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Lawyers without Frontiers - A View from Germany

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Articles

Lawyers Without Frontiers—a View From Germany

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I. Introduction

The globalization of legal services is a much-debated issue, yet it is unclear what is exactly meant. Different aspects need to be considered. Service providers get globalized—law firms from different countries co-operate or merge, leading to a changing face of a fast growing market. Laws also get globalized—national rules are changing, international treaties are signed so as to permit a more transnational practice. Ancillary problems develop such as the intrusion of large firms of accountants into the market, resulting in new challenges like the regulation of Multi-Disciplinary Practices.

This article is divided into three main sections. It starts with some reflections about the development of the German legal market in the past decade and how this development has been influenced by Anglo-Saxon law firms from the U.S. and England—or a phenomenon that the International Financial Law Review described as the "merger fever grips Germany."[1] In the second part a more detailed analysis of the legal framework that governs the practice of foreign lawyers in Germany will follow. The third part will be dedicated to a subject that has been widely discussed in the U.S. recently—Multi-Disciplinary-Practices. These are forbidden almost everywhere in the world apart from Germany which has a long tradition of multi-professionally structured firms.

II. Globalization, Mergers and the Market

A. The Millennium Year—Mergermania

During the past 12 months, almost every week a German law firm announced the intention to merge with an English or a U.S.-based law firm or to form some kind of a transnational alliance.[2] As

1. *See* Nick Ferguson, *Merger Fever Grips German Market*, 18 INT'L FIN. L. REV. 3537 (1999) [hereinafter *Merger Fever*]. *See also Hasche Fuels German Merger-Mania as Firms Rush for Growth*, WORLDLAW BUS., May/June 1999, at 3 (describing merger of German firm Gasche Eschenlohr with Sigle Loose Schmidt Diemitz and its alliance with Cameron McKenna, and observing "[t]he move comes as many national firms seek rapid growth—a development tagged *Fusionsfieber* by the German media to fend off increasing competition from foreign entrants and expanding rival national practices.") [hereinafter *Hasche Fuels German Merger-Mania*]; *Going Deutsch*, WORDLAW BUS., Feb. 2001, at 12.

2. For an overview, see the annual reports in the JUVE HANDBUCH: WIRTSCHAFTSKANZLEIEN, RECHTSANWÄLTE FÜR UNTERNEHMEN 4 (1998/99) [hereinafter JUVE HANDBUCH]; *see also* JUVE HANDBUCH: WIRTSCHAFT-

an observer, one could get the impression that top-tier German law firms were afraid of being left alone in the cold once all foreign grooms had found their brides and were desperately looking for the perfect match. It is thus fair to say that the German legal profession has been in turmoil since 1998 when Anglo-Saxon law firms started to enter the German market on a large scale. While some would say they behaved like charming grooms, to describe them as acting like a leviathan with a ferocious appetite is probably more appropriate.

The rationale for the move into the German market is clear. The rapid rise in cross-border deals is fuelling client demand for pan-European professional services.[3] Corporate clients grow larger and law firms cannot escape the concentration which is so rife in other sectors. In 2000—and for the first time in history—M & A activities generated more work for the profession in Europe than in the U.S.[4] The German business and financial community has taken on the world. Old names like Deutsche Bank, Daimler-Benz, Hoechst or Deutsche Telekom all sought international partners.[5] Another driving force has been the growth of the German stock market. The Neuer Markt, the market for high-growth stocks, which was launched in March 1997, has already outstripped all other European growth markets, with more than three quarters of all European growth exchanges being conducted on the Neuer Markt now.[6] Furthermore, the German public, known for being

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SKANZLEIEN, RECHTSANWÄLTE FÜR UNTERNEHMEN 3 (2000/2001); *see also Ansturm auf deutschen Beratungsmarkt*, FRANKFURTER ALLGEMEINE ZEITUNG (FAZ), Sep. 7, 2000; Arno Balzer, *Kampf der Kulturen*, MANAGERMAGAZIN, Oct. 2000, at 284 [hereinafter *Kampf der Kulturen*]. *See also Gaedertz IP Chief Quits as Mayer Brown Marriage is Confirmed*, THE LAWYER, Mar. 26, 2001, at 9 (reporting on the merger of the Frankfurt office of Gaedertz with Chicago-based firm Mayer, Brown & Platt).

3. *See Die Erwartungen der Klienten und der Druck der Wettbewerber drängen viele deutsche Anwaltskanzleien zu Fusionen*, FRANKFURTER ALLGEMEINE ZEITUNG, May 10, 2000.

4. *See* John E. Morris, *Jenseits von Big Apple*, JUVE RECHTSMARKT, Aug. 2000, at 12 [hereinafter *Big Apple*]. *See also* John E. Morris, *The New World Order: Clifford Chance and Rogers & Wells Are about to Pull Off the First Large-Scale Transatlantic Merger. Did the Eat-What-You-Kill Americans Ever Come to Terms with the Lockstep Brits? And, More Importantly, What Will It Mean for the Competition?*, AM. LAW., Aug. 1999, at 92 (describing the three-way merger of Rogers & Wells; Clifford Chance, and Punder; and Volhard, Weber & Aster. They are, respectively, U.S., U.K. and German law firms).

5. *See* Ferguson, *Merger Fever*, *supra* note 1, at 35.

6. *See id. See also* Rufus Jones, *iX Marks the Spot as German Firms Map Out Their Future*, 19 INT'L FIN. L. REV. 18 (2000) (reporting on the bonanza of work as the London and Frankfurt stock exchanges push through their merger).

risk-averse, has only recently started to discover the world of retail investment, making IPO a future growth market.[7]

In response to this development, lawyers in Germany had to accept that true international capability is required. With their long-time German clients becoming ever larger global players, top-tier law firms are expected to offer handling of cross-border transactions from beginning to end. "Seamless service," a "one-stop-one-shop concept" is regarded as a prerequisite for long-term success in the market. This in turn means that there is a need to offer a sizeable workforce and also U.S. and UK law advice.

One of the signs of the changes in the market is the change in recruitment practices and lateral movement among German lawyers. One commentator has observed that "[f]ive years ago joining a law firm and becoming a partner in Germany was considered a stronger relationship than marriage. Now it is much more common for partners to go to another firm."[8] Reports of lateral movement by German lawyers are now common.[9] Moreover, although recruitment firms are much less of a presence in Germany than elsewhere,[10] they do exist.[11]

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7. *See* Ferguson, *Merger Fever*, *supra* note 1, at 35.

8. *See Going Deutsch*, *supra* note 1, at 15 (quoting Harald Seisler, regional managing partner of Lovell Boesebeck Droste).

9. One of the leading sources for monitoring lateral movement is a website entitled www.legalmedia.com, which is maintained by the Legal Media Group, and publishes the International Financial Law Review and World Law Business, among other publications. A March 29, 2001, search of the term "Germany" in the "people and firms" category yielded 381 "hits." While some of the items report which law firms have been retained on which deals, a significant number of these 381 hits report mergers and lateral hires or departures. Some of these lateral movements are later reported in Worldlaw Business. *See, e.g.*, *Haarman, SJ Berwin Opens in Munich*, WORLDLAW BUS., Dec./Jan. 2001, at 7; *Oppenhoff's Berlin Turmoil*, WORLDLAW BUS. Oct. 2000, at 8; *Herbert Smith & Gleiss Lutz Disagree Over Alliance*, WORLDLAW BUS., Sept. 2000, at 7; *White & Case Merge in Germany*, WORLDLAW BUS., July/Aug. 2000, at 7; *German Partnership Splits Over Merger* WORLDLAW BUS., June 2000, at 3; *Freshfields German Merger Back on Track*, WORLDLAW BUS., June 2000, at 7; *German Firms Report Must Try Harder*, WORLDLAW BUS., Mar. 2000, at 3; *Bosebeck Defections Present Openings to Bruckhaus*, WORLDLAW BUS., Dec./Jan. 1999, at 9; *White & Case Grows Fat in Germany*, WORDLAW BUS., Oct. 1999, at 11; *Swimming Against the Tide*, WORLDLAW BUS., Aug. 1999, at 23 (about BBLP's strategy); *Will the real Clifford Chance Please Step Forward*, WORLDLAW BUS., Aug. 1999, at 16.; *Baker & MacKenzie gets Bosebeck Man*, WORLDLAW BUS., Aug. 1999, at 4; *Wilmer Cutler Lands German Minister*, WORLDLAW BUS., Apr. 1999, at 12; *Punder Loses Team to Sherman*, WORLDLAW BUS., Mar. 1999, at 3.

10. *See Going Deutsch*, *supra* note 1, at 15 ("With the exception of a few headhunting organizations in the major business areas, Germany's legal recruitment industry is relatively unsophisticated, as one UK lawyer puts it: 'Recruitment in Germany is five or six years behind the London market.'");

Widely regarded as the wake-up call for the profession was the Daimler Chrysler merger when the unthinkable happened and Daimler-Benz chose Shearman & Sterling as legal counsel over German law firms.[12] For responding adequately to the globalization zeal, however, German law firms were ill-prepared. Until recently, a typical German law firm was rather small, rooted in regional markets and focused on continental business.[13] It was not until 1989 that it became lawful for a German law firm to have more than one office.[14] Before, large law firms were restricted to practicing on a regional level.[15] In countries where the market for international legal services is very much concentrated on the capital —like in

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Hasche Fuels German Merger Mania, *supra* note 1, at 4 (reporting that London recruitment firm QD Legal opened an office in Frankfurt in March 1999, "making it the first specialist legal recruitment agency to open in the country.")

11. It is not clear, however, how widespread the use of these firms is. *See, e.g.*, *Going Deutsch*, *supra* note 1, at 15 (quoted Brobeck Hale & Dorr lawyer Tom Kellerman as stating: "[t]he partners that move to your firm do not necessarily come through a recruitment consultant in Germany, which makes things more difficult because you know that through a recruitment consultant you are probably seeing everyone. In Germany, you have to rely on word of mouth. Hiring there requires more legwork.")

12. *See id.* at 36.

13. For a graphic illustration of the change in German firms after the Supreme Court ruling, *see* JUVE HANDBUCH 2000/2001, *supra* note 2, at 515-26. These graphs show the merger history of Germany's largest law firms. As these graphs illustrate, most of the large firms are the result of the merger of regional firms, many of which first merged in 1990, following the Constitutional Court decision.

14. BGH, Sep. 18, 1989, Neue Juristische Wochenschrift (NJW) 1989, 2890: so-called "überörtliche Sozietät" is permitted, now laid down by law by § 59 a Bundesrechtsanwaltsordnung (BRAO) (by Gesetz zur Neuordnung des Berufsrechts der Rechtsanwälte und der Patentanwälte vom 2.9.1994, BGBl. I S. 2278, which amended the BRAO vom 1.8.1959 (BGBl. I S. 565)); for details, *see* WILHELM E. FEUERICH & ANTON BRAUN, BUNDESRECHTSANWALTSORDNUNG: RECHT FÜR ANWÄLTE AUS DEM GEBIET DER EUROPÄISCHEN UNION, (5th ed. Munich 2000) § 59a cmt. 9; WOLFGANG HARTUNG, *Berufliche Zusammenarbeit*, *in* MARTIN HENSSLER & HANNS PRÜTTING, BUNDESRECHTSANWALTSORDNUNG (commentary) (C.H. Beck'sche Verlagsbuchhandlung 1997), at 601 [hereinafter *BRAO*]; Martin Henssler, *Anwaltsgesellschaften*, NEUE JURISTISCHE WOCHENSCHRIFT (NJW) 1993, at 2137; Hanns Prütting, *Die Zulässigkeit der überörtlichen Sozietät*, JURISTISCHE ZEITUNG (JZ) 1989, at 705.

15. *See* JUVE/AMERICAN LAWYER MEDIA, GERMAN COMMERCIAL LAW FIRMS 3 (2000) [hereinafter GERMAN COMMERCIAL LAW FIRMS] ("While the big-ticket work has encouraged leading international firms to set up in Frankfurt (no doubt accelerating the modernization process), the German legal market had already started to move decisively in the direction of a modern service culture—even though it took a constitutional court ruling in 1989 to permit such developments as the establishment of firms with offices in more than one city.") The case to which this refers is BGH, NJW, 18.9.1989 (1989), 2890 (permitting branch offices). This branch office ban was not officially changed in the law regulating lawyers—the *BRAO*—however, until 1994. *See* Gesetz, v. 2.9.1994 (BGBl. 1 S.2278).

France or England—such a restriction would not have been a roadblock for growth. The legal market in Germany, however, reflects the federal structure of the country. There are more than half a dozen regional markets, each of them having, for historical reasons, a stronghold in certain areas of law.[16] By far, Frankfurt and Duesseldorf are the most attractive high-end markets, with Frankfurt having a focus on international banking law, capital markets work, M & A and the like.[17] Duesseldorf is known for the intellectual property and technology sector. Munich, Stuttgart, Berlin, Hamburg and Cologne are smaller, albeit still very important regional markets. In a way, the German market structure resembles the situation in the U.S. where New York may have a leading role for example for M & A work, but where IT and IPO work is dominated by West coast firms, competition law has a stronghold in Washington D.C., a lot of banking law is done in Boston and Philadelphia and firms specializing in energy law are to be found in Texas.[18]

Until the late 1980s, in each of the aforementioned regional markets, "large" law firms had grown to a size of some 20 or 30 lawyers, but were restricted from expanding into new markets in other parts in Germany. After relaxation of the archaic prohibition, firms from Frankfurt, Duesseldorf, Hamburg, Munich and Stuttgart began talking to each other and a first wave of mergers swept throughout Germany, creating a handful of law firms working on a national and international basis.[19] Talking about large law firms in that context means a law firm of less than 100 lawyers. In a judgment of the Eastern District Court of New York delivered by Judge Weinstein in 1973,[20] the court was referring to the world's largest law firm, Baker McKenzie, in which more than 240 lawyers were working—it would take another 25 years before Germany's largest law firm had grown to that size. In a way, history has

16. *See* GERMAN COMMERCIAL LAW FIRMS, *supra* note 15, at 4 ("The most important feature of the German market is that it is shaped by the federal nature of the country. There is no one legal center.... It is vital to note that even if the market gets more centralized as far as banking and corporate finance is concerned (i.e. towards Frankfurt), other cities will continue to retain a sphere of influence in certain areas of law, be it due to the structure of industry around that city or sometimes due to the accidents of the development of the German legal market since the war.") *See also Going Deutsch*, *supra* note 1, at 14 (explaining the nature of the Frankfurt, Munich, Dusseldorf, and Berlin markets).

17. *See* the surveys in JUVE HANDBUCH 2000/2001, *supra* note 2, at 5.

18. *See* Morris, *Big Apple*, *supra* note 4, at 5.

19. *See* Ferguson, *Merger Fever*, *supra* note 1, at 36.

20. Silver Chrysler Plymouth Inc. vs. Chrysler Motors Corp., 370 F. Supp. 581, 588 (E.D.N.Y. 1973).

repeated itself. The 1970s and 1980s brought changes for U.S. law firms when a wave of mergers and spin-offs among the ranks of corporate clients resulted in a lot of work for law firms.[21] On the other hand, clients started to like the idea of shopping around for good deals.[22] The professionals themselves began to move from one firm to the next, with the so-called "rainmakers" becoming the stars of the profession.[23] These developments hit the German market with a delay of 15-20 years. Large volume work for clients, beauty-contests and poaching are relatively new to German lawyers.

The 1990s have produced more law firm mergers in Germany than anywhere else in the world.[24] However, German law firms could not catch up with a development in just a few years that had taken 20 years elsewhere. When the international merger fever started, the largest German law firms could muster some 200 to 300 lawyers. A practice of that size makes it difficult to survive in a globalized market on one's own. It is, however, just as difficult to be more than just a junior partner in an international law firm—or, as someone put it more explicitly, - to avoid being steamrollered in a transnational merger with an English or U.S. firm.

B. Merger, Alliance, Best Friends?

Compared to U.S. law firms, their English counterparts have been more active in forming international law firms.[25] The reasons for that are twofold. Obviously English law firms felt a stronger need to grow out of their home market as their sheer size had made

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21. *See, e.g.*, MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM (1991); RICHARD L. ABEL, AMERICAN LAWYERS (1989); ROBERT L. NELSON, PARTNERS WITH POWER: THE SOCIAL TRANSFORMATION OF THE LARGE LAW FIRM (1988); JAMES B. STEWART, THE PARTNERS: INSIDE AMERICA'S MOST POWERFUL LAW FIRMS (1983).

22. *But see* GALANTER, *supra* note 21, at 50 (countering the intuitive notion that the most "sophisticated shoppers" might move toward lower-cost alternatives by noting that, among other factors, "[c]orporate counsel remain drawn to large firms because . . . quality is hard to judge and the costs of visible misjudgment are high").

23. *See, e.g.*, Marc Galanter & Thomas Palay, *Why the Big Get Bigger: The Promotion-to-Partner Tournament and the Growth of Large Law Firms*, 76 VA. L. REV. 747, 750 (1990).

24. *See* Ferguson, *Merger Fever*, *supra* note 1, at 36. *Cf.* Morris, *Big Apple*, *supra* note 4, at 12. Not all merger efforts have been successful, however. *See Hasche Fuels Merger Mania*, *supra* note 1, at 4 (citing mergers that fell through between Gleiss Lutz Hootz Hirsch and Stibbe Simont Monahan Duhot, the split up of Schon Nolte Finkelburg & Clemm and the breakup of the Pünder group.)

25. *See* Nick Ferguson, *UK Firms embrace a global future*, INT'L FIN. L. REV., Aug. 1998, at 31.

them pretty vulnerable to economical hiccups in the past.[26] Secondly, being larger than their rivals on the continent ensured a leading role in any co-operation, alliance or merger. Being closer to and in more direct contact with the German market was undoubtedly another strategic advantage. As a result, English law firms were on the forefront when a wave of mergers—others would say, unfriendly take-overs—swept through Germany. Linklaters (Oppenhoff), Freshfields (Deringer/Bruckhaus), Clifford Chance (Pünder), Lovell & White (Boesebeck Droste) have all merged with top-tier German firms, while others like Osborne & Clarke (Westphalen Fritze Modest) and Herbert Smith (Gleiss) have entered into strategic alliances.[27] There are, of course, also lone wolves. Allen & Overy, one of the five British law firms belonging to the magic circle, seems to have adapted a different concept. Allen & Overy has been able to build up a sizeable office in Frankfurt and was in the headlines recently when a top mid-sized law firm broke up when 8 partners left to join Allen & Overy.[28] The lone wolf among the German law firms is Hengeler Mueller Weitzel Wirtz who has refused any proposals to merge so far.[29] It has adopted a "best-friends" client referral relationship with Slaughter and May in the UK and Davis Polk in the U.S., believing that a merged international practice lacks the true partnership spirit that is crucial for professionals.[30]

The strategic concept of U.S. firms seems to differ from their English counterparts. U.S. law firms seem to be more focused on the home market which is, unlike the British market, large enough to sustain large scale growth. A quite common concept was to establish a mid-sized London office with 40-60 lawyers and to add a number of smaller offices on the continent.[31] Usually, the intention was not to attract European clients with a full-service concept but to concentrate on high-end work where American interests were involved. Those who could not rely as much on attractive investment, banking, capital market and M & A work on Wall Street like Cravath, Davis Polk, Skadden Arps or Sullivan &

26. *See id.*

27. *See* Ferguson, *Merger Fever*, *supra* note 1, at 36.

28. *See Britische Anwaltskanzleien legen ihre Ertragszahlen offen*, HANDELSBLATT, Sep. 5, 2000; Nicola de Paoli, *Marktdruck spaltet führende Anwaltskanzlei*, FIN. TIMES DEUTSCHLAND, June 6, 2000; *Nachrichten, Schilling Zutt zerbricht*, JUVE-RECHTSMARKT, July 2000, at 17.

29. *See* Ferguson, *Merger Fever*, *supra* note 1, at 36-37.

30. *See id.*

31. *See* Morris, *Big Apple*, *supra* note 4, at 8.

Cromwell were of course more interested in thinking globally.[32] This might explain why firms like White & Case, Shearman & Sterling and Cleary Gottlieb have been more active abroad than others. Those who have ventured into the European market have focused on markets like France, Central or Eastern Europe.[33] A good example seems to be White & Case who has built up a strong European presence since the 1970s but felt that it would never be able to become a top player in the City of London.[34] Its expansion into new markets resulted in the first U.S.-German merger. The German firm, Feddersen, one of the few remaining larger firms without a partner from the Common Law world, became a pioneer when it decided to merge with White & Case.[35] It will be interesting to see if there will be more U.S.-German mergers that reflect the desire to avoid being dominated by a large English law firm. In a way, the formation of Clifford Chance shows that U.S. and German law firms are brothers in the guild: the driving force behind the merger was the English firm Clifford Chance; a merger in which both Rogers & Wells in the U.S. and Pünder in Germany, although not small by national standards, were dwarfed by the sheer size of the English partner firm.[36]

The fact that a true merger of equals guarantees that U.S. or German firms are able to negotiate more favorable terms and conditions may be illustrated by the recent merger of two German firms with the English law firm Freshfields. It was a merger in which the German and English sides were of almost equal size.[37]

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32. *See id.* at 9.

33. For an excellent article explaining where U.S. law firms have opened branch offices and why, see Carole Silver, *Globalization and the U.S. Market in Legal Services—Shifting Identities*, 31 Law & Policy Int'l Bus. 1093 (2000). Silver grouped the 72 U.S. law firms with foreign branch offices into three categories: those with one branch office, those with offices in global economic centers and perhaps other cities; and those with offices in one economic or geographic area. Silver also distinguished between New York-based firms and non-New York firms. *See also Going Deutsch*, *supra* note 1, at 13 (explaining that international firms got it wrong when they opened branch offices in Dresden and Leipzig, many of which have now closed).

34. *See Nachrichten, Feddersen: mit White & Case in die weite Welt*, JUVE-RECHTSMARKT June 2000, at 22.

35. *See id.*

36. *See* Irene de Monte-Robl, *Von der Anwaltskanzlei zum Anwaltskonzern*, HANDELSBLATT, Aug. 6, 1999. Recent hires by other U.S. law firms suggest that they may be trying to expand their client base.

37. *See* GERMAN COMMERCIAL LAW FIRMS, *supra* note 15, at 13 ("Few dispute that of all the mergers and alliances that have taken place over the past two years, it was that between Deringer and Freshfields which was carried out with the minimum of fuss. The firms have similar leverage, profitability and culture (which shows how unusual Deringer was in the German market), and the process was

That it was unusual for English standards is exemplified by the rumor that allegedly an e-mail with an audio file attachment was circulating among the Freshfield lawyer: once the reader opened the message titled "our new corporate identity," the German national anthem began to play.[38]

It is no secret that there have been deep disagreements in the past about what is the most promising way ahead—a merger, an alliance, own offices? What does not seem to work for foreign law firms—at least on a large scale—is simply setting up a German office with domestic lawyers. Of course, firms like Allen & Overy, Ashurst Morris Crisp, Davis Polk & Wardwell, Jones, Day, Reavis & Pogue, Shearman & Sterling, and Skadden Arps all have their German offices. But these are small in size and it has been difficult for U.S. and UK firms to have the credible German capability to compete in structured transactions. Building up large German offices has been difficult in the past. Those who have tried focused their efforts on Frankfurt and the capital market. Recruitment of highly-qualified German lawyers is one key problem, the understanding of the different needs and expectations of a German client is another.[39] Although some foreign firms have enjoyed considerable successes in Germany in the past, especially Shearman & Sterling and Allen & Overy, there was little hope of being able to compete with the German top-tiers on equal footing.[40] The

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smoothed by the apparent willingness on the side of Freshfields to incorporate structures where the German partners did not feel overly dominated.")

38. *See* Balzer, *Kampf der Kulturen*, *supra* note 2, at 289.

39. *See generally* Joachim Jahn, *Wie aus Anwälten Unternehmer werden*, HANDELSBLATT, Sep. 1, 1999.

40. Interestingly, however, the U.S. and U.K. firms seem to have improved their standing in the past year or two. For example, in a survey rating the "quality" of firms, Sherman & Sterling was listed as 7th in the JUVE HANDBUCH 2000/2001, *supra* note 2, at 12; 17th in the JUVE HANDBUCH for 1999/2000, *supra* note 2; and 24th in the 1998/1999 JUVE HANDBUCH, *supra* note 2, at 14. While some of the improvement was due to firm mergers and a reduction in the number of firms ahead of them, Sherman & Sterling also improved its standing relative to some of the German firms evaluated. The firm listed first in the JUVE HANDBUCH 2000-2001 is Freshfields Bruckhaus Deringer, which is the firm created by the merger of Freshfields and Bruckhaus Deringer. On the other hand, mergers haven't also had those results. In 1998-99, for example, Feddersen was rated ninth. After it merged with White & Case, the resulting firm White & Case, Feddersen was rated 15th in the JUVE HANDBUCH 2000/2001, *supra* note 2, at 12. In the JUVE HANDBUCH 2000-2001, the Baker & MacKenzie affiliated firm ranked 6th in the marketplace, Sherman and Sterling was 7th, Cleary Gottlieb was 28th, Jones Day was 35th, and Morgan, Lewis & Bockius as 48th and Wilmer, Cutler & Pickering as 100th. *See id.* at 12, 28, 3. *See also Hasche Fuels German Merger Mania*, *supra* note 1, at 4 (quoted a Pünder senior partners explanation of lateral defections: "The reason they went to Shermans was simply for money. Foreign firms have a

German offices were too much of a satellite of London practices. When the need for rapid expansion became evident, there was a trend towards alliances, the best-known probably the Linklaters alliance. Experiences with alliances have obviously been mixed. Describing the difference between an alliance and a merger, a German lawyer recently said: "[a]n alliance makes two plus two equal four, while a merger makes two plus two equal five."[41] What he meant is that, according to popular belief, synergies really come through a merger while an alliance only allows coverage of an (additional) area. The client benefits from a merged practice because there are no integration costs for the retention of various law firms in different countries. Not all agree, however. In explaining why it never pursued size or invested in an international network, Hendrik Haag from Hengeler explained that "we don't want to merge. When you merge you get a lot of things you don't want. It is rarely the case that one plus one equals two—more often it is one-and-a-half."[42]

C. *When Different Worlds Meet*

A transnational merger of law firms has been described as resulting in the nightmare task of pulling around three or more firms to the same vision—German law firms have a different structure than Anglo-Saxon law firms, German lawyers have a different approach and credo than British or American lawyers.

The partner—associate ratio in German law firms differs dramatically from an American law firm:[43] one of Germany's largest law firms proudly claimed some years ago that their ratio was 1:1—

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problem getting highly qualified professions, so they do it with money."). A September 2000 article reported that Sullivan & Cromwell had been unable to hire a German equity partner despite offers of DM 4 million. *See German Lawyers Shun Sullivan's Millions*, *at* http://www.legalmediagroup.com/default.asp?Page=1&SID=4931& Type=News (visited Apr. 9, 2001).

41. *See* Ferguson, *Merger Fever*, *supra* note 1, at 37 (citing Clifford Chance's Keith Clark).

42. *See* Ferguson, *Merger Fever*, *supra* note 1, at 37. It should be noted, however, that Hengeler may have obtained the benefits of an alliance or merger, without the formalities. *See* GERMAN COMMERCIAL LAW FIRMS, *supra* note 15, at 11 ("Although competitors prefer not to believe it, the leading investment banks in Germany regard the cooperation between Hengeler Mueller and Slaughter and May or with Davis Polk as seamless: 'a lot better than some of the alliances and merged firms: was the judgment of one.'")

