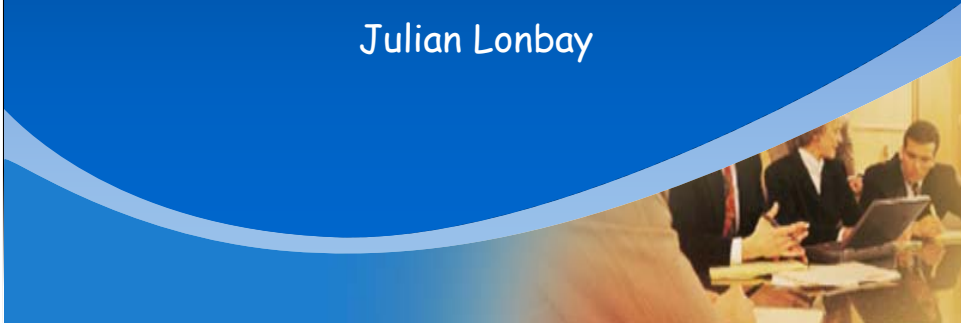


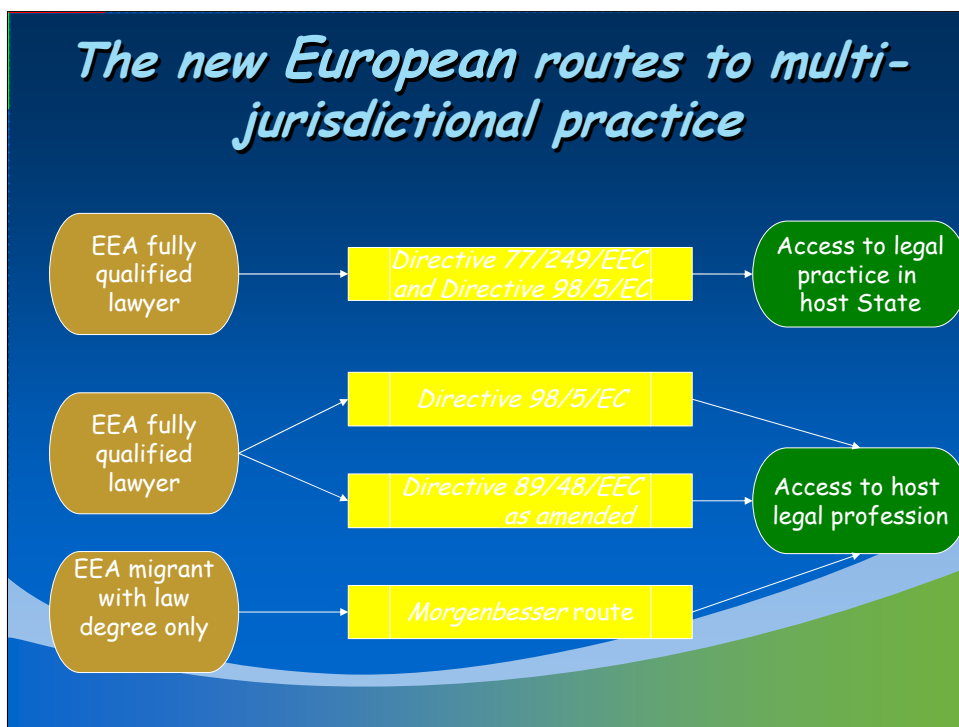
*Profession as a stake-holder:  
The CCBE*

Julian Lonbay



## *Competence at entry: the European level*

- EC and national Competition Law
- Directive 98/5/EC
- *Vlassopoulou* and Directive 2001/19/EC of the European Parliament and of the Council of 14.5.2001 (OJ L 206, 31.7.2001, p. 1)
  - The recent case C-313/01 *Morgenbesser*
- Draft Mutual Recognition Directive consolidation
  - The pending Case C-330/03
- Proposed services Directive
  - CEN services mandate



*Bypasses to legal practice in the UK and other EU States: An analysis of the implications of the developing European jurisprudence and the recently proposed legislation on routes to qualification and practice rights in the UK and EU.*

You don't need the tradition routes (e.g. in England and Wales, the QLD / LPC / BVC / ETC)

