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Message from the CCBE President

The CCBE has been very active these last few months. In addition to monitoring the work of its committees and working groups, such as the adoption and promotion of CCBE positions on various issues – which are briefly summarised in this newsletter – the CCBE secretariat is working on an unusual number of projects.

The development of the European Find-A-Lawyer search engine is well underway. This new tool should be integrated into the European Commission e-Justice portal next year. The European Commission is very interested in this project, and I urge all member Bars to participate. Another noteworthy issue is the creation of the European Law Institute, in which the CCBE has been involved and whose opening activities will require the CCBE’s attention. In addition, the Arab Spring has proved to be crucial in the international relations of the CCBE, because of the role played by lawyers, and the development prospects for the rule of law, which have been displayed on the other side of the Mediterranean. We held a first meeting with the Arab Lawyers’ Union in April in Brussels, and we maintain contact with this organisation. Separately, we have also continued with our close and positive relations with the Japan Federation of Bar Associations and the All China Lawyers Association at the annual Three Bars meeting held in Tianjin, China in August. Ongoing dialogue with our colleagues from the American Bar Association, the International Bar Association and the Union Internationale des Avocats demonstrates the importance which our worldwide colleagues give to the development of the European legal profession. We will only be able to exert a real influence for the rule of law and the 1 million European lawyers within the CCBE through being united in respect of our differences and being aware of all the issues which unite us.

Alternative dispute resolution

The CCBE recently responded to the Commission’s consultation paper on the use of Alternative Dispute Resolution (ADR) as a means to resolve disputes related to commercial transactions and practices in the European Union.

In its response, the CCBE underlines, among other things:

- the importance of raising consumer awareness of existing domestic ADR schemes;
- the possibility to impose on businesses the obligation to inform consumers of the existence of ADR schemes, as already exists in some Member States;
- the existence of other forms of ADR – in addition to arbitration, mediation and conciliation - such as binding decisions taken by a third party, “collaborative lawyer proceedings” and “participative proceedings”;
- the danger of imposing on parties a mandatory attempt at ADR, as it could hinder their effective access to justice;
- the importance of having independent and qualified arbitrators/third party decision-makers/mediators, bound by ethical rules.

The next step will be a legislative proposal. The Commission is now in the preparatory (impact assessment and drafting) stages and hopes to have the proposal ready by the end of November 2011.

For further information, please contact Karine Métayer (metayer@ccbe.eu).
Criminal Law
Procedural safeguards for suspects and defendants in criminal proceedings

Measure A: Right to interpretation and translation

The Directive on the Right to Interpretation and Translation in Criminal Proceedings was adopted by the European Justice Ministers in October 2010. This Directive entitles all persons who are suspected or accused of having committed a criminal offence from the time of suspicion until the conclusion of proceedings (including sentencing and any appeals) to interpretation and translation of all essential documents. Member States have 36 months to implement the Directive into national law.

Measure B – Letter of Rights/Right to information

On 20 July 2010, the Commission presented a proposal for a Directive on the right to information in criminal proceedings. This proposal refers to “measure B” of the Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings (the Roadmap contains 5 measures of which “measure A” mentioned above on the Right to Interpretation and Translation has been finalised).

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 a breach of competition legislation, whether national or European, unless the case is brought before a court having jurisdiction in criminal matters. In addition, European Arrest Warrant proceedings are explicitly covered. The institutions are nearing final discussions regarding the wording of the Directive.

Measures C and D - Access to a lawyer Right to communicate upon arrest

On 8 June 2011, the European Commission published a proposal on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest. The Commission proposal merges Measure C (Right to legal assistance) and Measure D (Communication with relatives, employers and consular authorities) into one proposal. The proposal is of major importance as the conditions under which suspects can consult a lawyer differ between Member States. For example, in some Member States the person accused of a crime may not currently be able to see a lawyer during police questioning. Evidence obtained without the presence of a lawyer has a different status from one country to another. And people sought under a European Arrest Warrant may not currently have access to a lawyer in the country where the warrant has been issued until they are surrendered to that country.