43. *See Die Erwartungen der Klienten und der Druck der Wettbewerber drängen viele deutsche Anwaltskanzleien zu Fusionen*, FRANKFURTER ALLGEMEINE ZEITUNG (FAZ), May 10, 2000; *accord* GERMAN COMMERCIAL LAW FIRMS, *supra* note 15, at 5-6.

this law firm recently merged with an English law firm where the ratio is 1:8 or 1:10. Career perspectives for young lawyers have changed dramatically because of such mergers. Becoming an equity partner is still the goal to achieve in Germany; if the chances to make it are rather dim, it is still common practice to leave the firm after a couple of years to join a smaller local law firm or become a sole practitioner. A career as an employed lawyer of a large law firm is still regarded as a career with little prestige and reward. It is quite obvious that the dominating Anglo-Saxon law firms will not adopt this German concept and it will be quite interesting to see how German junior partners will be integrated into an international law firm. There are examples that the so-called middle-segment, the younger equity-partner, is to become the main victim of the merger process.[44] Quite a few have been downgraded to non-equity partners in the international firm. Not surprisingly, many decided to leave the firm, resulting in severe losses for the German arm of the firm—a wave of "spin-offs" is the price most of the German law firms have to pay in the aftermath of a merger.[45]

Not only law firm structures differ. Also the legal professionals that work in the law firms are different. In Germany, the goal is to train lawyers who have an academic approach to problem-solving in the sense that they are not content with applying rules or standards. They are expected to have original ideas, always developing the law further to enable them to find tailor-made solutions for clients. To guarantee that, it is felt that an individualistic approach to legal education is indispensable and that is probably the reason why German lawyers tend to have more of an academic attitude than their colleagues elsewhere. In the legal services market, however, the traditional German model in which lawyers view their profession as an academic discipline and operate almost autonomously within the firm, is slowly starting to move to the more business-orientated, management-driven approach of Anglo-Saxon law firms.[46] One of the main difficulties to overcome

44. *See, e.g., Nachrichten, Feddersen: Mit White & Case in die weite Welt*, JUVE RECHTSMARKT, July 2000, at 22 (23).

45. *See, e.g.*, Eva Buchhorn & Claus G. Schmalholz, *Die große Freiheit*, MANAGERMAGAZIN, Oct. 2000, at 292 (293); Susanne Steckel, *Umbruch mit Abbruch*, JUVE RECHTSMARKT, Sep. 2000, at 16 (17); *Nachrichten, Feddersen-Spin-Off in Frankfurt und Berlin*, JUVE RECHTSMARKT, July 2000, at 25.

46. *See* GERMAN COMMERCIAL LAW FIRMS, *supra* note 15, at 5 ("German legal education is long, exhaustive, highly academic—and in need of reform"). *See id.* at 9 ("So-called Anglo-Saxon transaction style will become much more widespread as law firms adapt to the demands of investment banks and major corporate clients for uniform contracts throughout the continent. This will begin

while negotiating a merger seems to convince the German partners that they will be able to keep their own professional independence and will not become centrally managed by controllers and time-keepers.

There is a strong nexus between this aspect and the other side of the lawyer-client relationship, the client. It has often been said that Anglo-American lawyers are surprised by the needs and expectations of a German client.[47] Although "the German client" is changing, many clients in Germany still are very much focused on "their" lawyer rather than their firm. As a result of the close relationship with a specific lawyer, the client often wishes to deal with the familiar face in the crowd he has known for years and not with ever changing practice groups of anonymous lawyers from different locations, tailored on an ad hoc basis to meet specific legal demands.[48] Such traditional views give the *Rechtsanwalt*[49] a rather strong position in a firm. It was a severe blow for the new Linklaters Oppenhoff firm when one of the members of their merger task force and senior partner of Oppenhoff left after the merger, claming that the German arm was forced to adopt a British-style concept not compatible to the German market.[50] What was even more interesting was that he left to join a German office of Shearman & Sterling who is said to have understood the need to combine the best of two worlds—it is one of the most successful non-merged foreign law firms in Germany.[51]

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to trickle down to the real engine—the Mittelstand.").

47. *See Hasche Fuels German Merger-Mania*, *supra* note 1, at 4 ("Schmidt-Diemitz of Sigle says: 'In the beginning [foreign] firms made a mistake. They sent four or five American lawyers and believed they could do their job anywhere. Then they realized it did not work, so they started to hire German lawyers. There are differences in culture that you should not underestimate. German clients do not like thick bibles after a transaction. They want more simple documents.'").

48. *See* Jahn, *supra* note 39.

49. *The Rechtsanwalt* is the title most closely analogous to the U.S. title of lawyer. An individual becomes a *Rechtsanwalt* by majoring in law at the university, passing a state bar examination, performing an apprenticeship of approximately two years, and then passing a second bar examination. The states regulate the bar examinations, but they must include both written and oral components. *Rechtsanwälte* (the plural term) are regulated by their own regulatory body (*Kammer*) and have their own set of professional rules. *See* Laurel S. Terry, *German MDPs: Lessons to Learn*, 84 MINN. L. REV. 1547 (2000).

50. *See Nachrichten, Koerfer von O&R zu Shearman: Symbol eines Kulturkonflikts?*, *JuVe-Rechtsmarkt*, Feb. 2000, at 16; GERMAN COMMERCIAL LAW FIRMS, *supra* note 15, at 15.

51. *See, e.g.*, GERMAN COMMERCIAL LAW FIRMS, *supra* note 1, at 20 ("[It] is now regarded as a competitor of leading German firms in the field [of M&A and equity issues market]. . . . It's success . . . also reflect[s] the firm's ability to adapt its partnership structure to the European market.")

One other crucial point is the differing economics of German and Anglo-Saxon law firms. It is not surprising that hard data is difficult to obtain because German law firms usually do not publish their results. When German firm Oppenhoff merged with Linklaters, it was revealed that the median profit per partner at Oppenhoff was less than 50% of a Linklaters partner.[52] Partners in *Magic Circle* or *Wall Street* law firms can expect to enjoy profits between 2.5 and 3 million DEM per annum once they have reached the peak of the lock-step ladder.[53] There is only one German law firm that is somewhere near these figures, averaging a yearly profit of 2 million DEM.[54] Interestingly, it is Hengeler, the lone wolf on the market, who has resisted any proposals to merge so far. All other law firms generate less profit per partner.[55] While this may be fine in the national context where lawyers are still top-earners, in an international practice these differences need to be adjusted. One logical explanation for these differences is, of course, the partner: associate ratio of German law firms. Some "internationalized" practices have started to recruit large numbers of associates to generate more turnover and profits with the help of less expensive associates and non-equity partners. As a result, the situation for top-graduates is pretty comfortable at the moment. They are sought-after and the market cannot fulfill demand—as demand controls costs, the salaries for young associates have begun to rise significantly.

D. Summary

Globalization pertains largely to sophisticated commercial work carried on by major firms. One should not forget that a great deal of the practice of law, particularly that carried on by sole

52. *See* John E. Morris, *The New World Order: Clifford Chance and Rogers & Wells Are about to Pull Off the First Large-Scale Transatlantic Merger. Did the Eat-What-You-Kill Americans Ever Come to Terms with the Lockstep Brits? And, More Importantly, What Will It Mean for the Competition?*, AM. LAW., Aug. 1999 (describing the three-way merger of Rogers & Wells, Clifford Chance, and Pünder, Volhard, Weber & Aster); New Transatlantic Merger, WORLDLAW BUS., Nov. 1999, at 13. *See also* John E. Morris, *Watch Out World*, AM. LAW. Jan. 2000 at 15, 17 ("One challenge of the [Clifford Chance—Pünder—Rogers & Wells merger] will be to bring the economics of the German firm's practice closer to those at the English-speaking firms. Pünder's profits per partner and revenue per fee-earner are far lower [see table, next page.]").

53. *See* statistics in JUVE-HANDBUCH 2000/2001, *supra* note 2, at 512; Catrin Griffiths, *Alles Geld der Wall Street*, JUVE-RECHTSMARKT, July 2000, at 28 (30).

54. *See Britische Anwaltskanzleien legen ihre Ertragszahlen offen*, HANDELSBLATT, Sep. 5, 2000.

55. *See id.*

practitioners and small law firms, is and will always continue to be very rooted in a particular place and a national culture. The lawyers who provide these services are the ones who deal with the legal worries of Joe Public. They fulfill an indispensable function in society, being the catalysts of access to justice as a fundamental human right of lay clients. With all the discussion about "mega-lawyering" going on at the moment, one should not forget to take notice of the needs and problems of the traditional, "non-globalized" lawyer.

III. Practicing Law in Germany as a Foreigner

A. The Legal Framework

After a look at the market conditions, it seems useful to analyze the legal framework that governs the trans-border practice of law in Germany. For analyzing the framework, it is necessary to understand that in a way the position of Germany is not much different from one of the states of United States of America: Germany is a member of the European Union, a large liberalized market in which more than 374.5 million citizens live in 15 member countries. The gross national product, however, shows that the U.S. economy is still much stronger: the comparative figures for the EU and the U.S. are 16.588 billion DEM and 18.381 billion DEM with the EU having roughly 100 million more citizens.[56] Within the borders of these "United States of Europe," the provision of legal services has been liberalized in a way that guarantees that today EU-lawyers can provide services on a temporary or a permanent basis in any other member country. The provision of legal services within the borders of this common market is governed by three Council Directives, the so-called Legal Services Directive (77/249/EEC),[57] the Mutual Recognition of Higher Diplomas Directive (89/48/EEC)[58] and the Establishment Directive (98/5/EC).[59]

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56. *Cf.* the statistics for 1999 in *Institut der Deutschen Wirtschaft*, Zahlen zur wirtschaftlichen Entwicklung der Bundesrepublik Deutschland, No. 147 Bruttoinlandsprodukt.

57. Council Directive 77/249 1977 O.J. (L 78) 17 (facilitates the effective exercise by lawyers of freedom to provide services).

58. Council Directive 89/48 1988 O.J. (L 19) 16 (a general system for the recognition of higher-education diplomas awarded on completion of professional education training of at least three years duration).

