



Représentant les avocats d'Europe  
Representing Europe's lawyers

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## ▶▶ Message from the CCBE President, Colin Tyre, QC



Colin Tyre, QC  
2007 CCBE President

It is a great pleasure that one of my first duties as President is to welcome Bulgaria, Romania and Switzerland as full members of the CCBE. I have no doubt that they will each make a substantial contribution to the work of the organisation, and I particularly look forward to welcoming three new delegations to the Plenary Session in Edinburgh in May.

As 2007 begins, many of the issues which have occupied us continue to require attention, including the defence of our core principles against erosion by the competition authorities, the practicalities of implementation of the Services Directive, and our opposition to the reporting obligation imposed upon lawyers by the anti-money laundering directives. I hope that in the coming year we will make progress towards achieving a co-ordinated response within the profession to such challenges, at both European level and global level. A significant step towards that goal will be a European Bar leaders' meeting which we will hold in February.

It is equally important that we should push ahead with our own initiatives, including the CCBE's proposals for assistance of the legal profession in the emerging democracies in Eastern Europe, and our work on the academic and professional training of lawyers.

May I offer you my best wishes for an enjoyable and rewarding year ahead.

## ▶▶ CCBE Presidency 2007

The 105<sup>th</sup> plenary session voted in Colin Tyre, QC (United Kingdom) as CCBE President for 2007, Péter Köves (Hungary) as First Vice-President, and Anne Birgitte Gammeljord (Denmark) as Second Vice-President.

The CCBE President, Colin Tyre, QC, has written the welcome message to this newsletter (see previous article).



Péter Köves  
2007 First Vice-President

CCBE First Vice-President, Péter Köves says: "I felt privileged to assist former CCBE President, Manuel Cavaleiro Brandão, and will help Colin, our President, with the same enthusiasm in the furtherance of the objectives he set for himself and the CCBE this year. I also feel strong responsibility for my portfolio and support all committees belonging to it. As I have done last year, I will pay special attention to the new members of the CCBE family. There are very important first time events ahead of us this year. The first European Bar Leaders Meeting and the L4 Meeting which require special efforts from the Presidency, and I will take my share in it. I will do everything I can to see the further shift from the previous defensive position of European lawyers vis-a-vis the various challenges to a more proactive approach, in particular in competition issues and self-governance."

CCBE Second Vice-President, Anne Birgitte Gammeljord, says: "I still feel overwhelmed by the confidence which has been placed in electing me as second Vice-President. The election of a woman did not break new ground for the CCBE, as I am the second woman to be elected as second vice-president. However, I still believe that the election of a woman might have some value to the many women who are active in our profession. There are many important issues facing our profession at the moment, and I am looking forward to participating in the work of the Presidency, and hope that I may in a positive way help Colin Tyre QC and Péter Köves in their efforts and in bringing the CCBE forward as a united, strong and modern organisation. I am also looking forward to continue working with the members of the CCBE secretariat with whom I have already had the pleasure of working together in e.g. the Deontology Committee, the Services Working Group and the Structure Committee. "



Anne Birgitte Gammeljord  
2007 Second Vice-President

## ▶▶ 105th CCBE plenary session – Brussels, November 2006

The CCBE held its 105th plenary session in Brussels on 24 and 25 November 2006. Over 130 delegates from 32 CCBE member countries (both full and observer member countries) participated in the two-day plenary session.



Diana Wallis, MEP

Diana Wallis MEP addressed the plenary session on the issues of European Contract Law and Delos Lutton, President of the Union Internationale des Avocats, addressed the plenary session on the challenges faced by the global legal profession.

In addition to voting in the CCBE presidency for 2007, the CCBE voted on a number of countries becoming CCBE full and observer member Bars (see separate article in this newsletter).



Delos Lutton  
President of the UIA

The next CCBE plenary session will take place in Edinburgh on 11 and 12 May 2007.

## ▶▶ Deontology

At its Plenary Session on 24/25 November 2006, the CCBE adopted a 'Charter of core principles of the European legal profession'. The CCBE has been looking for some while at the issue of developing common principles on lawyers' ethics. Additional impetus to this project was given by the original draft framework Services Directive (Nov. 2003) which encouraged European wide associations to draw up common professional codes on a European basis. The Council of Europe, coincidentally, had also embarked on defining the fundamental principles of lawyers' ethics but decided, when learning about the CCBE's work, to follow the work undertaken at CCBE level.

The Charter, which can be obtained from the CCBE website <http://www.ccbe.org>, contains a list of ten principles which have been identified as common to the whole European legal profession. Amongst the principles are included lawyers' independence, confidentiality and avoidance of conflicts of interest, which the European Court of Justice referred to in the Dutch Wouters case (C-309/99). The Charter should be able to serve as a pan-European document. It should help, inter alia, Bars and Law Societies who are struggling to establish their independence in Europe's emerging democracies.