There are similar divergences in terms of the right of suspects to let a relative or employer know when they have been arrested. Individuals may not currently systematically be offered this right, may only receive it at a late stage in the process, or may not be informed once their family has been contacted.

The Commission’s proposal would guarantee these rights in practice, by:

• providing access to a lawyer from the first stage of police questioning and throughout criminal proceedings;
• allowing adequate, confidential meetings with the lawyer for the suspect to effectively exercise defence rights;
• allowing the lawyer to play an active role during interrogations and to check detention conditions;
• making sure that the suspect is able to communicate with at least one family member or employer informing them of the arrest and custody;
• allowing suspects abroad to contact their country’s embassy or consulate and receive visits;
• offering people subject to a European Arrest Warrant the possibility of legal advice in both the country where the arrest is carried out and the one where it was issued.

The Commission’s proposal on access to a lawyer and right to communicate is the third directive in a series of proposals to guarantee minimum rights to a fair trial anywhere in the European Union. The Commission is keen to ensure that these measures will establish clear rights across the EU and safeguard people’s fundamental rights to a fair trial and the right of defence. The Criminal Law Committee will be preparing a response to this proposal, and
will be paying close attention to the passage of this proposal through the European Parliament and Council of Ministers.

**Green paper on Detention**

The Commission has published a Green Paper on “Strengthening mutual trust in the European judicial area - the application of EU criminal justice legislation in the field of Detention”. The consultation is expected to examine how to strengthen mutual trust and render the principle of mutual recognition in the area of detention more efficient. Issues such as alternatives to imprisonment, pilot projects on detention and best practices in prison management will be addressed. The Criminal Law Committee will be examining this proposal with a view to preparing a position paper. The deadline for responding to the Green Paper is 30 November 2011.

**Victims’ Rights**

On 18 May, the Commission presented two proposals in the area of victims’ rights. The first is a proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime. The second is a draft regulation for mutual recognition of “protection orders” in the area of civil law (which aims to complete a proposal for the mutual recognition of protection orders in criminal law). The CCBE is aware that the Commission is treating this issue with very high importance, and is keen to develop a view on the issues raised in both proposals and in the general area of victims’ rights. The CCBE has established a Working Group to examine both proposals.

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

**Anti-Money Laundering**

*Financial Action Task Force (FATF)*

In June 2011, the FATF published a second consultation paper on the review of the FATF standards in the area of anti-money laundering [http://www.fatf-gafi.org/dataoecd/27/49/48264473.pdf](http://www.fatf-gafi.org/dataoecd/27/49/48264473.pdf) The following issues are considered in the consultation paper - the risk-based approach in supervision; Beneficial Ownership, including Recommendations 5, 33, and 34; Politically Exposed Persons; data protection and privacy; SRVII and wire transfers; International cooperation in the context of Recommendation 40; and adequate/inadequate implementation of the FATF Recommendations; and the role and functions of financial intelligence units. The consultation paper sets out the FATF’s current proposals on each of these issues as a basis for comment. The CCBE committee on anti-money laundering will prepare a response to the second consultation paper before the deadline of 16 September.

The CCBE submitted a response in January 2011 to the first FATF consultation paper from October 2010. The FATF first consultation focused on 6 issues – tax crime as a predicate offence for money laundering, Politically Exposed Persons, the Risk Based Approach, beneficial ownership, third party reliance, and implementation of the FATF 40 Recommendations. Both the FATF October 2010 Consultation Paper and the CCBE response are available on the CCBE website.

**European Commission review of the 2005 Money Laundering Directive**

The Commission is preparing a report on the implementation of the 2005 anti-money laundering Directive. The Commission has indicated that there will be a new anti-money laundering Directive before the end of 2012. The CCBE is in the process of preparing a paper regarding the issues it believes are problematic with regard to the current Directive. The CCBE paper will also suggest changes that could be considered in any forthcoming Directive.