59. Council Directive 98/5 1998 O.J. (L 77) 36 (facilitates practice of the profession of lawyer on a permanent basis in a Member State other than that in

Compared to the U.S., differences remain of course. Although European directives, like model codes in the U.S., try to harmonize the legal framework in the member countries, differing legal cultures and traditions like civil law and common law systems can be found. Although European law creates a common legal standard, the legal systems will keep their national characteristics. Language barriers remain. However, Europe will become a single market for legal services sooner than later and within this market, Germany's position has been described "as the powerhouse of Europe."[60] For an American lawyer, entering this market through the German door is, unsurprisingly, not as easy as it is for an Italian, Greek or Swedish lawyer—as it is much more difficult for a German Rechtsanwalt to practice in California than for a lawyer from New York. While EU nationals benefit from the freedoms granted by the EU treaty, American lawyers have to rely on the rights derived from the General Agreement on Trade in Services (GATS)[61]—unless they are willing to start all over again and complete a legal education in Germany.

B. Earning a University Degree

For an American lawyer, two options for practicing law in Germany exist. The first of those options is a rather theoretical one: becoming a qualified *Rechtsanwalt.* Practicing law in Germany is not subject to a nationality requirement.[62] If a foreign lawyer acquires the law degrees necessary to work as a lawyer in Germany, i.e. the first and second German state exam, he will be admitted to the bar like his German colleagues.[63] In order to practice law, the

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which the qualification was obtained). [hereinafter *EU Lawyers Establishment Directive 98/5*]. This document is also found in Neue Juristische Wochenschrift (NJW) 1999, 268 ff. For details (concerning all the three Council Directives), see Matthias Kilian, *Freizügigkeit der Anwälte in der EU, Juristische Arbeitsblätter* (JA) 2000, 429 (431 ff) [hereinafter *Freizügigkeit*].

60. *See* Ferguson, *Merger Fever*, *supra* note 1, at 35.

61. The express language of the Lawyers' Establishment Directive, *supra* note 59, applies only to EU citizens. Accordingly, European regulators have not permitted U.S. lawyers to rely on its liberal provisions that allow EU lawyers from one country to travel to another EU country. There is at least one lawsuit pending, however, that seeks greater access for U.S. lawyers. *See also Going Deutsch*, *supra* note 1, at 15 ("Restrictions laid down by German regulations make it particularly important for firms from outside the EU to recruit German lawyers. Lawyers from other EU countries will find it easy to practice and move around in Germany because of the country's compliance with the union's directives . . . .").

62. HENSSLER & PRÜTTING, *supra* note 14, § 4 cmt. 8; FEUERICH & BRAUN, *supra* note 14, § 4 cmt. 3.

63. Subject to fulfillment of requirements set up in §§ 4, 7 BRAO. For details,

lawyer has to be admitted to the bar in the territory falling under the jurisdiction of a district court, within which he has to establish an office.[64] This requirement applies to Germans as well as to foreigners who practice under the German title of *Rechtsanwalt.* Becoming a *Rechtsanwalt,* however, will require four to five years of university training and a two-year period of practical training in public service.[65]

C. Taking an Aptitude Test

For lawyers from EU member countries, it is much easier to become a German *Rechtsanwalt*: if they are qualified lawyers in their home country, they can take an aptitude test to prove that they have sufficient skills to practice in German law.[66] Having passed that test (*Eignungsprüfung*), they can become members of a local bar association (*Rechtsanwaltskammer*) and have the same professional rights and duties as their German colleagues. They are fully integrated members of the German bar although they can, if they wish so, also keep their home title.

This much more feasible alternative has its roots in the Council Directive 89/48.[67] The underlying notion of the directive is the general equivalence of all diplomas of higher education in the EU.[68] Someone who has studied for a minimum period of three years in

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see e.g. HENSSLER & PRÜTTING, *supra* note 14, § 4 and § 7; FEUERICH & BRAUN, *supra* note 14, § 4 and §7.

64. § 27 BRAO.

65. § 4 BRAO; *see* HENSSLER & PRÜTTING, *supra* note 14, § 4 cmts. 9 ff; FEUERICH & BRAUN, *supra* note 14, § 4 cmts.

66. Art. 4 I lit. b Dir 89/48; implemented into German law by § 16 Gesetz zur Umsetzung von Richtlinien der Europäischen Gemeinschaft auf dem Gebiet des Berufsrechts der Rechtsanwälte (EuRAG), BGBl. I 2000, 182 ff. For general information, concerning the EuRAG, see MATTHIAS KILIAN, *in* MARTIN HENSSLER & MICHAEL STRECK, HANDBUCH DES SOZIETÄTSRECHTS, (Cologne 2001), para H cmts. 21 ff; Kurt Franz, NEUES NIEDERLASSUNGSRECHT FÜR EUROPÄISCHE RECHTSANWÄLTE, BETRIEBSBERATER (BB) 2000, at 989; Andreas Klein, *EU-Anwälte ab sofort gleichberechtigt auf deutschem Markt,* ANWALTSBLATT (AnwBl.) 2000, at 190; Barbara Lach, *Die Möglichkeit der Niederlassung europäischer Rechtsanwälte in Deutschland,* NEUE JURISTISCHE WOCHENSCHRIFT (NJW) 2000, at 1609.

67. For detailed studies, concerning Dir 89/48, *see* Martin Henssler, *Der europäische Rechtsanwalt,* ANWALTSBLATT (AnwBl.) 1996, at 353 (355) [hereinafter *Rechtsanwalt*]; MARTIN HENSSLER & JÖRG NERLICH, ANWALTLICHE TÄTIGKEIT IN EUROPA 28 (Bonn 1995); Hildegard Schneider, *Die Anerkennung von Diplomen in der EG,* ANTWERPEN/APELDOORN 1995; Kilian, *Freizügigkeit, supra* note 59, at 432.

68. *Cf.* Henssler, *Rechtsanwalt, supra* note 67, at 355; Kilian, *Freizügigkeit, supra* note 59, at 432-33.

his home country and is fully qualified to become a professional there, should be regarded as sufficiently qualified to practice in any other EU country. In the case of lawyers, the substantial differences among the legal systems within Europe led the EU to allow each member country to require an exam, with which the foreign lawyer has to prove that he has acquired the necessary additional knowledge and skills to practice law in his host country.[69] The examination subjects have to be restricted to those topics not covered by his original law degree.[70]

D. Three-Year Adaptation Period

Since March 2000, when a new establishment directive came into force (Council Directive 98/5),[71] European lawyers have another option to become a *Rechtsanwalt.* They can register with a local Bar and practice in Germany under their home title for a period of three years as a so-called *"registrierter europäischer Rechtsanwalt."*[72] After three years, they can apply to become a member of the Bar and thus a *Rechtsanwalt.*[73] They have to prove that during the three-year period they have worked continuously and effectively in Germany and practiced German law.[74] The required proof leads to the irrebuttable presumption that the applicant has sufficient knowledge and skills to become a

69. Art. 4 I lit. b Dir 89/48. *Cf.* Henssler, *Rechtsanwalt, supra* note 67, at 357-58; Kilian, *Freizügigkeit, supra* note 59, at 433-34.

70. Art. 1 lit. g Dir. 89/48; implemented into German Law by § 17 EuRAG.

71. See *EU Lawyers' Establishment Directive 98/5, supra* note 54. For a discussion of this directive, see Roger J. Goebel, *The Liberalization of Interstate Legal Practice in the European Union: Lessons for the United States?* 34 INT'L L. 307 (2000); *see also* Laurel S. Terry, *A Case Study of the Hybrid Model For Facilitating Cross-Border Legal Practice: The Agreement Between the American Bar Association and the Brussels Bars*, 21 FORDHAM INT'L L.J. 1382 (1998) (substantially reprinted in the Symposium Issue of *The Professional Lawyer* 17 (1998)] [hereinafter *Cross Border Legal Practice*] (comparing the EC scheme of multijurisdictional practice with the other major global MJP schemes).

72. § 2 EuRAG.

73. § 11 EuRAG. For corresponding Art. 10 Dir 98/5 *see* Martin Henssler, *Der lange Weg zur EU-Niederlassungsrichtlinie für die Anwaltschaft*, ZEITSCHRIFT FÜR EUROPÄISCHES PRIVATRECHT (ZEuP) 1999, at 689 (700) [hereinafter *EU-Niederlassungsrichtlinie*].

74. For that requirement (concerning corresponding Art. 10 Dir 98/5), *see* Jörg Nerlich, *Erleichterte Niederlassungsbedingungen für europäische Rechtsanwälte*, SICHT, MONATSSCHRIFT FÜR DEUTSCHES RECHT (MDR) 1996, at 874 (876); Christoph Sobotta/Christoph Kleinschnittger, *Freizügigkeit für Anwälte in der EU nach der Richtlinie 98/5/EG*, EUROPÄISCHE ZEITSCHRIFT FÜR WIRTSCHAFTSRECHT (EuZW) 1998, at 645 (648); Henssler, *EU-Niederlassungsrichtlinie, supra* note 73, at 700; Kilian, *Freizügigkeit, supra* note 59, at 434-35.

Rechtsanwalt and offer his services as such to the public.

E. Delivering Services Under the General Agreement On Trade In Services (GATS)

Unless the United States ever becomes a member of the European Union, becoming a *Rechtsanwalt* for a fully qualified American lawyer is a long and winding road. Therefore, the choices narrow down to practicing in Germany under the home title as an attorney-at-law. American lawyers do, of course, enjoy the liberties of free movement granted by the General Agreement On Trade In Services (GATS),[75] which is part of the World Trade Organization (WTO). In accordance with the GATS, lawyers originating from member countries of the World Trade Organization are allowed to practice in Germany, but with a reduced scope of activities compared to German or EU-lawyers: they may only give advice in legal matters concerning their home country and the law of nations.[76] They are excluded from services in other parts of international law and EU law as well as from the law of third countries.[77] In contrast to the rules governing EU nationals, § 206 does not refer to whether a person has practiced under the professional title of a lawyer in his home country, but asks whether his occupation is equivalent to the tasks of a German *Rechtsanwalt*.[78] The German Federal Ministry of Justice has enacted statutory instruments which declare certain legal professions in various countries to be equivalent.[79] Not surprisingly, the United States were the first to gain such statutory recognition in 1995.[80] As of August 1999, only forty foreign lawyers were

75. For the impact of the GATS on the legal profession see Martina Errens, *Auswirkungen des GATS-Abkommens auf den Beruf des Rechtsanwalts*, EUROPÄISCHE ZEITSCHRIFT FÜR WIRTSCHAFTSRECHT (EuZW) 1994, at 460; Eugen Ewig, *Internationaler Dienstleistungshandel und neue Tätigkeitsfelder für die Anwaltschaft (GATS-Abkommen)*, NEUE JURISTISCHE WOCHENSCHRIFT (NJW) 1995, at 434; Eugen Ewig, *Verwirklichung der Niederlassungsfreiheit für Rechtsanwälte in der EU und im EWR*, NEUE JURISTISCHE WOCHENSCHRIFT (NJW) 1999, at 248; Laurel S. Terry, *GATS' Applicability to Transnational Lawyers and Its Potential Impact on U.S. State Regulation of Lawyers*, 34 VAND. J. TRANSNAT'L L. (2001) (forthcoming and on file with authors).

76. § 206 I BRAO. For details, *see* DIRK SCHROEDER & ANNE FEDERLE, *in* HENSSLER & PRÜTTING, *supra* note 14, § 206 cmt. 20; FEUERICH & BRAUN, *supra* note 14, § 206 cmts. 4 ff.

77. *See* FEUERICH & BRAUN, *supra* note 14, § 206 cmt. 6.

78. § 206 I 2 BRAO.

79. A list can be found in HENSSLER & STRECK, *supra* note 66, para H cmt. 31; FEUERICH & BRAUN, *supra* note 14, § 206 cmt. 7.

80. Verordnung zur Verbesserung der beruflichen Stellung ausländischer

established in Germany by making use of the GATS provision. Thirty-four of them were American attorneys-at-law, and twenty-three of them were members of the Frankfurt Bar.[81]

A "GATS-lawyer" has to join the local bar association in the district of his office. He may only use his originally acquired professional title by additionally indicating the country where he acquired it.[82] In order to be admitted to a German bar association, the lawyer has to submit a certificate issued by the competent authority proving his affiliation with the legal profession in his home country.[83] The application to join the bar association supplemented by the relevant certificate of his home country has to be filed with the administration of justice of the German Land (state) in which the lawyer wants to establish his law business; the certificate has to be filed every year.[84] Upon failure to comply with this requirement, the admission to the bar association and consequently the permission to render legal services in Germany will be revoked.[85]

Becoming a member of a German bar association, the attorney-at-law is subject to the German rules of professional responsibility which are laid down in the German legal profession act (*Bundesrechtsanwaltsordnung*).[86] On the other hand, he remains a member of his home state's bar association and is subject to its rules of professional responsibility. This leads to an obvious question: to which professional rules will the lawyer have to adhere in general, and more important, if they conflict? The German statutes do not address the problem. It is simply expected from a member of the bar association that he obeys the German rules, whether he is a member of another bar association or not.[87] In the United States, for obvious reasons, much more consideration has been given to the problem of professional responsibility of lawyers who are admitted in more than one jurisdiction. Many attorneys are admitted in more than one State and although Model Rules of the ABA exist, the state rules of professional responsibility differ in

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Rechtsanwälte vom 29.01.1995: BGBl. I, S. 142.

81. Bundesrechtsanwaltskammer (BRAK). *Cf.* FEUERICH & BRAUN, *supra* note 14, § 206 cmt. 7.

82. § 207 IV BRAO.

83. *See id.*

84. § 207 I BRAO. For details, *see* FEUERICH & BRAUN, *supra* note 14, §207; KILIAN, *in* HENSSLER & STRECK, *supra* note 66, para H cmt. 32.

85. § 207 I BRAO; *cf.* FEUERICH & BRAUN, *supra* note 14, § 207 cmt. 4.

86. § 207 II BRAO; *cf.* FEUERICH & BRAUN, *supra* note 14, § 207 cmts. 5-15.

87. *See* SCHROEDER & FEDERLE, *in* HENSSLER & PRÜTTING, *supra* note 14, § 207 cmt. 7 ff; KILIAN, *in* HENSSLER & STRECK, *supra* note 66, para H cmt. 32.

detail. A conflict of laws—or rather of rules—is probably not uncommon and unsurprisingly, ABA Model Rule of Professional Conduct 8.5 therefore addresses this problem.[88] It says for out-of-court-work: "[t]he rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct."[89]

Rule 8.5. deals only with the problem on an inter-state basis and currently disclaims application to trans-border matters, which it says, "should be the subject of agreements between jurisdictions or of appropriate international law."[90] The absence of any showing that either of these actually exists, make it seem likely that MR 8.5. will be used, for lack of anything else in analogous cases involving the U.S. and Germany.[91] There is, alas, one problem: MR 8.5. assumes that in the inter-state context the lawyer is fully admitted in two jurisdictions. Practicing as a GATS-lawyer in Germany, however, means that one admission is subordinate to the other as the lawyer is, compared to the U.S., admitted in Germany only in a limited sense. It would, however, make little sense if this distinction would result in the assumption of home country power to regulate extra-territorial activity. The locus of the impact of the activities and the balance of the lawyer's practice in the U.S. and in Germany should be the deciding factors. In Germany, there are different opinions whether a similar approach to that of MR 8.5. should be taken. While some regard such an approach as the only appropriate solution,[92] others submit that in the case of conflicting rules the

88. For a detailed study, *see* Detlev F. Vagts, *Professional Responsibility In Transborder Practice: Conflict and Resolution*, 13 GEO. J. LEGAL ETHICS 677 (2000).

89. *See* MODEL RULES OF PROF'L CONDUCT R. 8.5 (1983).

90. *See id.* at cmt. 7. The ABA Commission on Multijurisdictional Practice, however, includes as part of its mandate, an examination of multijurisdictional practice issues that arise in an international context. See American Bar Association, *Commission on Multijurisdictional Practice of Law: Mission Statement*, *at* http://www.abanet.org/cpr/mjp-mission_statement.html (last visited July 4, 2001). In June 2001, the ABA Ethics 2000 Commission proposed that this portion of the comment be deleted from Rule 8.5. *See* American Bar Association, MODEL RULES OF PROF'L CONDUCT R. 8.5 *in, Commission on Evaluation of the Rules of Professional Conduct Charges From the November 2000 Report to the May 2001 Report, available at* http://www.abanet.org/cpr/e2k-chan_june.html (last visited July 18, 2001).

91. *See* MODEL RULES OF PROF'L CONDUCT R. 8.5 cmt. 7 (1983).

92. *See* KILIAN, *in* HENSSLER & STRECK, *supra* note 66, para H cmt. 183; SCHROEDER & FEDERLE, *in* HENSSLER & PRÜTTING, *supra* note 14, § 3 RADG

more restrictive rule should be applied.[93] No court decisions addressing the problem have been reported yet but double deontology seems to become an increasingly important issue in the future.

F. Summary

Besides the hardly-practical option of completing the full legal education in Germany, the whole range of legal services rendered on a permanent basis is open only to EU nationals who are qualified lawyers in another EU country. They have the choice to take an aptitude test to become a *Rechtsanwalt* or to practice under their home title in Germany (with the option of becoming a *Rechtsanwalt* once a three year adaptation period is finished). Nationals of GATS countries may only practice under their national title and advise clients in legal matters concerning their home countries and the law of nations. They are not entitled to represent clients in court.

IV. Multi-Disciplinary Practices

A. The MDP Phenomenon

During the 1990s, the "Big Five" accounting firms—Arthur Andersen, DeLoitte Touche Tohmatsu, Ernst & Young, PriceWaterhouseCoopers and KPMG[94]—began hiring lawyers and offering services they previously had not: in addition to their traditional services of auditing, tax advice, business management and legal services were added to the portfolio. What was the rationale behind that development? One not too serious explanation is that lawyers and accountants are merely two sides of the same coin: accountants are lawyers who don't understand words, while lawyers are accountants who cannot count.[95] Bringing them together, thus, seems to be a perfect match. If you ask for a more serious explanation, the answer you will get depends on whom you have asked. A partner of a traditional law firm will usually explain that declining profits of the auditing arms of the

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cmt 2; Jacques Mauro & Heinz Weil, *Die freie Dienstleistung von Rechtsanwälten aus der Europäischen Gemeinschaft*, ANWALTSBLATT (AnwBl.) 1981, at 128 (130).

93. *See* Henssler, *EU-Niederlassungsrichtlinie*, *supra* note 73, at 709.

94. *See* Laurel S. Terry, *German MDPs: Lessons to Learn*, 84 MINN. L. REV. 1547 (2000) [hereinafter *German MDPs*].

95. *See* Gail Counsell, *Multidiscipline and the Megabuck*, ACCOUNTANCY, Mar. 1988, at 67.