The CCBE will now start working on a commentary to supplement the Charter.

For further information, please contact Sieglinde Gamsjäger ([gamsjaeger@ccbe.org](mailto:gamsjaeger@ccbe.org)).

## ▶▶ Competition

### Finnish Competition Authority/DG Competition conference, 13 December 2006



On the occasion of Finland's EU Presidency, the Finnish National Competition Authority and the European Commission (DG Competition) organised a conference on 'The Economic Case for Professional Services Reform' which took place on 13 December 2006 in Brussels. The conference was a follow-up to the UK Presidency event on 'Better regulation of professional services' held in November 2005. The conference brought together representatives from national ministries, European-level and national professional bodies (including lawyers) and national competition authorities.

The conference was split into three sessions. The first session considered two recent economic studies: the Copenhagen Economics study on the Danish legal services market and the Leuven University study on the deregulation of pharmacies in Belgium. Session 2 dealt with the economic case for reform of professional regu-

lation in the EU conveyancing services market. The last session looked into the benefits of a low regulatory environment (the Finnish experience and a selection of other case studies). The last session also dealt with recent developments in Italy where the government adopted a decree aiming to reform professional services in Italy.

The conference gave rise to a lively and controversial debate on competition in professional services. Giuseppe Scassellati Sforzolini, chairman of the CCBE Competition Committee, who represented the CCBE on this occasion, emphasised that the European legal profession will remain open to any necessary and reasonable reform process in the public interest. However, any reforms will need to be carried out by the appropriate institutions within the relevant legal framework. He recalled a number of concerns which the CCBE has put forward to the Commission in the past (in response to the Commission reports). Kari Lautjärvi, President of the Finnish Bar Association, presented the Finnish view on the lawyers' profession, noting that the quality of services in their so called 'low-regulatory' environment has become a crucial issue. Philip Lowe, Director General of DG Competition, emphasised that Commissioner Kroes strongly backs this Commission initiative, and that the Commission will continue its reforms in this area.

For further information, please contact Sieglinde Gamsjäger ([gamsjaeger@ccbe.org](mailto:gamsjaeger@ccbe.org)).

### **ECJ decision on Italian lawyers' fees**

On 5 December 2006, the European Court of Justice delivered its decision in the Italian Cases Cipolla v Portolese (C-94-04) and Macrino and Capodarte v Meloni (C-202/04) which are both related to the Italian lawyers' fees system.

In the Cipolla case, the Corte d'appello di Torino asked the Court whether the prohibition on lawyers and their clients making agreements derogating from the fees laid down by the legislation fixing the scale of lawyers' fees complies with Community law. In Macrino and Capodarte, the Tribunale di Roma asked whether the fixing of fees for out-of-court services complies with Community law.

The Court found that the "absolute prohibition on derogation from the scale of lawyers' minimum fees in Italy constitutes a restriction on the freedom to provide services", but that "it may be justified if it meets overriding requirements relating to the public interest such as the objectives of protection of consumers and the proper administration of justice and if the restrictions are not disproportionate in relation to those objectives".

The CCBE will closely look into the impact of the decision, but first reactions speak of a very favourable decision to the profession, recognising the role of lawyers in society.

For further information, please contact Sieglinde Gamsjäger ([gamsjaeger@ccbe.org](mailto:gamsjaeger@ccbe.org)).

### **National competition and regulatory developments**

#### Denmark

On 13 October 2006, the Lawyers' Commission, which was set up in 2004, published its report on the Danish legal services market. The Commission recommends, inter alia, that the Danish Bar and Law Society should become a public law institution (comprising all lawyers). The supervisory and disciplinary authority should remain independent from the state. The quality of legal services should be ensured through an intensified supervision of lawyers including reforms of initial and continuing training of lawyers and an increased public disclosure of disciplinary sanctions. The Lawyers' Commission also suggests a modernisation of the complaints handling system, changes to the entry requirements for the profession and the ownership of law firms, as well as a relaxation of the lawyers' monopoly on civil litigation.

The report of the Lawyers' Commission is now under consideration by various interest groups. The Government is expected to table a bill in December 2006.

#### Ireland

On 11 December 2006, the Irish Competition Authority released its final report on competition in legal services in Ireland. The Authority stated "that the market for legal services is permeated with unnecessary and disproportionate restrictions on competition and is in need of substantial reform". The Competition Authority makes 29 recommendations in its report, designed to remedy the problems it has identified in the legal profession. Most

importantly, it recommends new legislation which should establish an independent Legal Services Commission with overall responsibility for regulating the legal profession and the market for legal services.

The report can be downloaded at the following website address: [http://www.tca.ie/NewsPublications/NewsReleases/NewsReleases.aspx?selected\\_item=181](http://www.tca.ie/NewsPublications/NewsReleases/NewsReleases.aspx?selected_item=181).

## Poland

On 8 November 2006, the Constitutional Tribunal of Poland found that a number of provisions of the Polish law on advocacy dealing with training of lawyers and their admission to the profession do not conform with the Polish Constitution. By the end of this year, the Government and the Parliament should pass a new law to replace the provisions which were found unconstitutional.

The Polish Government is looking into modifying lawyers' fees and the discipline system.

## United Kingdom

### *England and Wales*

On 24 November 2006, the Government published the Legal Services Bill, setting out its proposals for the regulatory reform of legal services in England and Wales. The Bill makes provision for the establishment of a Legal Services Board to act as an independent oversight regulator. It also provides for the establishment of an independent Office for Legal Complaints. Alternative Business Structures (ABS) is another component of the Bill. ABS, according to the Bill, should enable lawyers and non-lawyers to work together on an equal footing to deliver legal and other services. External investment should be made possible.

The Bill will now have to pass Parliament.

The text of the Legal Services Bill can be obtained at the following website address: <http://www.dca.gov.uk/legist/legalservices.htm>.

### *Northern Ireland:*

On 23 November 2006, the Legal Services Review Group, established by the government in December 2005, issued a report on the legal services market. Oversight, carried out by a Legal Services Oversight Commissioner, is at the heart of the Group's proposals. The Legal Services Oversight Commissioner's main powers should relate to the complaints-handling process, with audit powers combined with those for monitoring the system and setting new targets. These should be supported by enforcement powers, including the power to impose financial penalties. The Group also concluded that the professions themselves should, in principle, continue to discharge regulatory responsibilities, subject to enhanced oversight arrangements and lay participation, where necessary. The complaints handling system would require the most wide-ranging reform. Lay participation should be increased and oversight strengthened. With regard to alternative business structures, the group recommends to leave the existing restrictions as they are. Allowing external ownership of legal firms, in their view, could carry with it unwanted problems.

The report can be obtained at the following website address: <http://www.dfpni.gov.uk/index/law-and-regulation/review-of-legal-services.htm>

## The Netherlands

### *NMa consultation on legal services provided by lawyers*

On 23 October 2006, the Dutch National Competition Authority (NMa) launched a public consultation on the legal services market in the Netherlands. With this consultation, the NMa is seeking views/reactions from interested parties with regard to a number of existing regulations concerning the legal profession, including the fees system, advertising and the structure of law firms/outside investment. The NMa is expected to publish a follow-up report in the first half of 2007.

### *Government position on the Van Wijmen Committee report*

In October, the Dutch government published its position on the Van Wijmen Committee report on the legal services market. The cabinet shares the Committee's vision about the role of the lawyer in society. The core values, according to the Dutch government, should be incorporated into the Act on Advocates. An advisory Council should be set up by the Bar (comprising a majority of non-lawyers) to advise the Bar on all draft regulations. Membership should continue to be mandatory. The cabinet is also in favour of some quality mechanism being established. Overall, the cabinet believes that the Committee's proposals constitute a vital guideline for structuring the special position of the legal profession, with the Bar Association having a major role to play in this.

## ►► Money Laundering

### **Financial Action Task Force (FATF) Consultation**

The CCBE participated in a Consultation organised by the FATF which took place in Amsterdam on 7 and 8 November 2006. The purpose of the Consultation was to discuss practical difficulties with the FATF 40 Recommendations as they impacted on lawyers, notaries, accountants and Trust and Company Service Providers (TCSP's).



The Consultation was spread over two days, with the issues of "Customer Due Diligence (CDD)" and the "Risk-based approach" discussed on the first day, and "Suspicious Transaction Reporting (STR)" and "Regulation and Oversight" on the second day. Representatives from the global legal profession explained the practical difficulties which lawyers have experienced with respect to issues on the agenda, with the discussions on STR's provoking the most active discussion.

The FATF summarised the discussions by identifying 8 areas that are causing difficulties and which could be examined in further detail. In this regard, the FATF asked the legal profession to list their top 3 priority areas from the 8 listed areas. An advisory group will be established to look at these issues in further detail. The global legal profession representatives have cooperated among themselves in order to try to reach agreement on priority areas for further examination.

### **Challenge by the French Bars**

The French Bars are bringing a challenge before the Conseil d'Etat regarding certain aspects of the 26 June 2006 French Money Laundering decree which implemented the second Money Laundering Directive in France, with a view to sending a preliminary reference to the European Court of Justice. The CCBE is intervening in this case, and submitted its preliminary brief at the end of August 2006. The CCBE has engaged Maître François-Henri BRIARD as its lawyer. The CCBE submitted a more detailed intervention in December 2006. It is expected that, following the submission of briefs, the procedure should take about 1 year.

### **European Commission report**

The Commission has published the report on the impact of the 2001 Money Laundering Directive. The report is based on responses from the notarial and legal professions to questionnaires sent out by the Commission. The CCBE is currently examining the report which is available on the CCBE website.

## Belgian challenge

An oral hearing took place before the European Court of Justice on 12 September 2006 in relation to the Belgian Bars' challenge to the implementation of the second Money Laundering Directive in Belgium, in which the CCBE has also intervened. The oral hearing took place before the plenary chamber (chaired by the President of the Court surrounded by 12 judges). Following the pleadings of the Belgian lawyers and the CCBE, there were the pleadings of the Council of Ministers, the Commission, the European Parliament, and the Belgian, Cypriot and Italian Governments. The opinion of the Advocate General was issued on 14 December 2006. In his opinion the Advocate General suggests that the Court rule that the Money Laundering Directive is valid in so far as it concerns lawyers, provided that it is interpreted in such a way so as not to impose an obligation on lawyers to provide information that they gain before, during or after a legal proceeding or in the course of providing legal advice. To do so would be a breach of legal privilege (the right of a client to have any information provided to his lawyer to be kept confidential). Any other activity, such as carrying out transactions on behalf of a client, do not, in his view, fall within legal privilege and lawyers can therefore be required to provide information which is gained via these activities to the authorities about suspected money laundering. It is expected that the European Court of Justice will deliver its judgement within the next three to six months.

The CCBE is examining the opinion.

For further information, please contact Peter Mc Namee ([mcnamee@ccbe.org](mailto:mcnamee@ccbe.org))

## ▶▶ Services Directive

The Directive on Services in the Internal Market was formally adopted by the Council on 11 December 2006 (O.J. L 376/36 du 27.12.2006 p. 36).

On 15 November 2006, the European Parliament approved the Council's common position with three technical amendments.

Prior to the Parliament's vote, Commissioner Charlie McCreevy made a formal declaration in the Parliament's plenary on what the rapporteur, Evelyne Gebhardt, regarded as the key questions:



Commissioner Charlie McCreevy

- The Commission will provide assistance to member states for the proper implementation of the Services Directive. "Analyses and orientations" given by the European Commission will neither provide legally binding interpretation nor amend the provisions of the Services Directive.
- "Concerning the need to consider further harmonisation, in the future review of the Services Directive, the Commission will assess whether, in the field of services, further measures are necessary and, if so, what kind of measures are appropriate. The Commission will, in particular, examine whether for certain services or certain issues there is a need for additional harmonisation."
- The Commissioner stated that the Directive does not affect national law and practices already in place concerning labour law, criminal law and social services.

Member States have now three years to implement the new rules into their national legislation.

The CCBE working group on services is currently drafting recommendations on the Services Directive for the bars.

For further information, please contact Karine Métayer ([metayer@ccbe.org](mailto:metayer@ccbe.org)).

## ▶▶ European Contract Law

On 10-11 November 2006, the CCBE held a conference in Rome hosted by the Consiglio Nazionale Forense (Italian Bar Council) titled "Towards a CCBE view on European Contract Law". The conference gathered together key players in the current political debate on European Contract Law at European level, including MEP Klaus-Heiner Lehne (Germany), Professor Hugh Beale (United Kingdom) and three experts nominated by the CCBE delegations: Marc Frilet (France), Michael Patchett-Joyce (United Kingdom) and Gustáv Bacher (Hungary).

The CCBE working group on European Contract Law, chaired by Professor Friedrich Graf von Westphalen, prepared for this purpose a Questionnaire on European Contract Law. The Questionnaire was circulated to the CCBE delegations. The answers to the Questionnaire were included in the conference document distributed to the participants before the conference, and can be found on the CCBE web-site ([www.ccbe.org](http://www.ccbe.org))



Professor Friedrich Graf von Westphalen

The discussions at the conference were concluded by a draft resolution on current developments in European Contract Law. At a hearing in the European Parliament on 21 November 2006 titled: "Common Framework of Reference: What next in European Contract Law", the CCBE second Vice president, Péter Köves, presented the draft resolution of the conference and spoke about Hungary as a national example of the usefulness of the Common Framework of Reference (CFR). At the CCBE Plenary session in Brussels on 24-25 November 2006, MEP Diana Wallis (United Kingdom) gave a key-note speech about European Contract Law. The CCBE delegations adopted the draft resolution of the Rome conference at the Plenary Session on 25 November 2006.

