



Tuning Legal Studies in Europe: Initial findings



Report of QUAACAS to the General Assembly of ELFA Hamburg 2008

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INTRODUCTION

The European Law Faculty Association (ELFA)¹ recognising the importance of the emerging European Higher Education Area for legal studies in the European Union and beyond established a Committee called QUAACAS² to monitor and help ELFA react to and participate in these developments. This was confirmed at its AGM in Strasbourg in 2004.

At its meeting in Brussels in September 2004, QUAACAS decided to concentrate on the problems of accreditation and to organize a conference devoted to this issue. On 19-20 November 2004 QUAACAS organised a very successful conference at the University of Utrecht,³ where the development of a European Qualifications Framework and Accreditation in European legal studies were discussed by around 100 participants from across Europe. At that meeting the Tuning Project, which has run since 2000, was presented.⁴ Tuning is a project run by universities to enable their input

¹ Information on ELFA can be found at <http://www.elfa-afde.org/> .

² QUAACAS stands for the Quality Assurance, Accreditation and Assessment Committee, The committee was established at the General Assembly in Birmingham 2003. It is composed of Julian Lonbay (Birmingham)(Chair), Tom Latrup-Pedersen (Aarhus), Anne Pélissier-Klebès (Strasbourg), Michiel van de Kasteelen (Utrecht) and Jacek Petzel (Warsaw). Further information can be found at <http://elixir.bham.ac.uk/menu/FreeMovement/frameset.htm> .

³ http://elixir.bham.ac.uk/menu/quaacas_frameset.htm .

⁴ <http://www.unideusto.org/tuning> .



and co-operation in the Bologna process.⁵ QUAACAS agreed that it would be a good idea to cooperate with the Tuning project in order to help to develop such a framework for law. This is necessary as part of the Bologna process to enable comparability of studies and exchange of students in a transparent fashion and to meet the needs of an international labour market and provide the basis for a European accreditation system, as explained in more detail in the section on the European Higher Education Area below at page 6. It was recognised that the process to be followed would involve cooperation from Law faculties in all EEA and Accession States in order to elaborate sets of generic and specific (legal) competences. The process would involve a consultation made via the completion of on-line questionnaires by academics from selected institutions, graduates and those in legal professions and others involved. Ultimately an expert-group will assess the results and devise (in consultation) a European-wide qualification framework.

In December 2004 the official letter from Tuning was received, proposing the cooperation of QUAACAS and ELFA in Tuning Project in the the field of Law. At its Warsaw meeting (January 2005) the Committee had decided to propose to ELFA to participate in the Tuning project and created a plan of activities, which seemed necessary in order to realise the research. Methodological problems were also discussed. The decision was made to adopt in principle the same methodology as already applied in Tuning project in other fields, despite some doubts concerning mainly the methods of choosing object of research (not using sample methods) and longitude of some ranking questionnaires

⁵ See further below at page 10.



Professor Gonzalez, one of the general coordinators of Tuning together with Robert Wagenaar, was accordingly invited to present Tuning at the Graz conference of ELFA in 2005. Julian Lonbay explained, in the QUAACAS report to the AGM of ELFA, the need for ELFA to participate. At ELFA's General Assembly in Graz⁶ at the end of February 2005 it was decided to participate through QUAACAS in the Tuning Programme.

After this decision QUAACAS started to organise the set of national representatives and continued its work on adapting the existing tuning questionnaires to make them useful in the field of law and to create a questionnaire for specific competences. In May 2005 QUAACAS organised meeting in Bilbao with the research team from Deusto University, who were already working on Tuning projects in other disciplines to establish the principles of cooperation and to solve other organisational issues. The decision was made to organise a meeting with all national representatives working for Tuning, selected through an open call⁷ in early 2005 to all ELFA members. This conference took place in Bilbao at the University of Deusto in September 2005. Conference meeting⁸ considered and discussed *in exenso* the Tuning process, its

⁶ <http://www.elfa-afde.org/html/activities.html>

⁷ See http://elixir.bham.ac.uk/quaacas/Particpate_QUAACAS.htm

⁸ See QUAACAS Newsletter (september 2005, for a brief Report on the bilbao meetng; http://elixir.bham.ac.uk/quaacas/NEWSLETTER_2_---_September_2005.pdf .



methodology⁹ and in particular the selection of the competences (see below page 13) and the questionnaires (see below page16).¹⁰

THE BOLOGNA PROCESS AND THE EUROPEAN HIGHER EDUCATION AREA

The Bologna process¹¹ started with a series of Ministerial announcements, initially from just four ministers in Sorbonne on the occasion of the anniversary of Sorbonne University in 2001.¹² The European Commission, though an active

⁹ See in Annex 2 Methodology 1a rev.

