Austria 2005
- Wilson, 2006
- Commission v. Luxembourg, 2006

- Lubina ?

Current and Future Developments

- Morgenbesser
- Lubina
- Academic training in one MS (e.g. NL)
- Professional training in another MS (e.g. Germany, Belgium)

How far is the future ?

- GERMANY
 - Änderung des Deutschen Richtergesetzes
 - § 112 a:
 - Gleichwertigkeitsprüfung für die Zulassung zum juristischen Vorbereitungsdienst
- = > Aptitude test for entering the professional training in Germany

Condition

- Nationals of the EU, EEA or Switzerland
- Ein rechtswissenschaftliches Universitätsdiplom (academic qualification) of the EU, EEA and Switzerland
- „das dort den Zugang zur postuniversitären Ausbildung für den Beruf des europäischen Rechtsanwalts gemäss § 1 des Gesetzes über die Tätigkeit europäischer Rechtsanwälte in Deutschland eröffnet“

- ...werden auf Antrag zum Vorbereitungsdienst zugelassen, wenn ihre Kenntnisse und Fähigkeiten den durch die bestandene staatliche Pflichtfachprüfung entsprechen...
- in case of differences => aptitude test

§ 112 a (3) Eignungsprüfung

- Aptitude test in the German language
- Subjects are: civil law, criminal law and public law including the law of procedure
- The aptitude test can only be repeated once

- Belgium
 - Either special one year course at university level
- or
- Examination at the bar

⇒ Bar training in Belgium

⇒ Advocaat in Belgium

- Academic versus Professional Recognition
- Perhaps only an academic discussion in the future !!!

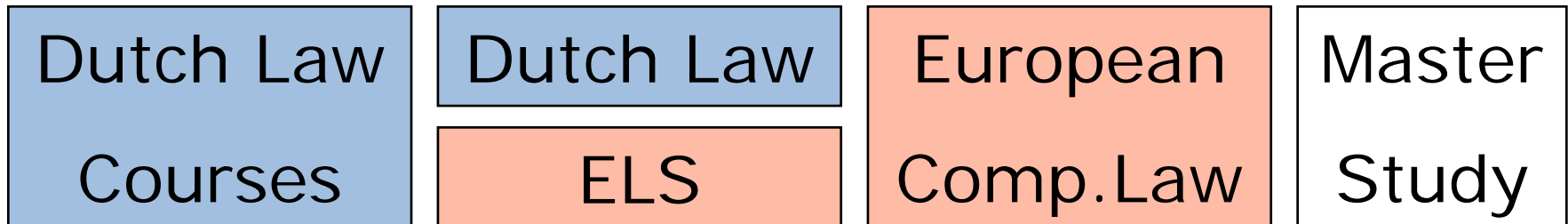
European Law School “classic”

- Content
 - Dutch Law
 - Comparative Law
 - European Law
- Approach
 - Skills
 - English-language
 - Small groups



European Law School

‘Classic’



- Dutch law first
- European and Comparative law later

Ambition

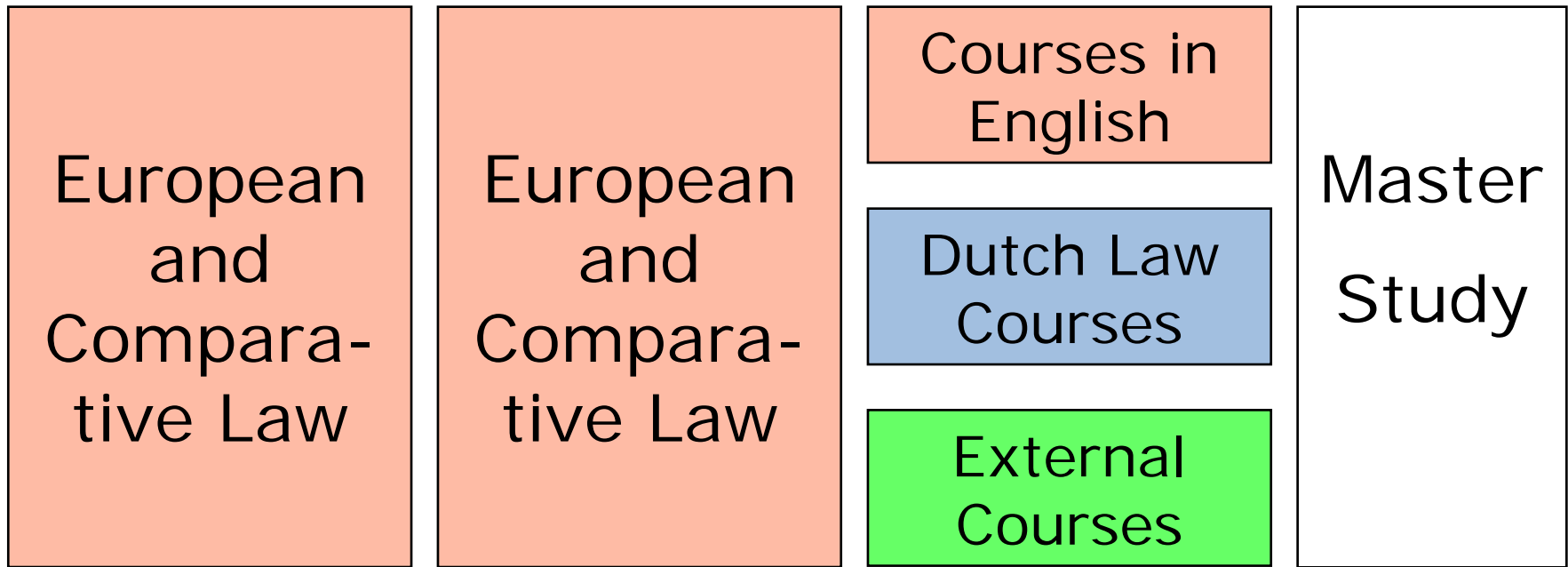
- Teaching Europe's Legal Professionals...
 - Solicitors, judges, prosecutors
 - Company lawyers
 - In-house lawyers
 - Policy makers
- But above all...
 - Academically formed law graduates
 - Experts on European Law and Policy, able to work nationally and internationally