In the resolution, the CCBE acknowledges that the Common Frame of Reference currently being discussed, assuming that it is broad in its coverage, could, as a legal lingua franca for Europe, provide for an agreed set of terms and concepts in contract law, not just for drafting EU legislation but also for lawyers dealing with each other. An intensive dialogue of European lawyers with political circles and academics at European level is vital in what is the most important initiative under way in the field of civil law. The resolution also reflects the fact, that a uniform internal market cannot be fully functional without further steps towards the harmonisation of civil law. European lawyers need to play a role in ensuring the quality and coherence of any future legal instruments underpinning the single market.

### The resolution states:

"That the CCBE is in full support of the initiative to create a Common Frame of Reference (CFR) in order to improve the quality and coherence of the existing acquis and future legal instruments in the area of contract law;

That the CCBE is willing to cooperate in this respect with both the European Commission and the European Parliament by contributing its practical and academic legal expertise to this important political undertaking".

The full text of the resolution can be found on the CCBE web-site ([www.ccbe.org](http://www.ccbe.org))

For further information, please contact Birgit Beger ([beger@ccbe.org](mailto:beger@ccbe.org))

## ▶▶ Training

### Continuing training

Recognising the importance of continuing training to lawyers and their clients, the CCBE approved a model scheme for continuing professional development at its Plenary Session on 24/25 November 2006. Further to the CCBE's 'Recommendation on Continuing Training' of November 2003, the scheme aims to provide support to national Bars and Law Societies across Europe in achieving the goals of continuing training.

The model scheme should serve as an example for Bars and Law Societies who have the competence and will to introduce continuing training within their home jurisdictions. It offers a framework for the development of guidelines or regulations on continuing training, dealing inter alia with the activities which can qualify as continuing training and credits systems.

The scheme can be downloaded from the CCBE website at <http://www.ccbe.org>.

## Access to the profession in Spain

On 18 October 2006, the Spanish Parliament approved a law on access to the profession in Spain. This law, requested by the Spanish Bar (CGAE) for decades, introduces for the first time a compulsory system of access to the profession for Spanish lawyers. The law regulates the conditions to obtain the professional title of a lawyer. It establishes courses provided by Universities and/or Schools of Legal Practice, a traineeship and a State exam. In order to respect the acquired rights of current law students, the law will enter into force only 5 years after its publication.

For further information, please contact Sieglinde Gamsjäger ([gamsjaeger@ccbe.org](mailto:gamsjaeger@ccbe.org)).

## ▶▶ New CCBE members

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Five applications for full and observer membership were put to the last CCBE Plenary Session on 24/25 November 2006. All applications were successful.

In view of Bulgaria's and Romania's accession to the European Union on 1 January 2007, the Bar Associations from Bulgaria and Romania, currently observer members within the CCBE, will join the CCBE as full members as of 1 January 2007.

Switzerland, who has been with the CCBE as an observer since the CCBE's foundation in 1960, will also join the CCBE as a full member as of 1 January 2007. Switzerland's full membership was made possible by a change to the CCBE statutes, providing that not only representative organisations of lawyers coming from the European Union and the European Economic Area, but also from the Swiss Confederation, can become full members.

The CCBE also welcomed two new observer members, the Bar Association of Serbia and the Bar Association of Montenegro.

For further information, please contact Sieglinde Gamsjäger ([gamsjaeger@ccbe.org](mailto:gamsjaeger@ccbe.org)).

## ▶▶ Access to Justice

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### The attachment of Bank Accounts

On 24 October 2006, the Commission adopted a Green Paper improving the efficiency of the enforcement of judgements in the European Union: The Attachment of Bank Accounts ([COM \(2006\) 618](#)) ([SEC \(2006\) 1341](#)).

The Green Paper on the Attachment of Bank Accounts addresses the problems of cross-border debt recovery risk which constitute an obstacle to the free circulation of payment orders within the European Union and an impediment for the proper functioning of the Internal Market. Late payment and non-payment jeopardise the interests of businesses and consumers alike. The differences in the efficiency of debt-recovery within the European Union also risk distorting competition.

The Commission intends to organise a public hearing on the subject matter of the Green Paper. All those responding will be invited to attend. The deadline for responses to the Green Paper is 31 March 2007.

The Access to Justice Committee is occupied with the preparation of a draft CCBE response to the Green Paper.

If you have any further questions, please contact Birgit Beger ([beger@ccbe.org](mailto:beger@ccbe.org))

## ▶▶ Criminal Law

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The CCBE Criminal Law Committee is continuing work on a more precise model for a European Criminal Law Ombudsman. It is expected that this paper will be completed in early 2007.



The joint chairs of the Criminal Law Committee participated in a conference on procedural safeguards for suspects in criminal proceedings which took place in Frankfurt (Oder) on Saturday 16 September 2006. The conference was organised by the German Deutscher Anwaltverein e.V.

The committee will continue to watch developments regarding conflicts of jurisdiction and the principle of 'ne bis in idem' in criminal proceedings, and the question of presumption of innocence (as there were recent Green papers on these issues).

For further information, please contact Peter Mc Namee ([mcnamee@ccbe.org](mailto:mcnamee@ccbe.org))

## ▶▶ Co-operation in the field of disciplinary matters

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The CCBE is currently working on the elaboration of **recommendations on disciplinary process for the legal profession**. This proposal was initiated by the CCBE working group on co-operation in disciplinary matters, which expressed its concern at the recent pattern of events around Europe where the disciplinary powers of the bars were being diluted or entirely removed from the control of the bars. The working group felt that the CCBE should develop a set of core principles of the disciplinary process for the legal profession, which could serve as a point of reference for Bars and Law Societies. The draft charter will be presented for adoption at the next Standing Committee in Vienna in mid-February 2007.

For further information, please contact Karine Métayer ([metayer@ccbe.org](mailto:metayer@ccbe.org)).

## ▶▶ Family Law

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The CCBE has welcomed the current European initiatives in the field of family law, and at its Plenary Session in Brussels on 25 November 2006, it adopted three CCBE positions: two letters on draft council regulations and one response to the Green Paper on matrimonial property regimes.

Regarding the proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, COM(2005)649, the CCBE favours the proposal, as it ensures simplification of the life of many citizens who are faced with the recovery of maintenance. The envisaged harmonisation of conflict-of-law rules will help to create some degree of legal certainty.

The Proposal for a Council Regulation amending Regulation (EC)no 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters, COM(2006)399, is also largely approved by the CCBE membership. Although, the CCBE expressed its preference for common nationality as the first connecting factor in its response to the Green Paper, nevertheless it has accepted the choice of law of habitual residence. The CCBE, however, would like to stress its reservation about this criterion, pointing out the need to have a more precise definition of habitual residence.

The CCBE also takes a position on the Green Paper from the European Commission on conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction and mutual recognition, COM(2006)400. The CCBE largely believes that rules determining the law applicable to matrimonial property regimes will help to create more legal certainty. The European Community has created rules for the law applicable on divorce. However, divorce in most EU Member States results in the liquidation of matrimonial property. For the sake of the coherence of European law, applicable rules on divorce and matrimonial property therefore should be harmonised. Although matrimonial property regimes are very different throughout Europe, especially between common and civil law countries, it is important to note that any instrument would apply conflict of law rules only, without intervening in internal substantive law.

The full text of the CCBE position papers can be found on the CCBE web-site ([www.ccbe.org](http://www.ccbe.org)).

For further information, please contact Birgit Beger ([beger@ccbe.org](mailto:beger@ccbe.org))

## ►► Free movement of lawyers – Judgements of the European Court of Justice in relation to the Establishment Directive

The European Court of Justice delivered two judgements in relation to the Establishment Directive on 19 September 2006. These two related decisions concern a reference for a preliminary ruling (case C-506/04) and an action for failure under Article 226 EC (case C-193/05) put forward in 2004 and 2005 regarding restrictions to the freedom of establishment of lawyers in Luxembourg (notably by imposing language requirements for the registration of community lawyers).

In Case **C-506/04** (preliminary ruling), the Court gave an important interpretation as regards articles 9 and 3 of the Establishment Directive.

### Remedy against decisions to refuse or cancel registration

The Court stated that article 9 of the Establishment Directive must be interpreted as meaning that it precludes an appeal procedure in which the decision refusing registration, referred to in Article 3, must be challenged at first instance before a body composed exclusively of lawyers practising under the professional title of the host Member State and on appeal before a body composed for the most part of such lawyers, where the appeal before the supreme court of that Member State permits judicial review of the law only and not the facts.

### Language requirements

The Court stated that article 3 of the Establishment Directive must be interpreted as meaning that the registration of a lawyer with the competent authority of the host Member State cannot be made subject to a prior examination of his proficiency in the languages of the host Member State.

In Case **C-193/05**, the Court condemned Luxembourg for failure to fulfil its obligation under the Establishment Directive by imposing the following requirements on community lawyers established under their home title:

- prior language test;
- prohibition from being persons authorised to accept service on behalf of companies;
- requirement to produce each year a certificate of registration with the competent authority of their home Member State.

Both judgements are available on the website of the European Court of Justice.

#### Case **C-506/04**

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=506%2F04&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100>

#### Case **C-193/05**

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&alldocs=alldocs&docj=docj&docop=docop&docor=docor&docjo=docjo&numaff=C-193%2F05&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100>

For further information, please contact Karine Métayer ([metayer@ccbe.org](mailto:metayer@ccbe.org)).