¹⁰ In February 2006 the next meeting of QUAACAS and national representatives was organized in Leuven during ELFA conference. First results were discussed as well as problems connected mostly with lack of representatives from some important counties. In Barcelona (ELFA AGM February 2007) the meeting of QUAACAS and national representatives took place to discuss progress and issues arising. Detailed questions connected with QUAACAS initial report and future plans of the Committee were discussed at a meeting in Cambridge (December 2007). Because negative position of ELFA Board to the proposition of participating in Tuning II no decisions on the future of Tuning could be made. In the opinion of QUAACAS cooperation with Tuning is highly desirable.

¹¹ See <http://www.bologna-berlin2003.de>, <http://www.bologna-bergen2005.no/> ; <http://www.dfes.gov.uk/bologna/> and <http://www.ond.vlaanderen.be/hogeronderwijs/bologna/> for more information.

¹² Knudsen, I, 'Introduction to the Sorbonne Bologna Declaration', *ELFA Newsletter* (2001), 25; Lonbay J, 'University Training: The implications of the Bologna Declaration for the UK', *Rassegne forense*, 35 (2002), 89, for a brief introduction in the context of legal studies, also Reich, N, 'Recent Trends in European Legal Education: the Place of the European Law Faculty Association', *Penn State International Law Review*, 21 (2002), 21, and Vanistendael, V, 'Legal Education in Europe and the Challenge of the Sorbonne Bologna Declaration', *ELFA Newsletter* (2001), 48.



participant, and one of the leading lights in the process,¹³ does not control the process which is primarily an inter-governmental process with strong stakeholder involvement,¹⁴ and which includes many non-EU States amongst its participants. The main overall aims of the process are to create a European Area of Higher Education in order to enhance the employability and mobility of citizens and to increase the international competitiveness of European higher education.

Undoubtedly the most eye-catching outcome of the Bologna process is the agreement of the 46 participating States to re-structure higher education into bachelor (undergraduate), masters and doctoral studies phases (post graduate). This means that for many States a new three year undergraduate law degree is being contemplated or created for the very first time. The structural re-alignment of higher education across Europe (and beyond) is likely to accelerate cross border co-operation between European law schools. These developments encourage cross-border training of law students. In earlier days ELFA considered that in some cases it would mean that a three year undergraduate degree in one country would be followed by an LLM from another jurisdiction.

The Bologna process also seeks to increase transparency of qualifications¹⁵ and the mobility of individuals. The European framework of qualifications of the higher education area is a part of the Bologna process adopted at the Bergen

¹³ Keeling, R

¹⁴ Lonbay, J., 'Reflections on Education and Culture in EC Law', in Crauford-Smith, R., (ed.) *Culture and European Union Law* (OUP, 2004).

¹⁵ The Lisbon Convention on the Recognition of Qualifications Concerning Higher Education in the European Region 1997 introduced the Diploma Supplement for this purpose.



conference (2005). The framework requires the Member States themselves to devise national frameworks. It is intended that these will, by 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 consideration of the result(s) of the learning process, often referred to as “competences”. The focus is on what (post)graduates can do and their access to the labour market and employability. The national learning outcomes or achievements will be explained and linked together, thereafter creating an overarching European meta-framework for qualifications of the EHEA. A fuller explanation of competences in the legal context can be found below at page 13.

The EQF for Higher Education has made use of the outcomes both of the Joint Quality Initiative (JQI) and of Tuning. The JQI, an informal group of higher education experts, produced a set of criteria to distinguish between the different cycles in a broad and general manner. These criteria are commonly known as the “Dublin descriptors”. From the beginning, the JQI and the Tuning Project have been considered complementary. The JQI focuses on the comparability of cycles in general terms, whereas Tuning seeks to describe cycle degree programmes at the level of subject areas. An important aim of all three initiatives (EQF, JQI and Tuning) is to make European higher education more transparent. In this respect, the EQF is a major step forward because it gives guidance for the construction of national qualification frameworks based on learning outcomes and competences as well as on credits. We may also observe that there is a parallel between the EQF and Tuning with regard to the importance of initiating and maintaining a dialogue between higher education and society and the value of consultation -- in the case of the EQF with respect to higher education in general; in that of Tuning with respect to degree profiles.



The framework for qualifications in the European Higher Education Area¹⁶ will help to create transparency without actually directly changing the national qualification systems. It will provide easily understandable information for everyone and focussing on common standards instead of differences thus improving mobility 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 and help to develop tools for increased shared understanding and become in themselves a method for consensus building in relation to Bologna qualifications.

In the summer of 2006 the European Commission launched a European Qualification Framework for Life Long Learning. Its objective is to encompass all types of learning in one overall framework. Although the concepts on which the EQF for Higher Education and the EQF for LLL are based differ, both are fully coherent with the Tuning approach. Like the other two, the LLL variant is based on the development of level of competences. From the Tuning perspective both initiatives have their value and their roles to play in the further development of a consistent European Education Area.

¹⁶ This was strongly supported by EU Education Ministers at their meeting in November 2006. European Commission website on the European Qualifications Framework
http://ec.europa.eu/education/policies/educ/eqf/index_en.html



TUNING

Tuning Higher Educational Structures in Europe is a university driven project which aims to offer a universal approach to implement the Bologna Process at the level of higher education institutions and subject areas. The Tuning approach consists of a methodology to (re-) design, develop, implement and evaluate study programmes for each of the Bologna cycles.

Furthermore, Tuning serves as a platform for developing reference points at subject area level. These are relevant for making programmes of studies comparable, compatible and transparent. Reference points are expressed in terms of learning outcomes and competences. Learning outcomes are statements of what a learner is expected to know, understand and be able to demonstrate after completion of a learning experience. According to Tuning, learning outcomes are expressed in terms of the level of competence to be obtained by the learner. Competences represent a dynamic combination of cognitive and meta-cognitive skills, knowledge and understanding, interpersonal, intellectual and practical



skills, and ethical values. Fostering these competences is the object of all educational programmes. Competences are developed in all course units and assessed at different stages of a programme. Some competences are subject-area related (specific to a field of study), others are generic (common to any degree course). It is normally the case that competence development proceeds in an integrated and cyclical manner throughout a programme. To make levels of learning comparable the subject area groups/Thematic Networks have developed cycle (level) descriptors which are also expressed in terms of competences.

According to Tuning, the introduction of a three cycle system implies a change from a staff centred approach to a student oriented approach. It is the student that has to be prepared as well as possible for his or her future role in society. Therefore, Tuning has organized a Europe-wide consultation process including employers, graduates and academic staff / faculty to identify the most important competences that should be formed or developed in a degree programme. The outcome of this consultation process is reflected in the set of reference points – generic and subject specific competences – identified by each subject area.

Besides addressing the implementation of a three cycle system, Tuning has given attention to the Europe-wide use of the student workload based European Credit Transfer and Accumulation System (ECTS). According to Tuning ECTS is not only a system for facilitating the mobility of students across Europe through credit accumulation and transfer; ECTS can also facilitate programme design and development, particularly with respect to coordinating and rationalising the demands made on students by concurrent course units. In other words, ECTS permits us to plan how best to use students' time to achieve the aims of the educational process, rather than considering teachers' time as a constraint and students' time as



basically limitless. According to the Tuning approach credits can only be awarded when the learning outcomes have been met.

The use of the learning outcomes and competences approach might also imply changes regarding the teaching, learning and assessment methods which are used in a programme. Tuning has identified approaches and best practices to form specific generic and subject specific competences.

Finally, Tuning has drawn attention to the role of quality in the process of (re-)designing, developing and implementing study programmes. It has developed an approach for quality enhancement which involves all elements of the learning chain. It has also developed a number of tools and has identified examples of good practice which can help institutions to boost the quality of their study programmes.

Further information on Tuning Legal Studies can be found in Annexes 1, 2 and 3 and the Tuning process in general in Annex 10.



COMPETENCES

There are two contemporary ways of describing student education. The first is to describe the *process* of education, and the second is to describe the *outcomes* of the learning process. The *process approach* would set out how long a student had studied at university, which subjects she had studied, what marks she had achieved, and where she was ranked in her class. The *outcome approach* would set out what the student is able to do as a result of the education. It would comment on the student's attainment in a number of specified areas and offer evidence of achievement or potential in each area. For example, a report might comment that she is able to make use of legal concepts in a sophisticated manner, able to discuss the reasons behind the rules, and able to apply the rules to novel situations.

