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50th anniversary of the CCBE

2010 is the 50th anniversary year of the CCBE. A colloquium in Brussels in January on *secret professionnel*/legal professional privilege, organized jointly with the Brussels Bar, was the opening event of the celebrations. The speeches delivered by the eminent European judges who spoke at this event, and twenty national reports contributed by national delegations to the CCBE, are published in a book.

More recently, on 10 September 2010 – the actual anniversary date – in Basle (where the idea originated of creating a *Commission consultative des Barreaux européens*, as it was then called), the CCBE held a colloquium on the challenges of the cyber-future for lawyers, namely the impact of the new technologies on professional ethics.

The closing event of the anniversary year, still ahead, is a conference organized jointly with ERA – the European Law Academy – which will take place in Brussels on 26 November, under the Belgian Presidency, on “Legal Aid, a Fundamental Right for Citizens – Effective Access to Justice in the European Union”. The Vice-President of the European Commission and Commissioner for Justice, Viviane Reding, is among the participants and the opportunity will be taken to present the CCBE recommendations on legal aid.



For further information, please contact Antoine Fobe (fobe@ccbe.eu).

eJustice



On 16 July the EU launched the [European e-Justice portal](#) – an electronic one-stop-shop for access to justice throughout the EU. The web site benefits citizens, businesses, lawyers and judges with cross-border legal questions and boosts mutual understanding of different legal systems by contributing to the creation of a single area of justice. With more than 12,000 pages of content, the first version provides information and links on laws and practices in all Member States. For example, the portal offers information on legal aid, judicial training, and videoconferencing, as well as links to legal databases, online insolvency and land registers. Justice information is now at the fingertips of more than 10 million citizens involved in cross-border judicial procedures each year.

Who benefits from this site?

- **Citizens** can get answers on how the 27 Member States' legal systems function. They can get quick answers when dealing with real-life events such as divorce, death, litigation or even moving house. They can find a legal practitioner in another country, learn how to avoid costly court cases through mediation, where to bring a lawsuit, which Member State's law applies in cases and whether they are eligible for legal aid.
- **Lawyers, notaries and judges** can have access to legal databases, contact colleagues through judicial networks and find information on judicial training. They can also find information on arranging cross-border videoconferences;
- **Businesses** will find links to insolvency and property registers and information about the laws that apply and about cross-border proceedings.

Language barriers – which often complicate acquiring this information – are overcome by offering information in all official EU languages. The website's contents are available in 22 official EU languages. The website's links will direct users to national information of Member States.

The involvement of judges and legal practitioners - lawyers, notaries, bailiffs and mediators - is essential to the success of the portal and several projects are underway. For example, work is ongoing on a European Case-Law Identifier (ECLI) to facilitate access to national and EU case law in the cross-border context.

The Commission, which manages the site, will continue to work closely with Member States and the CCBE to progressively enrich its content and develop new functionalities.

Next steps

New information, tools and functions will be added to the portal over the next few years. Fact sheets on defendants' rights (see article in this newsletter) and victims' rights in all EU Member States will be available in early 2011, including, for example, information on how road traffic offences are dealt with in different countries. These fact sheets will serve as a basic reference tool for legal practitioners as well as citizens.

Future versions of the portal will also make existing EU justice tools more effective, allowing a citizen to make a cross-border small claim or payment order online. Businesses will also benefit from lower costs thanks to simpler, streamlined online legal procedures once insolvency registers, business registers and land registers are accessible via the portal. Courts would be able to deal with cross-border requests online and communicate with the claimants and defendants in a particular case as well as with courts in other Member States.

Work by the CCBE is underway through its Find-A-Lawyer project which will develop a tool allowing citizens to refine their searches for lawyers. For example, it is hoped that the portal will eventually allow a citizen to look for a German-speaking lawyer who specialises in family or divorce law in Hungary.

Good progress is also expected to be made to tackle EU-wide interoperability issues for e-Signature, e-Identity and e-Payment through the so-called eCodex Project (eJustice Communication via Online Data Exchange) in which also the CCBE is involved. Solutions in these areas are required for several of the e-Justice projects' full implementation, such as for the European Payment Order or the European Small Claims procedure.

A [Roadmap](#) on e-Justice gives more information on the work to be done by the end of 2013.

For further information, please contact Simone Cuomo (cuomo@ccbe.eu).

Factsheets on Rights of Defendants

In November 2009, the CCBE was awarded a European Commission funded project on Factsheets on Rights of Defendants (FRD), which requires the preparation of factsheets on the rights of defendants in all 29 legal jurisdictions of the EU. The factsheets will be made available to the public on the European e-Justice portal and updated on an annual basis for three years. The deadline for completing the project was 25 September 2010.

The CCBE worked with legal experts, Bar Associations, Ministries of Justice and qualified legal translators to prepare the factsheets. The texts prepared by the CCBE experts were approved by local Bar Associations and submitted to Ministries of Justice in all of the Member States for approval, and were then translated into English.

The CCBE submitted its final report in advance of the deadline and is awaiting approval by the Commission. The CCBE is pleased to have worked on this important project and is delighted with the outcome of this complex and challenging undertaking. To co-ordinate lawyers, translators and Ministries of Justice across 27 Member States in 29 jurisdictions was a difficult task but the result is a set of factsheets for each Member State which covers all the ground requested by the Commission and within the timescales of the project.

For further information, please contact Peter Mc Namee (mcnamee@ccbe.eu).



Company Law

Corporate governance in financial institutions and remuneration policies

On 2 June 2010, the European Commission adopted a [Green Paper](#) on corporate governance in financial institutions and remuneration policies launching a public consultation on possible ways forward to improve corporate governance mechanisms in financial institutions (deadline: 1 September 2010). The Green Paper is part of the Commission's work on preventing a future financial crisis and strengthening the financial system.

The CCBE has responded to the consultation (see [CCBE response](#)):

- The CCBE generally supports the solutions proposed by the Commission regarding the composition, role and functioning of the board of directors. It insists however that considerations on the operation of boards should not lead to the ignoring or minimising of the responsibility of permanent executive leaders who are responsible for the daily conduct of the establishment. Risk management should be a concern shared by all stakeholders.
- The failure of risk management functions in financial institutions is a key reason behind the financial crisis and therefore the CCBE supports the reinforcement of risk management functions within financial institutions.
- External auditors identify significant risks that financial institutions may face and therefore have a good knowledge of the conduct of their activities. Accordingly, external auditors should share this information with supervisory authorities and the board of directors.
- It is necessary to increase the involvement of supervisory authorities and most importantly to improve the coordination of these authorities.
- Monitoring of financial institutions by shareholders must remain a priority, not least because as providers of capital, shareholders are the first to back the stability and solvency of institutions. For this reason, they should enjoy greater safeguarded rights.
- Corporate governance principles should not be systematically integrated into law. Only strictly necessary measures should become binding and the contractual and responsive nature of the modern economy should be preferred to the temptation of a managed economy.
- In the search for efficiency, restrictions on excessive remuneration, allocated outside the normal remuneration framework, should be insisted on. Fixed and variable brackets of shares for annual remuneration, limiting the amount and conditions for deferred remuneration (with a performance condition) and limiting non-competition clauses and other compensation for retirement, could be considered.

In a covering [letter](#) to Commissioner Barnier, issued together with the response, the CCBE pointed out that the Commission's paper does not address the real causes of the financial crisis such as the lack of equity capital of the banks and multiple securitization.

Interconnection of business registers

In a [letter](#) to Commission Barnier on 14 September 2010, the CCBE expressed disagreement with a proposal of the Council of the Notariats of the European Union (CNUE) in response to the European Commission's Green Paper on the interconnection of business registers. CNUE suggests that the direct and automatic transmission of data from one Member State's register to another "*should, at the very least, be subject to respect for a procedure which guarantees the safety of the Host Member State's Business Register, such as a certificate issued by the relevant authority in that Host State, as is the case in the cross-border directive*". The CCBE points out that the cross-border merger Directive is devised to monitor the legality of an operation and therefore it is legitimate to verify that the various vested interests have been respected (shareholders, staff of the merging companies, third party creditors, etc.). The interconnection of business registers does not require such a legality control: it is simply about checking whether transmitted data is up-to-date and has not been altered in the transmission process.



Commissioner Barnier

For further information, please contact Sieglinde Gamsjaeger (gamsjaeger@ccbe.eu).

▶▶ Criminal Law

Procedural safeguards for suspects and defendants in criminal proceedings

According to the Roadmap for procedural rights agreed under the Swedish Presidency (July-December 2009), the Commission is to come up with a procedural safeguards proposal each year for the next 5 – 6 years. The procedural rights that will form the basis of discussions over the next few years are as follows:

- Translation and Interpretation
- Information on Rights and Information about the Charges
- Legal Advice and Legal Aid
- Communication with Relatives, Employers and Consular Authorities
- Special Safeguards for Suspected or Accused Persons who are Vulnerable



The Criminal Law Committee has discussed in great detail the first proposal regarding Measure A - Right to interpretation and translation, the discussions of which are now at an end as agreement has been reached.

On 20 July 2010, the Commission presented a proposal for a Directive on the right to information in criminal proceedings. The proposal contains an indicative model Letter of Rights for suspected and accused persons on arrest (and an indicative model Letter of Rights for suspected and accused persons arrested under a European Arrest Warrant). The proposal aims to set common minimum standards as regards the right to information in criminal proceedings throughout the European Union. The Directive would apply from the time that a person is made aware by the competent authorities of a Member State, by official notification or otherwise, that s/he is suspected or accused of having committed a criminal offence, until the conclusion of the proceedings (including any appeal). It does not, however, apply in proceedings conducted by administrative authorities in relation to the breach of competition legislation, whether national or European, unless the case is brought before a court having jurisdiction in criminal matters. European Arrest Warrant proceedings are explicitly covered. The CCBE Criminal Law Committee is examining the proposal with a view to preparing a position paper.

Experts meeting 11/12 October - Procedural rights: access to a lawyer and communication while in detention

The Commission is organising an experts' meeting on 11/12 October on "Procedural rights: access to a lawyer and communication while in detention". The CCBE is providing a number of speakers at this meeting.

European Investigation Order in criminal matters

On 29 April 2010, 7 Member States (Belgium, Bulgaria, Estonia, Spain, Austria, Slovenia and Sweden) filed a proposal for a 'European Investigation Order' (EIO). This proposal does not only intend to replace the two existing instruments in the field of mutual assistance, the 'European Evidence Warrant' and the 'Framework Decision on the execution in the European Union of orders freezing property or evidence', but also all other legal instruments in this field like the 1959 'Convention on mutual assistance in criminal matters' (ratified by all member states), the First and Second Protocol to this Convention and also parts of the Schengen Convention (articles 48-53) and some of its Protocols



The most significant aspects included in the proposal are described below:

- Whilst the European Evidence Warrant was based on the type of evidence to be gathered, the EIO is based on the investigative measures as such. The issuing state decides what it wants and in what way the material should be collected by the executing state;
- The EIO covers **all** investigative measures with the exception of very few that are explicitly excluded;
- The issuing authority decides which measure should be executed by the executing authority, the executing state has no room to decide that other, less coercive ways may be more appropriate to achieve the desired goal with a very limited number of exceptions;
- A new EIO-form is to be used, clear time limits are set;
- An EIO can be issued in both criminal and administrative proceedings;
- Officials of the issuing authority are allowed to assist in the execution in the executing authority;

- There are hardly any grounds for refusal, (ne bis in idem, double criminality, territoriality, etc are no grounds for refusal);
- There is no mentioning at all of any defence rights, human rights are only touched upon in the most general way possible, there is no assessment of the impact on potential human rights violations by the proposal;

The CCBE Criminal Law Committee is preparing a position paper in response to the proposal.

The use of new technologies in criminal proceedings



The CCBE has been informed that the European Academy of Law (ERA) was successful with regard to an ERA application on “The use of new technologies in criminal proceedings”. The CCBE had been contacted by ERA in October 2009 asking the CCBE to partner with ERA in this project with a view to the CCBE providing potential speakers (defence practitioners are a part of the target audience). The subject matters of the seminar are of great interest to the CCBE. In particular the CCBE has examined in detail on a number of occasions the two issues of video-conferencing and linking of criminal databases.

The CCBE was also informed that an ERA project application, again from October 2009, on “Cross-border mediation”, was successful, too. As with the above application on “The use of new technologies in criminal proceedings”, the CCBE had been contacted by ERA in October 2009 asking the CCBE to partner with ERA in this project with a view to the CCBE providing potential speakers.

For further information, please contact Peter Mc Namee (mcnamee@ccbe.eu).

Deontology

Credit rating agencies

On 2 June 2010, the European Commission put forward [amendments](#) to the rules on credit rating agencies which would transfer investigation and supervisory powers to a new European supervisory authority – the European Securities and Markets Authority (ESMA).

The Commission’s proposed amendments have raised concerns amongst CCBE members because of their impact on the professional secrecy/legal professional privilege of lawyers. The proposal would give competent authorities wide-ranging powers to access any kind of documents and information whatever their source. In line with its previous positions of 2008 and 2009, the CCBE pointed out that the suggested amendments are contrary to European standards: the right to consult a lawyer in order to ask advice should always be provided on the basis that the client is assured that what is said to the lawyer, and the advice of the lawyer whether in writing or orally, remain confidential. This is part of fundamental freedoms and rights (see full [CCBE response](#)).

The CCBE’s response has been submitted to both the European Parliament and Council which are in the process of considering the proposed amendments.

For further information, please contact Sieglinde Gamsjaeger (gamsjaeger@ccbe.eu).

European Court of Human Rights – Pilot-Judgment Procedure

In June, the CCBE sent its views on the pilot-judgment procedure to the European Court of Human Rights. In line with the Interlaken conference, the Court plans to include provisions on the pilot-judgment procedure in its rules. This procedure is designed to handle large groups of similar cases arising from the same underlying problem, in order to unclog the court system.

While the CCBE recognises the value of pilot judgments and the need to codify their procedure, the CCBE calls for vigilance on new measures to be adopted.



The CCBE stresses that this practice/procedure is intended to dispose of much of the Court's litigation, to the detriment of applicants (except for those of the pilot judgments) since they will have to entreat national authorities to be successful, with all conceivable consequences of this (deadlines, inaccuracies of the law, etc.). The CCBE believes that this 'pick and choose' trend, following the example of the US Supreme Court, is dangerous for the future since this procedure is in conformity with the principle of subsidiarity, as the choice of the means, even if exceptionally limited, remains in the hands of the states concerned. Furthermore, the usefulness of pilot cases is limited insofar as they relate only to aspects arising from the circumstances of the case.

The CCBE also emphasises that if interstate applications and pilot cases are considered useful tools to fight against systematic violations of human rights, such measures should not prevent individuals whose rights have been violated to claim and receive personal compensation, including the recognition of the injury and financial and other compensation before the Court, through a decision which should consolidate all pending claims (and which should not pick one and declare that the others are inadmissible).

For further information, please contact Karine Métayer (metayer@ccbe.eu).

E-commerce



On 10 August 2010, the European Commission launched a [public consultation](#) on the future of electronic commerce in the internal market and the implementation of the E-commerce Directive 2000/31/EC (deadline: 15 October 2010). The consultation is aimed at identifying obstacles to the development of e-commerce. According to Commission studies, e-commerce remains limited to less than 2% of total retail service sales in the EU.

The consultation is of relevance to the legal profession. The E-commerce Directive contains *inter alia* a specific article dedicated to the regulated professions: commercial communications of regulated professions should be permitted, subject to compliance with professional rules. This provision and others (type of on-line services provided, on-line dispute resolution etc.) will be considered by the CCBE. The CCBE has asked member delegations to provide information about the implementation of the Directive at a national level so that a response can be prepared.

For further information, please contact Sieglinde Gamsjaeger (gamsjaeger@ccbe.eu).

