

# THE THREE TRUTHS ABOUT THE EUROPEAN LEGAL SYSTEM THE THREE TRUTHS ABOUT THE SYSTEM OF BELGIAN LEGAL EDUCATION

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## I THE THREE TRUTHS ABOUT THE LEGAL SYSTEM OF THE EU

1. The legal system of the EU is a specific legal system of its own based on the idea that very close economic integration, will make it impossible in the future for the Member States to start national wars.
2. The system operates on the principle of the absolute supremacy of the European rules. Most of the rules in this system however are implemented and enforced indirectly through national parliaments and national courts, without a central European administration implementing these laws and court decisions. The major engine of legal developments in the EU is the European Court of Justice, which has the power to interpret all EU law. The European legislator is of secondary importance in the development of EU law.
3. The legal system of the EU covers only a part of the legal spectrum that is connected in the widest sense with market integration. Large areas of law are left untouched by the EU: family law, traditional criminal law, education, culture.

1. The EU legal system is based on market integration:

The most fundamental idea of the Treaty of Rome signed on March 25<sup>th</sup>. 2007 is to create one single and integrated market i.e. a market without any obstacles at the border to movements of goods, persons, services and capital and in which the rules of free and fair competition between businesses would prevail, without any distorting interventions by national governments. In order to achieve this economic integration Member States agreed to abolish all customs duties and measures having an equivalent effect to trade restrictions and to establish free movement of persons, goods, services and capital on the basis of the central principles of non-discrimination and non-restriction. This is the fundamental idea to which all Member States adhere and on which application of European Community law largely turns for the interpretation of these fundamental principles.

There is however disagreement on the implementation of this idea. Some in the EU (the Europhiles) see the economic integration as a first stage of a spontaneous process of political integration, that would result out of necessity from the very close economic integration. However essential ingredients for political integration are lacking in the Treaty of Rome (absence as a dominant political force of an effective legislator, absence of a core of federal administration, absence of competence in matters of defense, foreign policy, immigration and important areas of justice and health and welfare policies.

Some others (the Eurosceptics) see the economic integration as restricted to free trade, abolishing all customs duties and levies having an equivalent effect, with a restricted scope for the fundamental freedoms limited to non-discrimination of non-nationals and strict enforcement of state aid rules, and rules on anti-trust and free and fair competition. It turns out that the process of economic integration is indeed a spontaneous process, requiring also social integration and requiring ever closer political cooperation. The absence of an effective legislator deciding by (qualified) majority voting in essential matters of economic integration such as immigration and taxation is perceived as an obstacle to full economic integration that should be abolished.

## 2. Supremacy of European law enforced by national institutions and controlled by EU institutions:

The system operates on the basis of the absolute supremacy of European rules. However these rules are not directly enforced by European administrations and European courts. The national legislators mainly implement the European rules by incorporation of these rules into their national law and that national law is then implemented by national administrations and enforced by national courts.

The control by the European institutions is indirect in most cases. In matters of competition the enforcement by the Commission is direct, but otherwise the Commission enforces the rules against Member States and individuals or entities by initiating infringement procedures before the ECJ. The ECJ is the only court having the power to interpret the EU rules authoritatively, but the ECJ does in the end not decide the cases submitted to it. It only gives an interpretation of the principles and rules of EU law that in its view are to be applied, allowing the national judge to apply these principles and rules correctly in order to reach a decision.

The whole legal system is characterised by the absence of a dominant legislator backed up by a competent administration implementing and administering the rules. Over the years the role of the European parliament has increased and been improved, but the principal legislative authority still remains with the sovereign states in the Council of Ministers deciding by qualified majority or even by unanimity. This makes the legislative process extremely slow and ineffective.

## 3. A partial and imperfect legal system:

European Community law covers only part of human activities. Large swaths of the area of law remain untouched by the principles of European Community law. This makes the European legal system appear as a system of pure business interests, with a huge unbalance in its value judgments. Part of these other areas are covered by developments under the Convention of Human Rights (CHR). Although the ECJ has decided that the CHR constitutes part of the principles of European community law, the CHR is formally not part of European Community law and its enforcement depends on case law

developed by the Court of Human Rights, an institution falling outside the framework of the European Union.

Therefore the over-all impression of European Community law is one of an imperfect legal system, based for its development on fundamental principles of economic integration and case law in its applications, but lacking some competences and some legislative instruments which are essential to a mature legal system.

## II THE THREE TRUTHS ABOUT THE SYSTEM OF BELGIAN LEGAL HIGHER EDUCATION

1. Belgian legal education as such does not exist, because it is conducted partly in a small language (Dutch) without any regional or world importance and partly in an important language (French) which used to dominate the world 100 years ago, but which is of decreasing relevance today.
2. Belgian legal education is designed to serve the local market but also to allow students to function in any legal system connected to civil law, common law or the rules of international business law.
3. Belgian legal education is geared towards an approach covering the basic principles of the main disciplines of law in local practice, but also geared towards specialisation in particular fields of law of which EU law is the most prominent.

1. Belgian legal education as such does not exist:

Belgium is a federal state and university education has been devolved to the two major communities: the Flemish or Dutch speaking community and the French speaking community. The approach to legal education in these two communities has been quite different.