European routes from the 1990's

Finished product routes

Directive 89/48/EEC as amended

Similar profession

Aptitude test / adaptation period

Directive 98/5/EC

3 years experience requirement

No test / assessment

## *Directive 98/5/EC*

- Article 10

- *... effectively and regularly pursued for a period of at least three years an activity in the host Member State in the law of that State including Community law ...*
- *It shall be for the lawyer concerned to furnish the competent authority in the host Member State with proof of such effective regular pursuit ...*

*To that end:*

*(a) the lawyer shall provide the competent authority in the host Member State with any relevant information and documentation, notably on the number of matters he has dealt with and their nature;*

## *Directive 98/5/EC*

- *Article 10*
  - ... *the competent authority of the host Member State may verify the effective and regular nature of the activity pursued and may, if need be, request the lawyer to provide, orally or in writing, clarification of or further details on the information and documentation ...*
- *Article 10 (3) route*
  - *< 3 years*

## *The mutual recognition Directive*

- *Vlassopoulou* and Directive 2001/19/EC of the European Parliament and of the Council of 14.5.2001
- 15 Directives into one + additional added components, in particular
  - Aptitude test and Adaptation period
  - Common platforms
  - Partial practice
    - Specialisation, professional regulatory controls
    - Notaries, prosecutors, *procuradores*, patent agents
    - The pending case C-330/03

## *Proposed Services Directive*

- Home State control
- Article 31 Quality of Services
  - Pan European quality control accreditation, kite marks and labels
  - Quality charters at the EU level
- Common codes of conduct
  - CCBE

### *Article 31*

#### **Policy on quality of services**

1. Member States, in collaboration with the Commission, shall take accompanying measures to encourage providers to take voluntary action aimed at ensuring the quality of service provision, in particular by:

- a) having their activities certified or assessed by independent bodies, or
- b) drawing up their own quality charter or participating in quality charters or labels drawn up by professional bodies at Community level.

2. Member States shall ensure that information on the significance of and the criteria for applying labels and other quality marks relating to services can be easily accessed by recipients and providers.

3. Member States, in collaboration with the Commission, shall take accompanying measures to encourage professional bodies as well as chambers of commerce and craft associations within Member States to cooperate at Community level in order to promote the quality of service provision, especially by making it easier to assess a provider's competence.

4. Member States in collaboration with the Commission shall take accompanying measures to encourage the development of publicly available independent assessments in relation to the quality and defects of service provision, and in particular the development at Community level of comparative trials or testing and the communication of the results of these.

5. Member States and the Commission shall encourage the development of voluntary European standards with the aim of facilitating compatibility between services supplied by providers in different Member States, information to the recipient and the quality of service provision.

## Competition Law

- *Report on Competition in Professional Services COM(2004) 83 final (9 February 2004)*
  - One concern, of many, was over entry requirements.
    - Did some of simple tasks of the professions have to be reserved to them? Could not less qualified persons do these tasks (probate, legal advice, conveyancing)?
    - Could not other methods less restrictive be used (e.g. quality control through accreditation)
    - Can quantitative entry controls be justified?
  - *Pending Case C-250/03 Mauri v. Ministry of Justice and State Bar Examination Board at the Milan Court of Appeal*

Wouters

COM(2004) 83 final.