European Contract Law

Green Paper

On 1 July 2010, the Commission released a consultation paper setting out a number of options on how to strengthen the internal market by making progress in the area of European Contract Law. This issue is considered of relevance given that the internal market is currently built on a multitude of contracts governed by different national contract laws which may entail additional transaction costs and legal uncertainty for businesses and lead to a lack of consumer confidence in the internal market.

Over recent years, experts have been working with the Commission to develop a set of contract law principles, called the 'common frame of reference' (CFR). In parallel, the CCBE has been active in the area of European Contract Law and adopted a [position](#) on the draft Consumer rights directive (COM 2008(614/3)) and the [Draft Common Frame of Reference](#). As far as this new consultation paper is concerned, CCBE's European Contract Law Working Group has started preparing a response.

Depending on the evaluation of the results of the consultation, the Commission could propose further action by 2012.

Among the **policy options** considered in the Green Paper are:

- The publication on the web of (non-binding) **model contract rules** which could be used in Europe's Single Market.
- A (binding or non-binding) **"toolbox" for EU lawmakers** when they adopt new legislation to ensure better and more coherent rules.

- A **Contract Law Recommendation** that would call on EU Member States to include a European contract law into their national legal systems, thereby partly following the model of the United States where all but one of the 50 states voluntarily adopted the Uniform Commercial Code.
- An **optional European Contract Law** (or a “28th system”), which could be chosen freely by consumers and businesses in their contractual relations. This optional law would be an alternative to the existing national contract laws and would be available in all languages. It could apply in cross-border contracts only, or in both cross-border and domestic contracts. It would have to guarantee a high level of consumer protection and legal certainty throughout the life cycle of a contract.
- **Harmonisation of national contract laws** by means of an EU Directive.
- **Full harmonisation of national contract laws** by means of an EU Regulation.
- The creation of a full-fledged **European Civil Code**, replacing all national rules on contracts.

The [consultation](#) comes to an end on 31 January 2011. At the same time, the Commission has charged its group of experts to come up with a draft text by May 2011.

The consultation paper can be read online at:

http://ec.europa.eu/justice_home/news/consulting_public/0052/consultation_questionnaire_en.pdf

Sounding Board of key stakeholders in the area of European Contract Law

In June, the CCBE received an invitation from Commissioner Reding to nominate up to 3 experts to join the Sounding Board of key stakeholders who will follow the work of the Expert Group on a Common Frame of Reference in the area of European Contract Law. The following persons were nominated: Friedrich Graf von Westphalen (DE), Pedro Portellano (ES) and Guido Alpa (IT), with Michael Patchett-Joyce (UK) as an alternate.



Commissioner Reding

The first meeting of the stakeholder expert group took place on 7 September.

CCBE position on the services and mandate of the Draft Common Frame of Reference with particular reference to service contracts between lawyers and clients

Following the approval of the [CCBE Position Paper on the Draft Common Frame of Reference](#) (DCFR), the European Contract Law Working Group has been focusing, during its last two meetings earlier this year, on the Chapter on services and mandate of the DCFR. The purpose of this was to find out whether the legal principles established in these chapters are in line with the legal and contractual requirements of the contract between lawyers and their clients. This work has resulted in the elaboration of a [position paper on the services and mandate of the DCFR, with particular reference to service contracts between lawyers and clients](#). This document was adopted in September. As indicated in the text, the paper does not intend to approve or disapprove any other aspect of service and/or mandate contracts as listed in other chapters of the DCFR, and is restricted to comments only about the legal requirements of a contract between lawyer and client.

For further information, please contact Simone Cuomo (cuomo@ccbe.eu).

Family Law

Divorce



After the European Parliament's green light in June, the EU Council in Brussels on 12 July formally authorised interested EU member states to form an 'enhanced cooperation' regarding the so-called Rome III Regulation, which aims to facilitate the divorce procedures for bi-national couples in the EU. It is the first time that this tool, available since the Amsterdam Treaty in 1997, will be used. It will allow 14 member states (i.e. Spain, Italy, Hungary, Luxembourg, Austria, Romania, Slovenia, Bulgaria, France, Germany, Belgium, Latvia, Malta and Portugal) to implement legislation allowing bi-national couples the option of choosing by common accord the legislation to use for their divorce.