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

Find-A-Lawyer project

The project Find-A-Lawyer (FAL), which is being co-financed by the European Commission’s Civil Justice 2009 programme, is being developed as scheduled. InterConnect, the IT company which was subcontracted for this project, has developed the search engine which will allow citizens to find a lawyer in the EU from a single point of entry and in an official EU language.

The FAL has been the subject of recent presentations to the Council of the European Union and a Conference on e-Justice organized by the European Commission and the Presidency of the EU in April 2011.

The next and final stage will see the CCBE presenting the results of the project to the European Commission, including the FAL search engine software itself as well as the manual to build it within the European e-Justice webportal. The Commission is currently planning to build it in the portal within the next year.

Despite the fact that the FAL was born as a pilot project for 13 participating Bars, more EU Bars have expressed their wish to join it in the coming months.

e-Codex

The European project on e-Justice Communication via Online Data Exchange (e-CODEX), in which the CCBE is actively participating together with 15 Ministries of Justice of the EU and one federal agency, is progressing satisfactorily. When completed, it is aimed to link up the national e-justice systems. The work includes analysis of e-Identities across the EU, relations with other European Large Scale Projects (such as STORK and PEPPOL), the building of architecture which will support pilot projects and use cases to be developed under e-CODEX, and questions regarding transportation of documents, metadata, semantics and document standards.

The CCBE has created a group of experts which is providing advice and support for the project: Peter Homoki (Hungary), Iain Mitchell QC (United Kingdom) and José Luis Ruiz (Spain).

Participants in e-CODEX meet periodically in different Work Packages. The e-CODEX General Assembly, the body which makes the main decisions for the success of the project, met again in Budapest on 29th and 30th of June to agree measures to guarantee correct implementation of the project.

Cross border networking for defence lawyers

The CCBE has been awarded by the European Commission a contract on Cross border networking for defence lawyers. The end-product which has to be delivered to the Commission is a study containing the design of a scheme to facilitate cooperation and networking between defence lawyers (or Bar Associations). In order to carry out the work, the CCBE is being assisted by experts from the national Bars with whom two coordination meetings have been planned. The first meeting took place in Brussels on 17th June 2011, and the second is scheduled for 30 September in Brussels.

The aim of the project on Cross border networking for defence lawyers is to:

• assist lawyers in getting to know their counterparts in other EU Member States so as to prepare the defence in cases involving mutual recognition and cross-border cases
• to facilitate dissemination of information amongst lawyers
• to raise awareness of the specific features of defending mutual recognition and cross-border cases
• to encourage training initiatives on defence in mutual recognition and cross-border cases and
• to promote 2-way communication between Justice DG and defence lawyers/bar associations.

The project must be completed by 28 November 2011.

For further information, please contact Alonso Hernández-Pinzón (pinzon@ccbe.eu).
**European Contract Law**

**Feasibility study on European contract law**

An expert group established by the European Commission delivered on 3 May a feasibility study on a future initiative on European contract law (available only in English). In April 2010, the Commission convened the group, made up of legal practitioners, former judges and academics from across the European Union, to explore ways to improve contract law in the EU. The study covers the most relevant practical issues in a contractual relationship, such as legal rights for faulty goods and rules on which contract terms may be unfair. The CCBE has been closely following the work of this group through its participation in the Sounding Board of Key Stakeholder Experts. In addition, the CCBE’s European Contract Law Working Group has drafted a general response on the feasibility study, which was approved by the CCBE Standing Committee in June (published at this link, where you can also consult a series of other position papers in the same area).

As a next step, the Commission will have to determine if and to what extent the expert group’s text can serve as a starting point for a political follow-up initiative on European contract law. Proposals are expected at the end of this year.

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

**MEPs support optional European contract law**

The European Parliament’s Committee on Legal Affairs (JURI) supports the idea of an optional European contract law. It adopted by a large majority, on 12 April, a report by Diana Wallis (ALDE, UK) on European contract law. “Today’s vote was an important step towards introducing a simplified and flexible optional instrument, which will enlarge the choice of parties when drawing up contracts, provide legal certainty across borders and can be put in place relatively quickly,” commented the rapporteur after the vote. This optional legislation would be an alternative to the existing national contract laws and would be available in all languages. It could apply either in cross-border contracts only, or in both cross-border and domestic contracts.