The *process* approach is suited to producing a *transcript* which contains a record of study periods and achievements. This is appropriate where a student is moving from one academic institution to another within the same system, because the receiving institution shares the same processes and objectives as the sending institution. The receiving institution is able to make use of the information fairly easily.

The *outcome* approach is much more suitable where a student is moving into a different kind of academic institution or into the world of work. The outcome approach aims to tell the recipient what the student is able to do, and so it aims to present the *competences* of the student. Competences are written in the form that "This student is able to..." Now that is the sort of information that any prospective employer wants to know. If you examine the 'person specification' section of



any modern further particulars produced by a human resources department for a job, it will set out a series of requirements for what the person is able to do, either as essential for the job or as desirable.

What are the sorts of competences that are essential in law? There four key aspects: (1) ability to demonstrate an understanding of the concept map of a legal system and to deploy it in the resolution of concrete legal problems, (2) an understanding of core values associated with law (, (3) an ability to use certain legal techniques, and (4) an ability to demonstrate a number of transferable skills.

The idea of a 'concept map' pays attention to the deep structure of a legal system – organising concepts such as property, obligations, crime, and personality which bring together a cluster of rules, values and principles which are deployed by lawyers in the resolution of legal issues. To understand the law is to know how the rules and principles fit together in a pattern. So even if specific rules change, these organising concepts remain fundamentally usable.

The values are both procedural and substantive. Procedurally, the legal approach involves values such as hearing both sides before making a decision, of relying on convincing evidence, of impartiality before forming judgments, and the ability to give rational reasons as justifications. Substantively, there are values associated with the rule of law, constitutional rights, and human rights.

Techniques would involve the use of key material resources (often electronic these days), as well as the ability to reason in a legal manner, through applying principles of legal interpretation.



A comparison between Danish and British lists of transferable skills identifies the following as important examples of skills that are not specific to the study of law, but that are typically enhanced in a legal education: ability to communicate arguments on complex issues; ability to make oneself understood orally and in writing (and, the Danes would add, in a foreign language); and ability to work in teams.

Statements on competences are more flexible. They can provide useful information on students who have had unusual careers. A student who has studied philosophy in the US and the completed studies in a number of European countries may not fit into a standard pattern of having studied law for the normal minimum number of semesters, and have passed subjects that carry traditional names. But she may be able to present compelling evidence that she can learn and use complex legal concepts effectively, that she can write lucidly about them, and that she can construct a rational and well-defended argument. When someone moves into a new jurisdiction, the rules may be different, but many of the competences needed to operate in the new system are similar to those acquired in relation to the old. So competences offer a way in which defensible checklists of areas in which the new arrival can be asked acquire new knowledge or skills.



QUESTIONNAIRES

Initial comparison between the UK and Danish national frameworks and learning outcomes for law were discussed by the QUAACAS committee at their meeting in Graz. The first meeting of national representatives in the Tuning Legal Studies project was held in Bilbao in early September 2005. The conference discussed the main aspects of the Tuning process for Legal Studies. Following this Bilbao conference the on-line questionnaires on generic and specific competences for law graduates were devised, discussed and agreed and thereafter set up by the Tuning technical unit.¹⁷ A key task of the national representatives was to persuade various cohorts to respond on-line.

There were ultimately four questionnaires. Employers and graduates were asked about generic competences, with academics selecting from the results of these answers on a third questionnaire. Academics were additionally asked to rank a set of specific “law” competences. The questionnaires are set out in Annexes 4, 5, 6, and 7.

The data collection proved to be a difficult and lengthy process. The databases for generic skills were closed in late April 2006 and the results and analysis for the generic skills were expected to be ready in May 2006 but in fact, due to the internal discussion within the technical unit of the Tuning project questioning the representativeness of the data collected, they were in fact only available in early 2007, whereon it was decided to reopen the data bases until June 2007. Thus the data collected so far in this first initiative does not cover all the Member States, and for some that are covered the response

¹⁷ See Annexes 4, 5, 6 and 7.



rates are not sufficient. The delay also had a knock-on effect on the plans for a conference on Tuning-related issues that was initially planned for November 2006, but postponed until September 2007.