"Big Five" forced them to move into allegedly more lucrative markets like legal services.[96] The standard answer of a partner of the "Big Five" firm usually follows these lines: "[in the] 1990s, law firms began to offer tax advice to their clients, before a de facto monopoly for accounting firms. The move into the legal services market was merely a reaction to that intrusion of law firms."[97] As so often, it is difficult to say who is wrong and who is right. Realistically, there is some truth in both submissions.

B. Decyphering the Acronym

There are two possible explanations for what the acronym "MDP" stands for. Thus, a threshold problem in the discussion is terminology: for some, MDP stands for "multi-professional practice," for others it stands for "multi-professional partnerships."[98] The second implies some form of association, while the first does not. Therefore, it is helpful to understand the theoretical models that show how multi-professionally structured services can be provided:

The first model is a co-operative MDP model, in which legal and auditing services are provided by independent legal entities that co-operate to some extent. There is no sharing of fees and consequently, no partnership.[99]

In an affiliation model, a law firm remains formally independent, but is affiliated to an accounting firm.[100] Common branding, joint marketing, a referral system are characteristics of such a system. Often, the law firms lease paralegal personnel, technology and facilities from the accounting firm. In some jurisdictions like Sweden it is submitted that such a construction amounts to a de facto partnership because usually royalties have to

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96. *See generally Oral Remarks of* Richard Miller, *General Counsel and Secretary of the American Institute of Certified Public Accountants (AICPA) to the ABA Commission on Multidisciplinary Practice*, Mar. 12, 1999, *at* http://www.abanet.org/cpr/rmiller.html (last visited Apr. 9, 2001) (explaining, *inter alia*, the AICPA's Vision Project); *see also* ABA Commission on Multidisciplinary Practice, Background Report, Jan. 1999, at 35 and accompanying text, *at* http://www.abanet.org/cpr/multicomreport0199.html (last visited Apr. 9, 2001) (describing the increase in consulting services, including legal services, by the Big Five and the decrease in the importance of the attest function.).

97. *See* Volker Tausch, *Weidmann und Wilderer*, JUVE-RECHTSMARKT, Feb. 2000, at 4 (5).

98. *See* Laurel S. Terry, *A Primer on MDPs: Should the "No" Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 894, 908 (1999) [hereinafter *A Primer on MDPs*].

99. *See id.* at n. 1.

100. *See id.* at 894.

be paid for the use of the brand of the accounting firm.[101] Thus, it is difficult to say whether this model is a multi-disciplinary partnership rather than a multi-disciplinary practice. This affiliation model is the path *Ernst & Young* has chosen to take in the U.S. when the law firm McKee Nelson Ernst & Young was formed in 1999.[102]

The third model can be described as a "fully-integrated MDP." Accountants and lawyers are partners in a single entity. They offer an integrated, seamless service and share offices, personnel, fees and revenues. It is this "fully-integrated MDP" on which the discussion is centered and here, MDP stands for multi-professional partnership.[103]

The American Bar Association set up the "ABA Commission On Multidisciplinary Practice" in August 1998.[104] After extensive hearings, in which, among others, the Vice-President of the German Bar Association testified,[105] a report was issued in June 1999, recommending that the ABA adopt a recommendation that MDPs be permitted under certain specified conditions.[106] The Commission's *Report* was considered at the ABA Annual Meeting in Atlanta in August 1999; following a debate, the House of Delegates effectively rejected the Commission's recommendation.[107] Instead of the Commission's recommendation, the ABA House of Delegates approved a resolution that "[t]he American Bar Association make no change, addition or amendment to the Model Rules of Professional Conduct which permits a lawyer to offer legal services through a multidisciplinary practice unless and until additional study demonstrates that such changes will further the public interest without sacrificing or compromising lawyer independence and the legal profession's tradition of loyalty to clients."[108]

After it held further hearings and distributed additional documents, including an *Updated Background and Informational Report and Request for Comments*, the ABA Commission issued its

101. Matthias Kilian, *Schwedische Anwaltschaft*, ANWALTSBLATT (AnwBl.) 2001.

102. *See Juristen andocken*, HANDELSBLATT, June 10, 2000; KILIAN, *in* HENSSLER & STRECK, *supra* note 66, para H cmt. 215; WALL STREET JOURNAL, Nov 3, 1999, B 10.

103. *See* Terry, *A Primer on MDPs*, *supra* note 98, at 908.

104. *See id.* at 902.

105. *See* Terry, *German MDPs*, *supra* note 94, at 1600.

106. *See* Terry, *A Primer on MDPs*, *supra* note 98, at 903.

107. American Bar Association, GPSOLO Jan/Feb. 2001, *available at* http://www.abanet.org/genpractice/ magazine/janfeb2001/ramirez.html.

108. *See* http://www.abanet.org/cpr/flbarrec.html (last visited Apr. 20, 2001).

second report and recommendation. This second report significantly modified and simplified the Commission's Recommendation from the prior year.

The May 2000 ABA Commission Recommendation, however, met with a similar fate as the first - it ultimately was defeated by the ABA House of Delegates. In July 2000, by a 3-1 margin and after vigorous debate, the ABA House of Delegates affirmed the current ban on MDPs, disbanded the ABA Commission on Multi-disciplinary Practice, and recommended that the ABA Standing Committee on Ethics & Professional Responsibility consider whether changes to the ethics rules were necessary in order to assure that there are safeguards in the ethics rules related to strategic alliances and contractual arrangements between lawyers and nonlawyers.[109] In adopting this resolution, the ABA House of Delegates defeated a motion to substitute a competing resolution to the effect that the ABA take no further actions to discourage further discussion of MDPs and that MDPs be included within the jurisdiction of the ABA Committee on Research into the Future of the Legal Profession.[110]

It is not only the ABA, but also many bar associations in Europe that currently discuss the MDP issue. At the moment the notorious "Wouters case" is before the European Court of Justice.[111] In this case, a Dutch lawyer is suing the Dutch Bar Association as the bar rules ban Dutch lawyers from practicing in co-operation with accountants. The details of the case are rather complicated, but the interesting aspect is that the lawyer in question is a partner of the Dutch tax-advising arm of Arthur Andersen. He is backed by Arthur Andersen and other Big Five firms who hope that he will be able to set a precedent. The plaintiff submits that the ban is contrary to European Community competition rules and the EU Treaty's rules on freedom to provide services and right of

109. *See* http://www.abanet.org/cpr/multicom.html (last visited Apr. 20, 2001) (for documents related to the action taken by the ABA House of Delegates with respect to the various proposals).

110. *See* http://www.abanet.org/cpr/mdprecommendation7-00.html (last visited Apr. 10, 2001).

111. The Dutch Court of Appeals has propounded the case to the European Court after the District Court had dismissed the claim in the decision of "Wouters et al. vs. Nederlandse Orde van Advocaten (Feb. 7, 1997—96/1283 und 96/2891). For details, *see* Laurel S. Terry & Clasina B. Houtman Mahoney, *Future Role of Merged Law and Accounting Firms What If...? The Consequences of Court Invalidation of Lawyer-Accountant Multidisciplinary Partnership (MDP) Bans, in* PRIVATE INVESTMENTS ABROAD—PROBLEMS & SOLUTIONS IN INTERNATIONAL BUSINESS IN 1998 § 7.04 (Matthew Bender 1999).

establishment.[112] A decision is not expected before 2002. The European bar associations have been invited to give statements and many have taken the opportunity to look at the subject afresh. While in England, Wales[113] and Austria[114] there seems to be a move towards liberalization, other jurisdictions like Denmark,[115] Sweden,[116] Scotland,[117] Portugal,[118] and Ireland have stressed once again that they will continue to fight MDPs. If the European Court of Justice decides in favor of Mr. Wouters, this will be an earth-shaking moment for the legal community in Europe.

C. The German View

In the discussion that has taken place in the U.S. since the ABA Commission was set up in 1998, Germany has played a prominent role. Opponents and supporters of multi-disciplinary practices likewise turned their heads to Germany. Unlike the U.S., Germany permits full integration between lawyers and certain identified categories of non-lawyers.[119] The categories include patent lawyers, tax advisors, notaries and most importantly, auditors and accountants.[120]

MDPs have become the "talk of the legal town" in the U.S. because of the efforts of the Big Five firms to form multi-disciplinary practices. Although Big Five-affiliated law firms exist in Germany, they came relatively late to the market.[121] In

112. For a discussion of the pending case before the European Court of Justice, *See MDPs on Trial*, WORLDLAW BUS. Dec./Jan. 2001, at 25.

113. *See* KILIAN, *in* HENSSLER & STRECK, *supra* note 66, para H cmt. 213.

114. *See* Matthias Kilian, *Aktuelles österreichisches Anwaltsrecht*, MITTEILUNGEN DER BUNDESRECHTSANWALTSKAMMER (BRAK-Mitt) 2001.

115. *See* Matthias Kilian, *Rechtsanwaltschaft in Dänemark*, ANWALTSBLATT (AnwBl.) 2001, at 49.

116. *See* Matthias Kilian, *Schwedische Anwaltschaft*, ANWALTSBLATT (AnwBl.) 2001.

117. *See* Matthias Kilian, *Der schottische Solicitor*, ANWALTSBLATT (AnwBl.) 2000, at 363.

118. *See Matthias Kilian*, Die portugiesische Anwaltschaft, Anwaltsblatt (AnwBl.) 2001.

119. *See* Terry, *German MDPs*, *supra* note 94, at 1565 (explaining that with the exception of the Sternsozietät provision about certain forbidden interlocking partnerships, German MDPs may be fully-integrated).

