

3. CHANGES RELATED TO EUROPE 1992

The principal factors of the large European common market in 1992 that will affect business law professions are:

- . changes in regulations and jurisprudence with respect to freedom of practice and establishment, and with regard to the recognition of diplomas;
- . changes in the organization and deregulation of legal and judicial professions at the national level;
- . the accelerated development of Community law and the growing position of Brussels in the legal community; and
- . the "Europeanization" of business, a phenomenon which is part of a more general trend of globalization and internationalization of the economy.

3.1 Changes in Regulations and Jurisprudence

The move towards freedom of practice for the legal and judicial professions within the EC has been in effect since the promulgation of Directive 77/249 dated March 22, 1977, which states firms have the right to practise freely, and Member States are obligated to adapt the text of this directive to internal legislation without modifying its scope. However, the trend has gained considerable momentum in recent years due to two decrees issued by the Court of Justice of the European Communities:

- . The "Klopp" decree dated July 12, 1984, condemns national regulations (in this case the *règle de l'unicité du domicile professionnel* in the Federal Republic of Germany (F.R.G.) and in France) since they impede freedom of practice and establishment. These regulations were not discriminatory, however, since they applied to both national and foreign firms.

- . The decree dated February 25, 1988, condemns the F.R.G. for breach of treaty, since German legislation states that lawyers from another Member State may only practise in the F.R.G. in association with a German lawyer (this rule also applies between German *Länder*). This clause was deemed contrary to the principle of freedom of practice.

It is important to note that these two decrees have the paradoxical effect of creating a situation of "reverse discrimination." Foreign members of the EC are constrained less than national members. Therefore, the Court simplifies and modernizes national regulations.

A directive pertaining to a recognition of degrees for professional training periods of at least three years is being prepared. The current proposal provides for a large system of equivalencies. However, it also specifies that where professions are regulated, candidates may have to undergo an "aptitude test" or "training period," despite the fact that their diplomas are deemed equivalent to those required. This clause may be applied in a more or less liberal manner, depending on the country. Previous jurisprudence leads one to believe that the Court of Justice of the European Communities will not allow the clause to limit freedom of establishment. However, this does not exclude rearguard confrontations. Progress may be slow.

3.2 Reform and Deregulation regarding the Legal and Judicial Professions

As a result of Europe 1992, considerable changes are taking place in most EC countries to open, deregulate and reorganize the legal and judicial professions. This move, which was already perceptible prior to 1985, has increased considerably since then, with each country striving to acquire the best assets to prepare for inevitable future openness. The principal stakes involved are: