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**For a European Space of Legal Education**

ELFA statement concerning the Bologna-Declaration of the European Ministers of Education  
of 1999

I.

ELFA is the representative organisation of European Law Faculties. Nearly half of the Law Faculties of European countries (in a broad sense) are ELFA members. It was founded in 1995 and coordinates initiatives in all fields relating to legal education and training including the mobility of students and professors of its member faculties. It organises annual conferences where current topics in legal education and learning are discussed with, *inter alia*, politicians and experts.

The last three annual conferences in Amsterdam (24-25 February 2000), Milano (23-24 February 2001) and Riga (22-23 February 2002) were devoted to an assessment of the “Joint Declaration of the European Ministers of Education, convened in Bologna on the 19<sup>th</sup> of June 1999” (hereafter referred to as the Bologna Declaration) and its consequences for legal education in Europe. The papers delivered at these conferences and additional materials have been published in the ELFA Newsletter and in the recently started *European Journal of Legal Education*. ELFA proposes to take the following position on the philosophy underlying the Bologna Declaration and the proposals elaborated within it.

II.

ELFA is very much in favour of the spirit underlying the Bologna Declaration, namely a general concern about the quality, transparency and mobility in European (legal) education, an increase in competitiveness of European institutions of higher education in a globalising world, the achievement of greater compatibility and comparability of systems of higher education, a reduction of student drop-up rates in law faculties, and an orientation of university degrees also towards needs of the changing labour market, whilst always maintaining high standards in academic education.

The Bologna Declaration is usually associated with the so-called bachelor/masters/doctorate (B/M/D) model of awarding degrees in higher education according to which the cycle of studies is to be divided into

- A three year undergraduate study resulting *a bachelor's degree*
- A one or two year(s) post-graduate programme leading to *a master's degree*
- A three year *doctoral programme*.

ELFA recognises, as has particularly been demonstrated during its Riga conference (a summary of the debate is on the ELFA website and in the Summer 2002 issue of the Newsletter), that many countries and many of its member faculties have already undertaken or are about to undertake changes of their curricula in order to fulfil the requirements of the Bologna Declaration. This process needs careful monitoring and evaluation to avoid a drifting apart of the different initiatives.

In the overall appreciation of the changes undertaken, it should not be forgotten that the creation of a European space for higher education as envisaged by the Bologna Declaration should also lead to a *European space of legal education*. However, a European space for legal education is only realistic if it is paralleled by a *European space of professional practice in law*.

In this spirit, ELFA wants to draw the attention of those responsible for managing and reforming legal education in the countries of its member faculties to certain aspects which, in its initial view, have not yet adequately been covered by the Bologna Declaration (III). ELFA also makes some proposals of its own for a more Europeanised system of legal education (IV).

### III.

1. The Bologna B/M/D model of division of higher learning has the advantage of a certain simplicity and transparency but is not completely compatible with the needs and conditions of professional education and training, e.g. in law. ELFA urges the responsible persons engaged in the process of implementing the Bologna Declaration to devote more attention to the specific needs and standards of professional education. For legal education this is all the more important since the mutual recognition of diplomas and free establishment of lawyers has already been regulated by EC directives 89/48/EEC and 98/5/EC. It may therefore be useful to co-ordinate and make transparent, without trying to harmonise them *strictu sensu* on a European basis, the minimum standards of academic and professional training allowing access to the legal professions. This should also help to avoid distortions of competition in the exercise of the legal professions which are now provoked by different requirements and different length of study and training in law.

2. In considering the recommendations contained in the Bologna Declaration, their most important impact on legal education as offered by ELFA member faculties would be the introduction of the possibility of obtaining a *Bachelor* degree after three years of higher education in law – a possibility which already exists in the UK, Ireland and France but which is not accepted by most European jurisdictions. Some countries and some member faculties have in the meantime created or are considering creating the possibility for law students to obtain a Bachelor degree in law after three years of study as a sort of “fast track” education. However, this degree will not and cannot give immediate access to the legal profession (as a lawyer, judge, state official, company or organisation law expert). *All* (except Spain, where plans are advanced to introduce it) *European jurisdictions* require substantial additional theoretical and/or practical training of usually a minimum of two years, in several jurisdictions even more. It remains to be seen whether a general framework can be established for all European jurisdictions (despite many peculiarities in their legal systems and therefore law studies) within which a law student can be admitted to practice law. Concrete proposals are developed under IV.
  
3. Whether these two phases of legal education (the undergraduate and the graduate part) should be finished with separate Bachelor’s and Master’s degrees must remain subject to further discussion and finally to the decision by those competent in the countries of ELFA’s member faculties. Many member faculties of ELFA already award a Master’s degree as an *additional diploma* to students already trained in law. These are often based on a one year degree programme documenting specialised legal or interdisciplinary training improving the job opportunities of the degree holder (e.g. LL.M. EUR, LL.M. Taxation, LL.M. Int. Law etc.). It is submitted that this type of master’s degree can be integrated into the Bologna model of legal education . The European Court of Justice has recognised the importance of such an additional degree for the free movement of persons in the European Union in the *Kraus* decision of 31.3.1993.
  
4. The Bologna Declaration is silent about two further important points in the current debate on higher education, the first one being access to higher education (in law).

#### **Access to legal studies**

Some but not all jurisdictions restrict or severely control *access to legal studies* e.g. by *numerus clausus*, entrance requirements, mid-term exams etc. No uniformity exists with regard to access to law schools in Europe, and it seems difficult to imagine that this will ever be possible. ELFA’s prime concern has always focussed on student and teacher mobility within the existing ERASMUS/SOCRATES framework. It is therefore paramount to ELFA that the consequences of the Bologna Declaration on student mobility are taken into consideration. As a rule, every student admitted to law school should be allowed and encouraged to study at least one semester in a foreign law school before being awarded a degree in law.