In the Flemish or Dutch speaking community university education is conducted in Dutch. As a consequence it is very difficult for foreign students to participate in legal education or research at university level, because of a language barrier. Until about 20 years ago there were very few foreign students at Dutch speaking universities.

Conscious of their language handicap Dutch speaking universities began, starting around 1990, developing a strategy in which more and more specialized courses would be taught in English, and offering postgraduate degree programmes in English. Basic legal education remained totally in Dutch. The EU helped substantially by launching the ERASMUS (European exchange programme for the Research And Study Mobility of University Students) programme at the end of the eighties. As a result Dutch speaking law faculties have been able to attract substantial numbers of foreign students. At KULeuven we attract annually 300 foreign students in the last two

years of the curriculum, while we are sending approximately 200 students (out of 800) abroad, for at least one and in many cases two semesters. The law school of KU Leuven has more than 100 exchange agreements with law schools in Europe, but also with law schools in North America, East-Asia, Australia and South-Africa.

The policy has been to allow credits for courses taken at foreign law schools on a very liberal basis. For studies at other EU law schools credits can be obtained for all courses including courses that are mandatory at KU Leuven. For courses taken at non-EU universities, credits are restricted to optional courses.

The French speaking law schools have been following another path. Until very recently they continued to conduct all their legal education in French, including their specialised and post-graduate education. In the early days of the EU (before the accession of the U.K.) they focused on educating officials for the EU, as French was the dominating language of the EU and the official language of the European Court of Justice (ECJ) and the headquarters of the EU were located in Brussels. Since the accession of the U.K. and all the other new Member States, French has lost its dominant position in the EU, although it still is the official language of the ECJ. As a result the flow of foreign students which the French speaking law schools originally attracted has been steadily diminishing and been restricted to French speaking jurisdictions. It is only very recently that they have reversed the direction of their policy and now some law schools are starting English speaking programmes. The gap which they have to close is very substantial however, because they have to meet European wide competition in particular from English speaking countries and from the Netherlands, Scandinavia and the Flemish part of Belgium.

## 2. Serving the international market:

Although the main aim of legal education of all Belgian law schools is still to serve the local market and to provide good legal education in Belgian law preparing for the local bar, in which no one outside Belgium would be interested, in particular the Dutch speaking universities are now aiming at providing a legal education that enables their graduates to perform in any legal or business environment in the world. The restriction is that those systems would have to be based on civil law or common law or international business law and that the legal activity would be limited to business activities. Subjects like family law or criminal law are not included in these programmes.

The pursuit of this policy is evidenced by several features that are characteristic for this type of legal education: (1) emphasis on an effective knowledge of foreign languages preferably languages that are spoken worldwide like English, Spanish and French, but also important regional languages like German, (2) encouraging students to study abroad by actively participating in Erasmus exchange programmes during the undergraduate legal study and applying a very liberal credit policy for subjects taken abroad, but also encouraging students in completing post-graduate studies abroad and in far off places like Australia, Japan, Singapore and Hong-Kong, (3)

providing part of the specialised undergraduate curriculum in English: about ¼ of the specialisation courses in the fourth and fifth year of the curriculum are taught in English (the specialisation European and international law is entirely taught in English), (4) establishing attractive “niche-programmes” for foreign students worldwide like post-graduate programmes in law and economics, European Community law, European and international taxation and criminology.

### 3. Teaching the fundamentals with a comparative advantage in EU law:

This policy also translates in the way specialised courses are taught. The basic conviction is that it is impossible to memorize all the details of a legal system and that rote learning results in forgetting the details in no time. Therefore the study should concentrate on the basic structure of a legal system keeping in mind that nothing resembles a legal rule so much than another legal rule solving the same problem in another legal system, in particular in the area of business law. The differences are to be found more in the fundamental values judgments underlying the legal system. If however, the premises of a market economy are accepted, as seems to be the case in a globalised economy, many legal rules in the area of business law are very much the same, or at least their differences can be understood quite easily.

Only law schools in a very limited number of countries are capable of attracting foreign students, without a big effort in adapting their programmes and proposing special offers. Such law schools are located in countries with a language that is spoken worldwide and that have a legal system in which foreign students have a natural interest, because either it constitutes the basis of their own legal system (e.g. former colonies and dependencies of the British empire), because the legal system is at the forefront of legal developments in global business (e.g. U.S.), or also increasingly because the country is a must for foreign investors (P.R.China, Japan and East-Asian tigers). From an academic perspective small countries are unattractive to foreign students, except when they specialize in a particular “niche of legal education”.

Belgian law schools have been looking for such a niche in European Community law. This is a field of growing importance of foreign investors wanting to do business in the EU. Of course many law schools in Europe are following the same path, but Belgian law schools have the advantage of the proximity of the European Commission and the other European institutions such as the Council of Ministers and the European Court of Justice. They are using intensively the close connections (practically all law schools in Belgium are within a 60 minutes range of the European Commission) with the European bureaucracy for teaching many specific subjects of European law. This is a unique comparative advantage. Other programmes such as business law, international law or human rights do not have that advantage and dozens of law schools all over the world are offering these subjects, so that it is much harder to make the attractive difference.