ANALYSIS OF RESULTS

The gathering of the data was based on four questionnaires.¹⁸

- Graduates – generic competences
- Employers – generic competences
- Academics – specific competences
- Academics – generic competences

The generic questionnaire for academics was based on the results generated by responses to the generic questionnaires for employers and graduates. For each of the listed competences, the respondents were asked to rank the importance of each competence and achievement on a scale from 1 to 4. The results were received by QUAACAS extremely recently and have not yet been analysed. We cannot yet say if there are any significant differences comparing graduates and employers ranking of competences, differences between countries, comparing ranking from graduates, employers and academics about importance of generic competences, and comparing background information from graduates and employers with their ranking (see the questionnaires). The analyses in this presentation are therefore rather temporary on this point.

The Tuning Legal Studies project did not succeed in having all ELFA member countries to participate in the research. The number of graduates who answered the questionnaire were 1.487, employers 392 and academics (specific competences) 212, but with odd numbers from each country (see annex 8).

The opinions of the academics about specific competences are presented as a summary of all answers related either to first or second cycle (see annex 4 for description of the cycles).

¹⁸ See annexes 4, 5, 6, and 7.



Figure 1 (overleaf) shows that opinion of the importance of specific competences are more or less a question of year of education as the second cycle is a reflection of the first cycle with a little bit more importance of each competence. The exceptions are for the ability to demonstrate knowledge of principal features of the legal system including general familiarity with its institutions and procedures (question 1) and ability to reflect on own learning (question 28) where the perception of importance are merging. The number on the horizontal axis relates to the question number.