5. The second point on which the Bologna Declaration is silent concerns the **financing of higher education**. Most European jurisdictions adhere to public funding, but this consensus seems to be withering. In Germany, a private law school has been founded in Hamburg (Bucerius School of Law) where access is highly regulated and considerable tuition fees (with the possibility to obtain scholarships) are charged. Private law schools financed by tuition fees are becoming increasingly available in Eastern European countries (e.g. Poland, Estonia, Hungary, Czech Republic). ELFA is worried that financial constraints in all European jurisdictions may induce governments to pull out of public responsibility for the financing of undergraduate education (including law) which would only increase the indebtedness of young law graduates and make more difficult their later success in the professions. ELFA would welcome a clear commitment of the European education ministers not to change the existing public financing of undergraduate studies and they should maintain and improve it for post-graduate legal education.
  
6. ELFA is currently planning to undertake an inquiry among its member faculties on the practical experiences with the **ECTS system** and its development from a credit transfer to a credit accumulation system. At the moment the existing schemes of grading and assessment in the study of law vary considerably among European jurisdictions, and simple solutions to overcome these differences will not easily be found. In our opinion, considerable work still has to be done to extend the ECTS system as a true and reliable indicator of quality in higher education.

#### IV.

If European legal education wants to compete with the highly successful US-American system of education for lawyers, a number of additional and more courageous steps have to be taken which will need a careful discussion (which has already been started by ELFA during its annual conferences in Amsterdam, Milan and Riga and which will continue [on-line](#) at the ELFA forums and at Birmingham conference in February 2003)

1. Little attention has been paid so far how the bachelor and the master's programmes can be organised so as to avoid unnecessary repetition of subjects. The following proposal is put up for discussion by members of ELFA faculties:
  - The bachelor part should be devoted to a *comprehensive study of the national law* of the respective faculty. It should focus on essential subjects like constitutional, administrative, criminal and civil law and procedure to be studied more under *methodological* and less under content related aspects. There should be enough room to allow for optional courses for students at least from the beginning of the second year. The bachelor exam should be possible after *three years*, but some countries may want or need a longer period for awarding the bachelor's degree which however in no case should exceed four years.

- The master's part should consist of *European* Community and Human Rights Law as well as of “*generic*”, i.e. “Europeanised” and “internationalised” courses on constitutional, administrative, commercial, intellectual property, environmental, competition and/or consumer law. Faculties will have to develop their own profiles and compete for their models. This part should not exceed *two years* and could terminate with a special master's exam and degree which should be recognised EU-wide as such.
  - This proposal would be without prejudice to the schools of law that already include the suggested masters' topics in their undergraduate law degrees (primarily schools in the UK, Ireland and France).
  - There have been suggestions to turn this schedule “upside down”: to start the bachelor's programme with “generic” and European subjects, and later to concentrate on national law during the master's programme, similar to US law schools. In the opinion of ELFA, such a model now would be premature on a general scale, but could be tried out by some faculties as pilot projects. It would also require complete new teaching materials, some of which already exist, e.g. in tort law as prepared by the working group under the direction of Prof. Van Gerven, or in contract law using the principles of “European Contract Law” under the editorship of Prof. Lando and Prof. Beale.
2. The Bologna model, if carefully implemented and monitored as suggested above, would also give a chance to develop a genuine cross-border model of European legal education which is recognised *ex lege* in two jurisdictions:
- The Bachelor degree could be obtained in the students' “home jurisdiction” and should in principle allow him/her, after appropriate additional practical training to be determined by the state of his residence, to practice law there.
  - The Masters' degree received in the jurisdiction of another EU country should give immediate access to professional legal training in this country without the cumbersome and lengthy process of directives 89/48/EEC and 98/5/EC. This would of course require that the masters' programme is tailored so as to allow an understanding (not a detailed knowledge!) of the law and the language of the host country of the student already holding a bachelor's degree from his home country.
  - This cumulation of degrees would require a co-operation between two law schools from different EU/EEA countries which is already taking place via pilot projects between Groningen/NL and Bremen + Oldenburg/Germany, Cologne and Paris II etc. which award a joint bachelor's /master's degree purporting to grant access to the legal profession in both participating countries without further exam requirements, but still allowing for practical training periods to be determined by the host jurisdiction.
3. The Bologna model of higher education, adopted to the specific needs of a European space for legal education could, in the opinion of ELFA, therefore result in *three different options* which have to be chosen by the participating faculties:

- The *generic LL.B./LL.M. model* (1) would combine basic training in one jurisdiction with a later masters phase concerning a certain Europeanisation and specialisation of graduates; cross-border practice would follow from EU-Directives 89/48/EEC or 98/5/EC.
  - The *cross-border LL.B./LL.M. model* (2) is more concentrated on immediately being able to join professional practice training which would then be recognised in at least two countries
  - The third model would be the current UK/Irish model(3); cross border practice following from EU directives 89/48/EEC and 98/5/EC.
4. It is not up to ELFA to decide which model is the one of the future. Each may be very attractive to different types of students. Much will depend on how faculties organise their basic bachelor's and their advanced master's programme. The competent jurisdictions should allow a certain degree of *flexibility and experimentation*. Professional associations or state examination boards should not put too restrictive a set of conditions upon final access to the legal profession which should be possible *at the latest after six years* (3 + 2 +1 or 4+ 1+1 or 3+1+2).
5. The process of *Europeanisation and flexibilisation* of legal education in Europe will need careful monitoring which may eventually result in the evaluation and eventual accreditation of truly European study models. This task should be conferred upon ELFA in co-operation with relevant university and professional associations.

The ELFA Board

31 May 2002