## ▶▶ GATS

### Current state of the GATS negotiations

Following the suspension of the GATS talks in early summer 2006, the technical work has resumed in Geneva. It is uncertain whether new deadlines will be fixed for new rounds of offers to replace the deadlines fixed at Hong Kong and missed due to the suspension of talks. 31<sup>st</sup> July 2006 was to be the deadline for tabling the improved offers, and 31<sup>st</sup> October 2006 for the final draft offers.

### EU-US cross-border discipline protocol

Discussions are continuing between the CCBE and the ABA on an international cross-border protocol, which will be based on ABA model Rule 22 of the Model Rules for Lawyer Disciplinary Enforcement. The goal is to ensure proper liaison in relation to cross-border discipline issues, and it is hoped that a final draft will be able to be drawn up in the coming months, after discussion and approval within the decision-making structures of the two organisations.

### IBA Resolution on cross-border practice

The International Bar Association has drafted a Resolution on cross-border practice which was discussed at IBA meetings in London in May 2006 and Chicago in September 2006. The Resolution outlines a package whereby lawyers would be able to practise home law in another jurisdiction, with the possibility of host bars at the same time requiring “knowledge and skills transfer”. The intent of this new provision is to ensure that, if the host bar desires, foreign lawyers involved in international trade will offer capacity-building services to the local bar and local lawyers. A further draft has now been developed.

For further information, please contact Peter Mc Namee ([mcnamee@ccbe.org](mailto:mcnamee@ccbe.org))

## ▶▶ European Court of Human Rights



European Court of Human Rights (ECtHR)  
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In order to ensure the good functioning of the system introduced by Protocol 14 to the European Convention of Human Rights (ECHR), the CCBE is organising a seminar in cooperation with the European Court of Human Rights (ECtHR). Protocol 14, adopted on May 2004, amends the control system of the Convention by introducing a number of changes (for instance introduction of a new admissibility criteria, possibility for a single judge decision for clearly inadmissible cases etc.). The seminar, which will take place in the premises of the ECtHR in Strasbourg is aimed at human rights lawyers. The main issues addressed will be the new admissibility criteria introduced in Article 35 ECHR, the competence of single judges and rapporteurs, the competence of three-judge committees, the increasing use of pilot judgments and the execution of judgments.

For further information, please contact Karine Métayer ([metayer@ccbe.org](mailto:metayer@ccbe.org)).

## ▶▶ International Private Law – “Rome I”

At its Plenary Session in Brussels on 25 November 2006, the CCBE adopted a position on a new instrument in International Private Law, the draft Regulation on the Law applicable to contractual obligations (Rome I) COM (2005)650, hereafter “Rome I”.

In its position paper, the CCBE expressed the view that it favours the conversion of the Rome Convention into a Community Instrument since it would thus ensure homogeneity, certainty of the applicable law, transparency

of the rules and therefore protection of weaker parties. However, party autonomy as the major principle of contract law in a free society needs to be upheld. On the other hand, although there should in principle be a choice of law clause in consumer contracts, the mandatory consumer protection provisions of the *acquis communautaire* and/or the mandatory provisions of the home state of the consumer should apply in business to consumer contracts.

Furthermore, the conversion of the Rome Convention into a Community Instrument would, in the view of the CCBE, guarantee a certain level of coherence with other EU legislation regarding Community private law, e.g. “Brussels I”, “Brussels II bis” etc.

In order to ensure consistency with the existing *acquis communautaire* on the choice of law rules in EU law, and to ensure a minimum level of legal certainty, the CCBE recommends to include all existing EU conflict rules for all types of contracts into the Rome Convention, especially those on insurance contracts, in order to create one coherent and comprehensive set of EU conflict rules to replace the various provisions scattered in different instruments.

For the full text of the position paper on “Rome I”, please visit the CCBE web-site ([www.ccbe.org](http://www.ccbe.org)).

For further information, please contact Birgit Beger ([beger@ccbe.org](mailto:beger@ccbe.org))

## CCBE Permanent Delegation to the Court of Justice and Court of First Instance

The CCBE Permanent Delegation to the Court of Justice and Court of First Instance completed 4 papers recently. The papers concerned the following issues:

- (a) Oral hearing before the European Court of Justice (ECJ) - Since the establishment of the ECJ, oral hearings have formed an integral part of its procedures. However, the CCBE believes that there is a perception among many EC law practitioners that the importance given to such hearings has declined over the years. For its part, the CCBE believes that, far from being allowed to fall into decline, the oral hearing is rather in need of being reinvigorated to ensure a greater degree of interaction between the Court and the parties, and more generally to affirm its central role in the administration of justice in the Community. In this regard, the oral hearing fulfils a key function that cannot be replaced by other parts of the procedure, namely it provides the only direct contact between the judges and the parties. The CCBE in its paper outlines the drawbacks in the current approach to oral hearings before the ECJ, and explains the importance of meaningful hearings, with suggestions on how to improve the current situation.
- (b) Adjudication of costs before the Court of First Instance (CFI) - The CFI is working on the issue of adjudication in cases of disputes as to the level of recoverable costs of proceedings before it. The CFI has prepared a research note on the systems before the national courts in each Member State. The view of the CCBE is that the present system that the CFI operates for assessing costs, whilst not necessarily reaching a satisfactory outcome in all cases, is broadly acceptable.
- (c) Confederation of British Industry (CBI) proposal for a Competition Court - The CCBE responded to a request from sub-committee E (Law and Institutions) of the House of Lords Select Committee on the European Union on the establishment of an EU Competition Court as proposed by the CBI. The CBI asserts that the current system for delivering a decision in Merger cases is too slow. The CCBE response suggests that, if there is a problem with the duration in delivering a decision, this is due to the resources allocated to the CFI. The CCBE suggests that one possible solution could be the creation of a number of specialised chambers in the CFI. Another option proposed by the CCBE is simply the appointment of more judges to the CFI (with a corresponding increase in support services), thus enabling the court to take on a larger workload and dispose of it more expeditiously. Beyond these matters, the CCBE suggests that it might be possible for the CFI in certain cases to deliver its decision orally and its reasoned opinion sometime thereafter. The CCBE was invited to give evidence on this issue before the House of Lords on 29 November 2006.
- (d) Length of pleading - The Court of First Instance is reviewing its current Practice Directions, including the section recommending certain page limits for written pleadings before the Court. The page limit indica-

tions in the present Practice Directions are expressed as recommendations. They do not purport to be legally binding as such. However, the CCBE believes that a practice has arisen according to which the Registry returns pleadings to a party if they are significantly longer than the page limit indicated in the Practice Directions, and declines to register them in their original form. In particular, it is common that applications longer than 50 pages will not be registered, but rather returned with a request for a reduction in their length to below 50 pages. Only when an acceptably short version of the application is received will it be registered and notified to the defendant Institution. The CCBE believes that the current arrangements, under which the Registry refuses to register applications that are considered too lengthy, are close to a system of binding page limits. The CCBE believes that pleadings should not be rejected merely because they exceed the recommended page length. If the Court considers in a particular case that the pleadings of the winning party were unreasonably long in the context of the case, then it could and should reflect this in the costs order that it makes.

All the above papers are available on the CCBE website: [www.ccbe.org](http://www.ccbe.org)

For further information, please contact Peter Mc Namee ([mcnamee@ccbe.org](mailto:mcnamee@ccbe.org))

## ▶▶ PECO – Moldova

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Further to a request from the Moldovan Bar Association earlier this year, a number of national Bar Associations expressed their willingness to help the Moldovan Bar via a twinning programme on issues such as the structure of the Bar, training of lawyers and discipline of the profession.

The Austrian Bar Association (ÖRAK) and the German Federal Bar (BRAK) have successfully completed their project on “The structure of the Bar” in October. They provided a two weeks training on the organisation/functioning of the legal profession in Austria and in Germany to a lawyer from Moldova.

Due to the Council of Europe/European Commission joint programme on “Increased independence, transparency and efficiency of the justice system of the Republic of Moldova” which was launched in November, it was agreed that those parts of the twinning programme which fall within the scope of the Council of Europe/Commission programme (i.e. structure of the Bar, training of lawyers, discipline) will be coordinated in the future with the Council of Europe/Commission.

For further information, please contact Sieglinde Gamsjäger ([gamsjaeger@ccbe.org](mailto:gamsjaeger@ccbe.org)).

## ▶▶ Succession and Wills

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The European Commission organised a public hearing on 30 November 2006 in Brussels on intestate and testate succession where there is an international dimension. The hearing, which was open to all interested parties, is part of an on-going consultation process following the publication of a Green Paper on 1 March 2005, on which the CCBE submitted a response.

At the hearing, there was a discussion on which questions should be governed by the law applicable to succession, e.g. questions of the administration and distribution of the estate. Furthermore, there was a debate on which objective connecting factor (e.g. habitual residence, nationality etc.) should determine the applicable law, and whether the law of the place of an immovable property should apply by way of exception. Last but not least, the question was raised whether there should be a choice of law regarding the law applicable to succession, and also which role the subject of “reserve héréditaire” of an estate (a French legal concept not known under English law, translated as “reserved portion”) might play.

The European Commission will at a later stage also consult experts from the Member States; however, the draft of a future legal instrument is not expected before the end of 2007.

If you have any further questions, please contact Birgit Beger ([beger@ccbe.org](mailto:beger@ccbe.org))