Proceeding via the means of enhanced cooperation, the Council has successfully avoided Sweden's veto of the initial proposal, in 2006, knowing that family law is subject to unanimity in the Council. The ministers of

justice in the 14 countries concerned must now reach unanimous agreement on the legal mechanism (draft regulation on divorce in the EU) proposed by the Commission, in consultation with MEPs. Other member states can join at any time.

The *Proposal for a Council Regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation* (also referred to as the Rome III regulation) can be downloaded at this [link](#). It is currently under consideration by the European Parliament. The proposal aims to lessen the burden on children and to protect weaker partners during divorce disputes, according to the Commission. The need for EU action is clear for them: there were more than one million divorces in the 27 EU member states in 2007, of which 140,000 (13 %) had an 'international' element. The Commission underlines that the proposed EU rules have no effect on national divorce or marriage laws.

In its [letter](#) of 2006, the majority of the CCBE broadly approved the draft Rome III Regulation. Even though in its [response](#) to the Green paper, the CCBE expressed its preference for common nationality as the first connecting factor, in the end it approved the choice of the law of the habitual residence which would have the practical advantage of being most frequently the *lex fori*. During its meeting in October 2010, the CCBE Family Law Working Group will reconsider its position again on this draft proposal, in view of any further developments that might have taken place since 2006.

For further information, please contact Simone Cuomo (cuomo@ccbe.eu).

GATS

The CCBE was contacted by the OECD Secretariat in August 2010 with a request to provide the OECD with experts that would be in a position to complete an online weighting exercise for the OECD Services Trade Restrictiveness Index (STRI) project. The OECD has revised the list of measures to be included in the STRI and is now collecting the respective data from the websites of regulators and from country laws. When the OECD has completed the regulatory database, it will use the weights obtained from the online exercise to calculate the STRIs. The exercise takes the form of a short e-questionnaire and will be filled out online by experts. The CCBE secretariat provided the OECD with a list of experts from the GATS committee, which has been following this issue for some time.

For further information, please contact Peter Mc Namee (mcnamee@ccbe.eu).

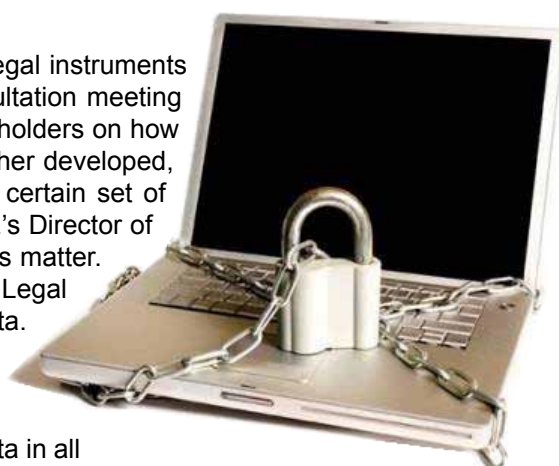
IT Law

Future of Data Protection

The European Commission is currently reviewing the general EU legal instruments for the protection of personal data. On 1 July, a stakeholder consultation meeting was held where the Commission sought additional input from stakeholders on how the fundamental right to the protection of personal data can be further developed, effectively respected and enforced in the future. Responding to a certain set of questions put forward by the Commission, Antoine Fobe, the CCBE's Director of External Liaison, presented during this meeting CCBE's view on this matter. In this regard, reference is made to the CCBE [position](#) on the Legal Framework for the Fundamental Right to Protection of Personal Data.

At this stage, the main policy objectives for the Commission are to:

- Modernise the EU legal system for the protection of personal data in all areas of the Union's activities to meet the challenges resulting from globalisation, the use of new technologies, and the needs of public authorities, in order to improve current data protection legislation as well as the effective application of data protection principles;
- Achieve consistent and effective legal implementation and application of the fundamental right to protection of personal data in all areas of the Union's activities as well as of the rules allowing their lawful free movement;
- Continue to guarantee a high level of protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States, in all areas of the Union's activities, as well as the free movement of such data;



- Ensure proper adaptation to and application of the Treaty of Lisbon's new legal bases for the protection of personal data in all areas of the Union's activities, taking into account the abolition of the former distinction between "pillars";
- Improve the clarity and coherence of the EU legal framework for personal data protection.