European Law School English track

- Curriculum
 - Year one
 - Introduction to law
 - Problem based learning
 - Binding Study Advice
 - Work in progress
 - Year two
 - Year three

European Law School

'ELS-ET'



European Law School

Ba Year one

'ELS-ET'

- Introduction to Law and Legal English
 - Comparative Government
 - Comparative Contract Law
 - Legal History
 - Common Law
- States Markets and European Integration
 - Comparative Law
 - European and International Law
 - Comparative Criminal Procedure
 - Portfolio



European Law School Ba Year two/three 'ELS-ET'

Second year

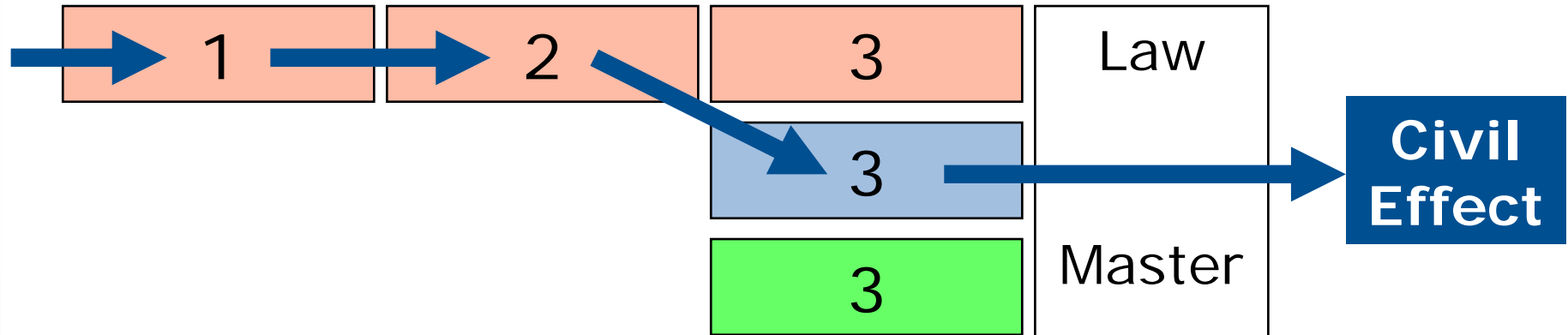
- Comparative Property Law
- Substantive Criminal Law
- European Law Foundations
- Comparative Tort Law
- Private International Law
- European Law: Substantive
- Electives:
 - Intro. European Company Law
 - Eur. Criminal Justice Area
 - Minor English language:
 - European Contract Law
 - Eur. Administrative Law
 - Minor Dutch Law:
 - Materieel strafrecht en criminele politiek; and
 - Bestuursrecht
 - Burgerlijk procesrecht
- Legal Writing and Moot Court Training

Third year minors

- English language electives
- Nederlands Recht / Dutch Law ('Civiel effect' with master at UM)
 - Vermogensrecht
 - Staats en Bestuursrecht
 - Juridisch Nederlands
 - Arbeid en Onderneming
 - Strafrecht
- Belgisch Recht / Belgian Law
- Bachelor Essay

European Law School

'ELS-ET'



- Qualification for Training at Law Firm (Advocaat-Stagiair)
- Title *Advocaat* after 3 years

European Law School

'ELS-ET'

LL.B.

LL.M.

Civil Effect

Advocaat

Rechts-
anwalt

- Right to work as lawyer EU-wide under home title
- Title of host EU Member State:
 - 3 years work practice, or
 - Aptitude test

- Thank you for your attention !
- Questions ?