120. § 59 a BRAO. For details, *cf.* Heinz-Willi Kamps, *Der Rechtsanwalt in der Steuerberatungsgesellschaft*, COLOGNE 1997; Markus Gotzens, *Die interprofessionelle Zusammenarbeit von Rechtsanwälten mit Angehörigen anderer freier Berufe*, FRANKFURT 1998.

121. *See* Terry, *German MDPs*, *supra* note 94, at 1576-77. *See also* Petra Einwiller, *German Firms Must Band Together or Buckle Under*, WORLDLAW BUS., Dec./Jan. 2000, at 43 (discussing the Deloitte Touch affiliated-firm Raupach).

Germany, MDPs have been in existence for many decades and unlike in the U.S., they are not a modern trend. Many MDPs in Germany are small or mid-sized firms with a handful of lawyers, accountants and tax advisors, serving the need of local communities as "main street firms."[122] This fact is often overshadowed by the dominance of Big Five and Magic Circle law firms in this discussion. In Germany, the Big Five firms discovered MDPs as an useful vehicle to expand their business in the early 1990s, but they did not invent MDPs. The urge for forming an MDP in Germany is probably much stronger than in the U.S., and this should not be forgotten when discussing the problem: lawyers in Germany enjoy "monopoly rights."[123] Accountants and tax advisers are not allowed to give legal advice or negotiate contracts. Of course, there are also UPL provisions in the U.S.[124] However, the definition of unauthorized practice of law is rather illusive and has recently been the subject of much attention.[125] The motivation to form a MDP in the U.S. and in Germany may be, as a result, different: in Germany the driving force may often be the desire to be able to offer a seamless one-stop service, while in the U.S. sharing of fees may be the bigger incentive. In the U.S., a client need not go to a lawyer working in a law firm in order to obtain assistance with estate planning, litigation support, discovery work, labor law compliance, employee benefits issues, business planning advice if these are not offered as "legal services" and are not provided by an employee or

122. *See also* Alexandra Schmucker, *STAR: Entwicklung der Strukturen und Beschäftigtenzahlen in Rechtsanwaltskanzleien*, MITTEILUNGEN DER BUNDESRECHTSANWALTSKAMMER (BRAK-Mitt.) 2000, at 166.

123. Granted by the "Rechtsberatungsgesetz" (RBerG), RGBl. I S. 1478 (BGBl. III 303-12). The aim of this law is to guarantee a high quality level of advice for the client. See STEPHAN WETH, *in* HENSSLER & PRÜTTING, *supra* note 14, § 1 RBerG cmts. 1ff.; FEUERICH & BRAUN, *supra* note 14, § 3 cmts. 18–20. Commentaries on the RberG: *Rudolf Altenhoff & Hans Busch & Jürgen Chemnitz*, Rechtsberatungsgesetz, 10th ed. Münster 1993; *Günter Rennen & Gabriele Caliebe*, Rechtsberatungsgesetz, 3d ed. Munich 2001.

124. *See generally,* Information and Commentary on the Multijurisdictional Practice of Law, *available at* http://www.crossingthebar.com for links to U.S. unauthorized practice of law or UPL provisions (last visited July 18, 2001). .

125. *See generally*, Terry, *A Primer on MDPs*, *supra* note 98, at 920-22 (highlighting some of the criticisms of U.S. UPL laws, which were raised in the context of the U.S. MDP debate. The recent work of the ABA Commission on Multijurisdictional Practice and the work regarding ABA Model Rule of Professional Conduct 5.5 by the ABA Commission on Evaluation of the Model Rules of Profesional Conduct [the Ethics 2000 Commission] also show the difficulty of defining the practice of law.) *See* http://www.abanet.org/cpr/mjp-home.html (last visited Apr. 10, 2001) and http://www.abanet.org/cpr/ethics2k.html (last visited Apr. 20, 2001).

partner who holds out himself as a lawyer.[126]

When talking about MDPs, opponents express a number of reservations.[127] Confidentiality, loyalty, independence and competence of lawyers are believed to be threatened once a lawyer starts providing legal services in a MDP. By far the most often cited concern in the U.S. is a potential conflict between a lawyer's confidentiality obligations on the one hand, and an auditor's disclosure obligations on the other hand.[128] This approach generally focuses on the dissimilarities between lawyers and auditors. In Germany, the approach is different and that might explain why there is little concern about a conflict of obligations: training, values and obligations of auditors, lawyers and tax advisors are very similar.[129] In particular, auditors and accountants are a highly respected, heavily regulated profession. For that reason, it has never been submitted that professional standards could erode only because lawyers are allowed to form partnerships with auditors or tax advisors. They are all subject to basically the same obligation of confidentiality and enjoy the same right to refuse testimony.[130] In this context it is fitting that—unlike the U.S. law—the German law does not impose the obligation on the auditor to disclose to the authorities certain matters that he finds during an audit.[131] For that

126. *See* Terry, *A Primer on MDPs*, *supra* note 98, at 881. Whether it is illegal for those outside a law firm setting to offer such services is a question about which there is strong disagreement. The answer depends on one's views about the parameters of UPL law in the U.S. *See id.*

127. One of the best sources to consult, particularly for views opposing MDs, is the almost 400 page report prepared by the New York State Bar Association MDP committee chaired by Robert MacCrate. This report is available on the Internet at http://www.nysba.org/multidiscrpt.html (last visited Apr. 20, 2001).

128. *See* Terry, *A Primer on MDPs*, *supra* note 98, at n.123.

129. *See* Martin Henssler, *Die interprofessionelle Zusammenarbeit in der Sozietät*, WIRTSCHAFTSPRÜFER KAMMER MITTEILUNGEN (WPK-Mitt.) 1999, at 2 [hereinafter *MDPs*].

130. *See* Henssler, *MDPs*, *supra* note 129, at 2. *Cf.* also Martin Henssler & Matthias Kilian, *Die interprofessionelle Zusammenarbeit bei der Mediation*, ZEITSCHRIFT FÜR KONFLIKTMANAGEMENT (ZKM) 2000, at 55 (56).

131. *See* Terry, *German MDPs*, *supra* note 94, at 1594. As explained in that article, one of the co-authors of this article is unsure about the scope of differences of the U.S. and German reporting obligations:

> One point I never clearly resolved to my satisfaction is *why* there is less concern in Germany about simultaneous legal and audit services. One explanation might be that German law requires less disclosure of auditors than does U.S. law. An alternative explanation is that commentators from the United States generally focus on the dissimilarities between lawyers and auditors, whereas Germans focus on the similarities between the two professions.

Two footnotes give possible examples of the different emphases. With respect to the U.S., *See id.* at n. 285 ("I think there are more similarities between the lawyer's

reason, the problem of conflicting disclosure and confidentiality obligations of partners in the same firm is eased.

From a German point of view, problems involving core values like confidentiality, loyalty, independence and competence are less difficult to regulate than many detail problems that occur when members of different professions form a partnership.[132] Sharing common values does not necessarily mean that professional rules are harmonized beyond these threshold issues. Limiting liability, professional insurance requirements and keeping files are just a few examples where the need for further harmonization is the most obvious. The paradigms of such a lack are the rules concerning the incorporation of MDPs. Lawyers, tax advisors and auditors all may form incorporated practices. However, according to their professional rules, auditors can only become partners in a practice in which the majority of shares is owned by auditors.[133] The Lawyers Act on the other hand bans lawyers from becoming a partner in a firm in which the majority of shares is not owned by lawyers.[134] Even if one accepts the presumption that people who study law cannot count, it is quite obvious that here the conflicting professional rules result in a deadlock when it comes to setting up incorporated multi-disciplinary practices. Not surprisingly, all of the Big Five legal arms in Germany are separate legal entities to circumvent these legal requirements.[135] They are only multi-professional in the sense that the partners in the law firm are simultaneously partners of the Big Five umbrella organization. Such a construction causes new problems. How do you apply rules addressing conflicts of interest? To what extent is it necessary that confidentiality obligations are waived if there is a need for multi-professional work together with other entities of the umbrella

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and auditor's obligations than one might sometimes suspect from the popular press. It appears that commentators may sometimes exaggerate the lawyer's duty to keep information confidential, on the one hand, and the auditor's duty to disclose on the other hand." (citations omitted)). With respect to Germany, *see id.* at n. 209 ("when I asked a leading German legal ethics expert [co-author Professor Henssler] about the conflict between a lawyer's confidentiality obligations on the one hand, and an auditor's disclosure obligations on the other hand, he emphasized that in Germany both lawyers and auditors were subject to confidentiality obligations. When pressed, however, he conceded that [German] auditors might have some disclosure obligations during certain mandatory year-end audits.").

132. *See* in detail Henssler, *MDPs*, *supra* note 129, at 4.

133. § 28 II 2/3 Wirtschaftsprüferordnung (WPO), BGBl. I, 2803.

134. § 59 e III 1 BRAO. *But see* for a critical remark Henssler, *MDPs*, *supra* note 129, at 6.

135. *See* Terry, *German MDPs*, *supra* note 94, at 1612.

organization?

V. Concluding Remarks

The German legal market is a fast growing market in the heart of Europe with a liberal legal framework that allows business-orientated service structures. With the European Central Bank—the European equivalent to the "Fed"—headquartered in Frankfurt, capital market work will increase. The current wave of mergers and acquisitions will continue to generate a lot of M & A work. With Germany being the traditional gateway to East Europe, the attractiveness of the German market will increase even further once the European Union has pushed its borders further east. Thus Germany has been and it appears that will continue to be a locus for lawyers without frontiers.