At the time of writing, it is still unclear what next steps the Commission is going to undertake.

For further information, please contact Simone Cuomo (cuomo@ccbe.eu)

Legal expenses insurance

The CCBE has recently adopted a position on the issue of legal expenses insurance and the freedom of choice of a lawyer (http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_090910_CCBE_posit1_1284470064.pdf). The position covers three main aspects:

- The CCBE expresses concerns over the Commission's intention to entrust the insurance industry with drafting a "doctrine" following the Eschig [case](#) affecting the free choice of lawyer in relation to legal expenses insurance. Given the importance of the issue, the CCBE is of the opinion that the legal profession must be allowed to fully participate in this work. Besides, the CCBE invites the Commission to submit its draft "doctrine" to DG Justice and the Member States' ministries of justice in order to be checked on its compliance not only with the relevant Directive on legal expenses insurance but also with the European Union's Charter on Fundamental Rights and the requirements of the national judicial systems.
- The CCBE invites the Commission to ensure that the Member States carry out the legislative modifications in order to transpose the Eschig decision if necessary and that the legal expenses insurers fully adhere to its terms.
- Most importantly, the CCBE explains why it believes that freedom of choice of lawyer should be guaranteed at all stages and cannot be limited to the stage of the proceedings only. Freedom of choice under Article 4 (1) a) of Directive 87/344/EEC on legal expenses insurance must apply from the moment when a lawyer is contacted by an insured person for the purpose of assessing the chance of success of proceedings, and include the preparation and carrying out of court or administrative proceedings. It is crucial that the insured person must be able to consult a freely chosen lawyer in order to decide whether proceedings should be launched or not. The CCBE reports on how legal expenses insurers try to limit or to circumvent the free choice of a lawyer by various means in many Member States. It also underlines the conflict between the interests of insurers and of the insured seeking justice.



Background

The CCBE had made representations to the parties involved in the "Eschig" [case](#) C-199/08 in order to stress the importance of the freedom of choice of lawyer. The CCBE particularly welcomed the judgement in which the European Court of Justice held that directive 87/344/EEC must be interpreted as prohibiting legal expenses insurers from reserving the right, where several insured persons suffer loss as a result of the same event, to select the legal representative of all the insured concerned.

For further information, please contact Karine Métayer (metayer@ccbe.eu).

Money Laundering – Update on Commission Study

In July 2009, the Commission (DG Internal Market) launched a tender for a study on the impact of the money laundering Directives with a special emphasis on the legal profession. The study is being carried out in response to Article 42 of the 2005 Money Laundering Directive. Article 42 provides that:

"By 15 December 2009, and at least at three-yearly intervals thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and the Council. For the first such report, the Commission shall include a specific examination of the treatment of lawyers and other independent legal professionals."

In November 2009, the Commission awarded the study to Deloitte (Consortium). Deloitte must submit the final report to the Commission by the end of October 2010 (Deloitte submitted its the interim report in May 2010). The CCBE task-force has been following developments regarding the study and is most interested in finding out the conclusions.

For further information, please contact Peter Mc Namee (mcnamee@ccbe.eu).

PECO

Serbia - Fiscal (cash) register issue solved



At the end of August 2010, the government of Serbia adopted a Regulation which ended long-standing discussions between the Serbian Bar Association and the Serbian state authorities. According to the Regulation, lawyers are exempted from the obligation to record their income through fiscal cash registers.

According to legislative proposals of last year, lawyers would have needed to record part or all of their services through registers similar to those used in supermarkets. State authorities would have been given the power to close down law offices not complying with these provisions. The proposals caused serious concern at CCBE level as they ignored the profession's core values (in particular independence and professional secrecy/legal professional privilege) and the rights of clients.