ACADEMICS: SPECIFIC COMPETENCES

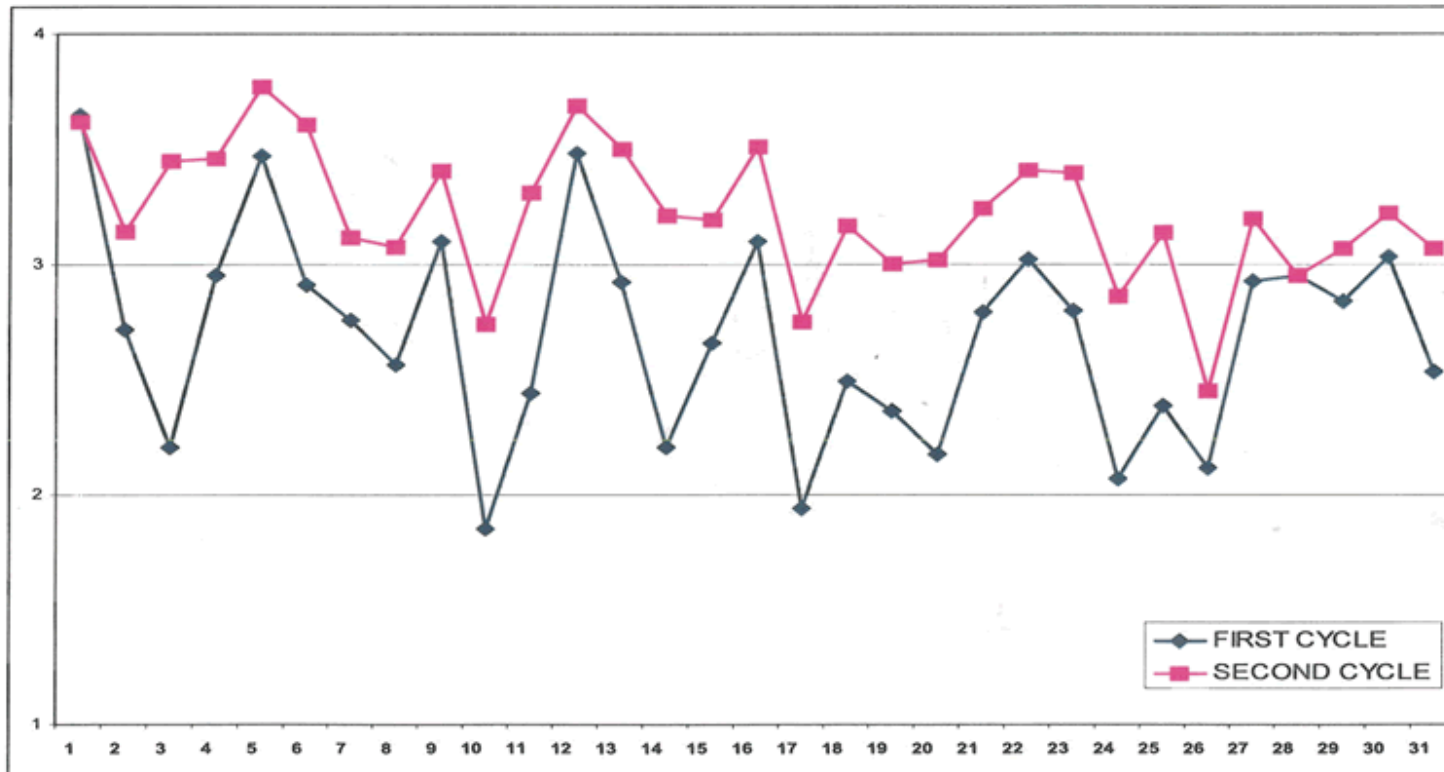


Figure 1



GRADUATES: IMPORTANCE vs ACHIEVEMENT: Generic Competences. ordered by importance

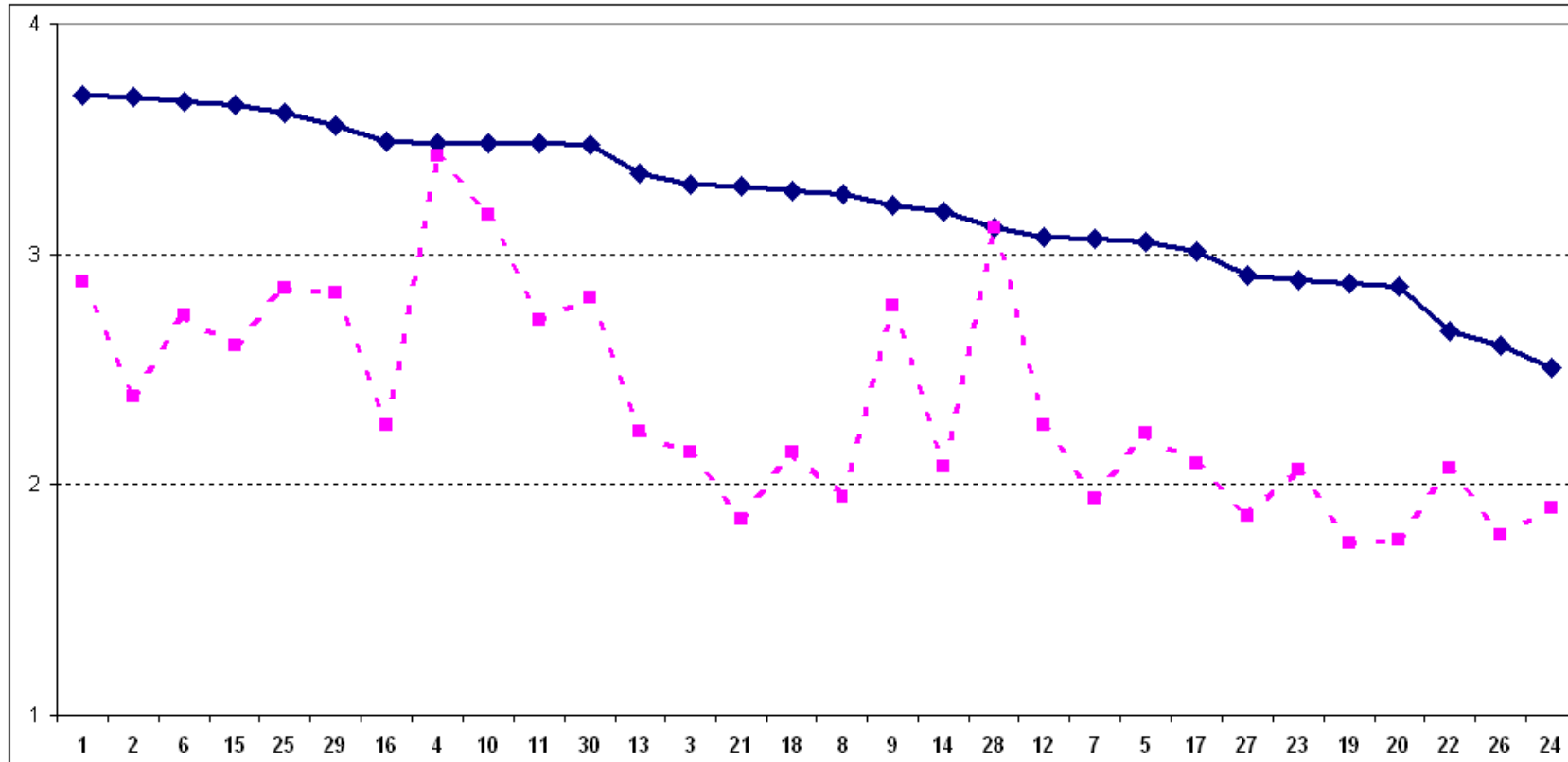


Figure 2

Black line: Importance

Stippled line: Achievement



The graduates ranking of importance of generic competences compared with opinion of achievement through their legal education, shows a gap between expressed importance and achievement (see figure 2). In the figure the questions are reproduced in ranking of importance.

The exception is for questions 4 and 28; “Basic general knowledge in the field of law” and “Ethical commitment” where there is a merging between importance and achievement.

Quaacas, at this stage, is not able to compare the graduates ranking in relation to any of the background questions or country. The same is true for the situation for the questionnaire to employers. ‘Employers’ mean in this context not only advocates or practicing layers but also human resources managers in private or public enterprises, judges and other relevant groups. The question to the employers were the same as for the graduates



EMPLOYERS : IMPORTANCE vs ACHIEVEMENT Generic Competences, ordered by importance

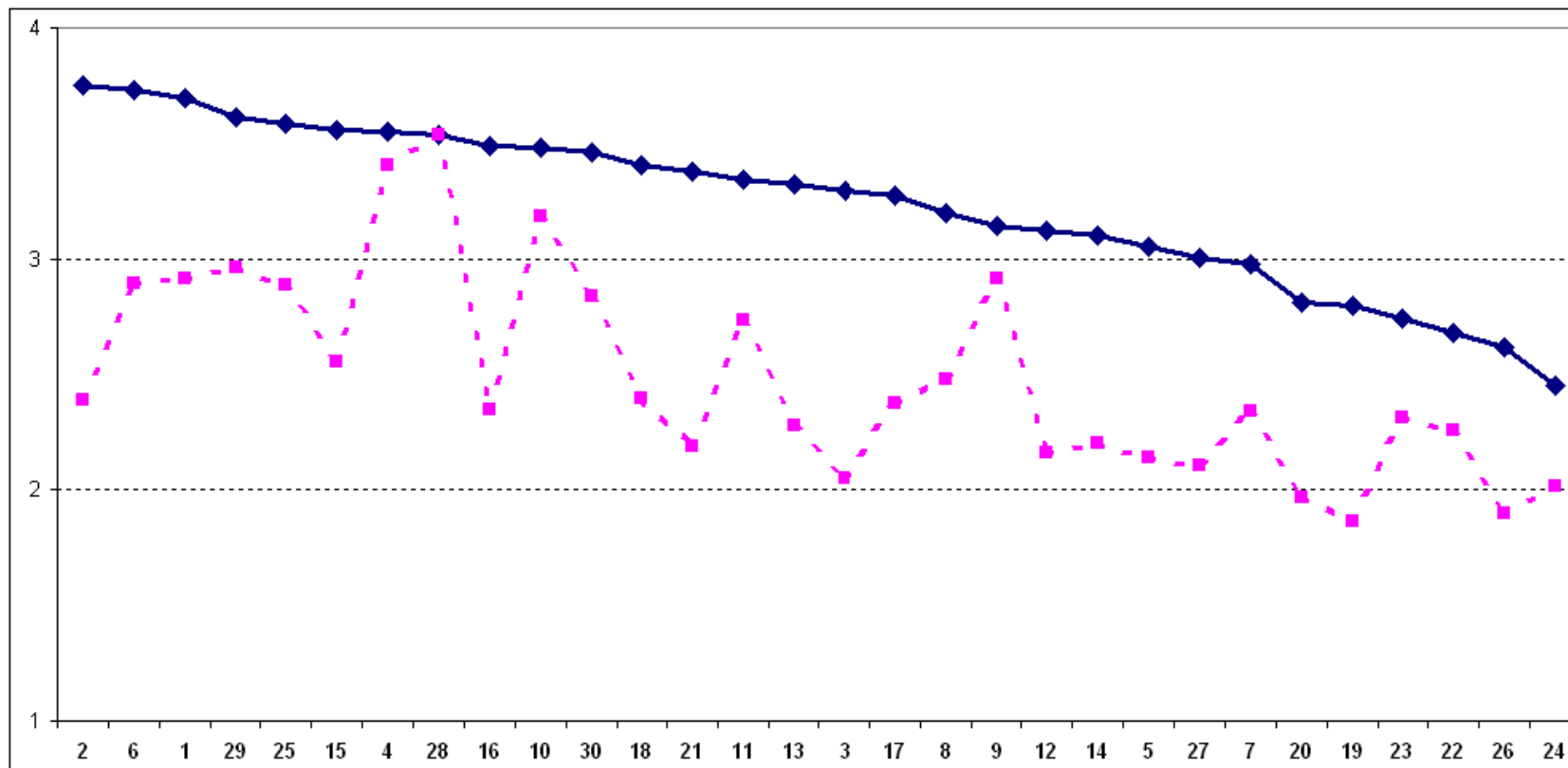


Figure 3

Black line: Importance

Stippled line: Achievement

The employers opinion of importance versus achievement shows also a gap, except for question 28; “Ethical commitment”.



Comparing the highest ranked competences among the graduates and employers gives the following picture:

EMPLOYERS		GRADUATES	
2	Ability for applying knowledge in practice	2	Ability for applying knowledge in practice
1	Ability for analysis and synthesis (summarising)	1	Ability for analysis and synthesis (summarising)
4	Basic general knowledge in the field of law	15	Problem solving
15	Problem solving	4	Basic general knowledge in the field of law
6	Oral and written communication in your native language	6	Oral and written communication in your native language

(The numbers indicates the question number in the questionnaires)

A comparison of the lower ranked competences shows the following

Taking the average of the graduates and employers opinion of the five highest ranked competences comparing

EMPLOYERS		GRADUATES	
23	Ability to work in an international context	20	Ability to work in an interdisciplinary team
8	Elementary computing skills	8	Elementary computing skills
24	Understanding of cultures and customs of other countries	26	Project design and management
22	Appreciation of diversity and multiculturality	22	Appreciation of diversity and multiculturality
26	Project design and management	24	Understanding of cultures and customs of other countries



importance with achievement, we get the following indication of “gap”.

Question (no)	Importance	Achievement	“Gap”
Ability to apply knowledge in practice (2)	3.7153	2.3878	1.3275
Ability to analyse and synthesis (1)	3.6925	2.8961	0.7964
Basic general knowledge in the field of law (4)	3.5164	3.4137	0.1027
Problem solving (15)	3.6037	2.5795	1.0242
Oral and written communication in your native language (6)	3.6954	2.8171	0.8783

As mentioned above, a relevant question to ask is: What are the sorts of competences that are essential in legal education? The answers could depend on one’s intentions – it would depend whether legal education should be mainly professionally or/and academically orientated. But the gap between competences and achievement raises a lot of questions about curriculum design in legal education, focus on teaching or learning activities, alignment between described learning outcomes, teaching and learning activities, and assessment, and so on



FURTHER STEPS

It is clear from this report that the results of Tuning Legal Studies so far can only be regarded as initial. There are several countries not represented at all in the data gathered, and others with weak levels of response. In the view of QUAACAS it is highly desirable that ELFA continue to participate with Tuning in its new phase. There is a clear likelihood that a sectoral qualification framework could emerge in law in Europe. If ELFA, representing European Law Schools, does not respond, other groups are likely to take up the cudgels.

Some implications arising from the work undertaken already seem to be clear. As competences are recognised as significant or important there is clear scope for further work on curriculum reform to enhance and develop those particular competences. It is conceivable that some work could be undertaken in co-operation with the European legal professions for certain competences in develop both curricula and extra-curricula activities. Co-ordination could be sought with the Council of Bars and Law Societies of Europe (CCBE) for example. ELFA could develop its own policies on which competences should be recognised or enhanced (by further collaborative work). There is also a clear chance for ELFA to help and advise law schools across Europe in the ongoing development of national qualification frameworks in relation to legal studies. First however the Tuning of Legal Studies needs completion.



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