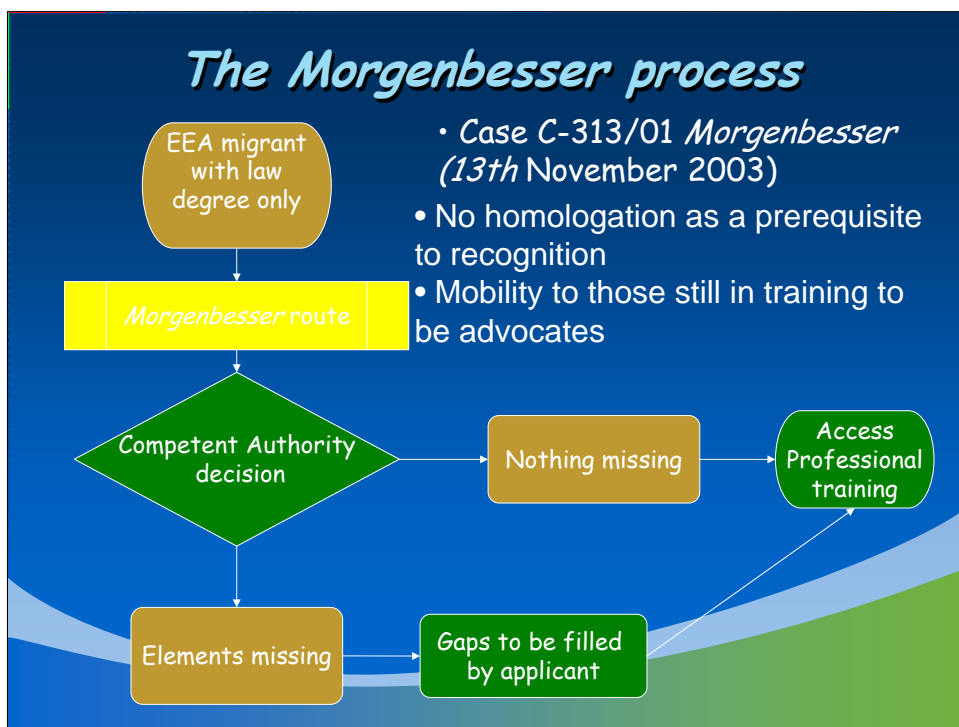
Restrictive regulations in the liberal professions include licensing restrictions such as entry requirements and reserved tasks, as well as rules governing conduct such as price regulation, advertising restrictions, and regulation of business structure. Such restrictions may eliminate or limit competition between service providers and thus reduce the incentives for professionals to work cost-efficiently, to lower prices, to increase quality or to offer innovative services. Price regulation, advertising restrictions and entry barriers may for example allow prices to remain above competitive levels. Business structure regulations may inhibit the development of innovative services and cost-effective business models.

#### 4.4. Entry Restrictions and Reserved Tasks

48. The professions are subject to qualitative entry restrictions in most Member States. These can take the form of minimum periods of education, professional examinations and minimum periods of professional experience. In many cases, entry restrictions are coupled with reserved rights to provide certain services. In some Member States the pharmacy and notary professions are even subject to quantitative entry

restrictions based on demographic or geographic criteria.

49. Qualitative entry restrictions, combined with reserved rights, ensure that



“objective differences relating to both the legal framework of the profession in question in the Member State of origin and to its field of activity. In the case of the profession of lawyer, a Member State may therefore carry out a comparative examination of diplomas, taking account of the differences identified between the national legal systems concerned (*Vlassopoulou*, paragraph 18).” (*Morgenbesser* para 68)

§70 ... the host Member State is entitled to require the person concerned to show that he has acquired the knowledge and qualifications which are lacking (*Morgenbesser*)

§71. By the same token, the competent national authorities must measure whether the learning and skills acquired in the host Member State, either through a course of study or by way of practical experience, sufficiently demonstrate that the missing knowledge and qualifications have in the meantime been acquired ...

## *Conclusions*

- There are no easy quick fixes to the problems posed
- In Europe national qualification routes are both multi-infiltrated and by-passed by European dimensions
- A new series of new alternative routes to national legal professions have been and are being established

## *Conclusions Regulatory impacts*

- Deregulation of access routes
- ` Old routes challenged and bypassed
- Assessment methods challenged
- Providers h(e)aven
  - Transnational education

## *Conclusions: regulatory impacts*

- Re-regulation

- Individual rights
- New modes of assessment necessary
- The importance of a qualifications framework
- Meta-referencing European level framework
- The professions are starting this work at the EU level, of necessity
- Academics need to speed up or their input will be too little too late

## *Conclusions*

- Role of the CCBE
  - Advise and guidance to national Bars on Morgenbesser
  - Detailed work on competences in terms of outcomes
- Role of ELFA
  - Quaacas

## Helpful links

- *Access to European legal professions*  
<http://elixir.bham.ac.uk>
- *The CCBE website* <http://www.ccbe.org>
- *Links to EC policy in relation to regulation of lawyers*  
<http://elixir.bham.ac.uk/menu/FreeMovement/frameset.htm>
- *European Standards for Services*  
[http://europa.eu.int/comm/enterprise/standards\\_policy/services/index.htm](http://europa.eu.int/comm/enterprise/standards_policy/services/index.htm)