Since June 2009, the CCBE has been assisting the Serbian Bar Association to resolve the issues raised by fiscal cash registers: a number of letters were sent to the Serbian authorities, including data on a survey which the CCBE carried out amongst its members and which showed that such registers do not exist elsewhere in Europe. In February, the CCBE President, José María Davó Fernández, and the UIA President, Corrado De Martini, met with the relevant authorities in Serbia. The meeting resulted in the Serbian authorities issuing a moratorium in order to study the issues more thoroughly; this finally led to the adoption of a new Regulation re-classifying lawyers' services as professional services (which fall outside the scope of fiscal cash registers).

The CCBE is pleased with this positive outcome of the issue and will continue to support two other countries of the Balkan region – FYROM and Bosnia and Herzegovina – where similar issues have been raised.

Georgia

On 31 August 2010, the CCBE received a letter from the President of the Georgian Bar Association requesting assistance in support of the rights of lawyers in Georgia. The letter states that an alarmingly high number of lawyers has been arrested and put in prison in recent years. The circumstances of the arrest are often not clear. Charges brought against lawyers cover a wide range of issues such as fraud or influence of witnesses; in a number of cases it seems that clients simply accuse lawyers of not having provided services of quality.

The CCBE is very concerned about these developments and will see how best to assist the Georgian Bar Association in response to its request.

The CCBE – through the PECO and Human Rights Committees – will continue monitoring the developments in Georgia very closely.

For further information, please contact Sieglinde Gamsjaeger (gamsjaeger@ccbe.eu).



Permanent Delegation to the Court of Justice and General Court of the European Union and to the EFTA Court (PD Lux)

European Court of Justice – Changes to the Rules of Procedures

The European Court of Justice (ECJ) is in the process of changing its Rules of Procedure. The CCBE has many concerns with regard to the current system e.g. lack of sufficient advance warning/need to allow more than one lawyer to plead/issues regarding the oral hearing. The CCBE submitted its concerns to the ECJ in July 2010 and again in an updated paper in September 2010.

Delays to proceedings before the General Court

The CCBE sent a letter concerning the need to address delays to proceedings before the General Court, to the Commission legal service, Council legal service, European Parliament legal affairs committee and all Permanent Representations. The aim of the letter is to emphasise that structural measures need to be taken urgently to address such delays, as any option decided upon will take time to implement. The CCBE believes that it is necessary to convey that something needs to be done in the near future, as there is some debate as to what the best solution would be.



House of Lords Consultation on the workload of the Community Courts

The House of Lords has launched a call for evidence on the workload of the Community Courts. The deadline for submitting responses is 24 September. The CCBE will submit a response and will aim to provide oral evidence at a later date.

Meeting with the European Court of Justice and the General Court

The CCBE will be having a meeting with the European Court of Justice and a meeting with the General Court in October 2010. The CCBE delegation will be led by the CCBE President, José María Davó Fernández. It is anticipated that a number of topics will be discussed, ranging from proposed changes to the ECJ Rules of procedure, suggested measures to address the delays in proceedings before the General Court and the oral hearing before the General Court.

For further information, please contact Peter Mc Namee (mcnamee@ccbe.eu).

Victims' rights

The European Commission has published a consultation document¹ on July 15, 2010, with a view to adopting “a package of measures, including a Directive on minimum standards, in the first half of 2011”.

Victims' rights are one of the priorities of the Stockholm Programme, and of the Commissioner for Justice, Fundamental Rights and Citizenship, Viviane Reding. Following a first discussion at the Paris Standing Committee on 23 June 2010, it was agreed that the CCBE should develop its own position on the subject of victims' rights, and thereby contribute to the Commission's efforts to introduce new legislation in this area. The deadline for responding to the Commission consultation document is 30 September 2010.

The CCBE is at this stage focusing on the ‘service rights’ – for example, victim support, information on the case, counselling etc. The CCBE will contribute to the discussions regarding improving the experience of victims of crime and enhancing the protections they are given while ensuring that the position of defendants is not undermined.

For further information, please contact Peter Mc Namee (mcnamee@ccbe.eu).

¹ http://ec.europa.eu/justice_home/news/consulting_public/news_consulting_0053_en.htm