In its response at the beginning of this year to the Commission’s consultation paper on European contract law, the CCBE also considered that the appropriate instrument for progress towards a European contract law in the current circumstances is a Regulation setting up an optional instrument of European Contract law. According to the CCBE, such an optional instrument should be an “opt-in” instrument, requiring a choice of the instrument by all the parties to the contract, irrespective of their status as business, consumer or private party.

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

**Mutual Recognition of Legal Acts**

**Comparative study**


With this report, the CCBE delivered a comparative study about authentic acts and instruments with comparable status and effects from 22 different EU Member States, thus providing a much more comprehensive overview than the comparative study which was commissioned by the European Parliament (entitled: “Comparative study on authentic instruments, national provisions of private law, circulation, mutual recognition and enforcement, possible
legislative Initiative by the European union”), which was based on only 6 countries: United Kingdom, France, Germany, Poland, Romania and Sweden.

Furthermore, with this study the CCBE would like to underline the differences between legal cultures, and express that the overall idea of any future legislation on authentic acts or comparable instruments by the European Union, should be inspired by the wish to facilitate peoples’ lives. When considering ways to enhance legal security for cross-border users of legal acts, the differences in legal cultures and systems must be considered. The mechanisms for mutual recognition should benefit all citizens and residents of all Member States.

In some countries, such as Austria, Hungary and Portugal, lawyers are entitled to prepare specific authentic acts. As an example, in Hungary lawyers are competent to ratify signatures for company registration. In the Czech Republic, lawyers are competent to ratify (verify) signatures in cases where the official verification of signature is required by particular laws. In Nordic countries, where authentic acts do not exist, citizens would be excluded from the benefits of future legislation if it focuses on authentic instruments. In all Member States there are legally binding documents drawn up by legal professionals, and it is these which should fall within the scope of benefit of any mechanism for mutual recognition. Otherwise, there would be discrimination against EU citizens and businesses exercising their freedom of choice to use alternatives to notaries, or not having access to notaries due to the absence of notaries in their Member State, as well as discrimination between legal professions.

Green Paper - Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records

In March 2011, the CCBE submitted its response to the Commission Green Paper concerning the free movement of public documents and recognition of the effects of civil status records.

In this response, the CCBE welcomed the Commission’s ambition to reduce red tape in administrative procedures related to documents for citizens living, working and travelling in other EU countries. The CCBE fully supports the idea of ensuring that public documents – such as a contract or deed to a property – circulate without the need for additional procedures, and that the effects of civil status documents – such as a birth certificate – are recognised where ever citizens are in the EU.

The CCBE raises, however, some concerns as to the scope of the Green Paper and the possible follow-up actions after the consultation.

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

The European Corporate Governance framework

On April 5, 2011 the European Commission published a Green Paper to launch a public consultation on possible ways to improve the European Corporate Governance framework. The following questions were addressed: a) how to ensure the proper functioning of Boards of directors and the diversity of members; b) ways to enhance shareholder involvement in corporate governance, and c) solutions for improving the monitoring and implementation of codes of corporate governance at national level.
The CCBE supports the initiative of the European Commission launching debate on matters of corporate governance, especially in light of the economic and financial crisis. In its response to the Green Paper, the CCBE - amongst others – supports the promotion of women on Boards of directors.

To read the CCBE’s response, click here.

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

**European Law Institute**

The European Law Institute (ELI) was founded in Cape Sounio, near Athens, on 16 April. The CCBE has participated early on in the project group, and its President is a founding and ex officio member, and as such, also a member of the ELI’s Council. The ELI’s inaugural congress took place in Paris on 1st June. The CCBE President, Georges-Albert Dal, delivered a speech on the expectations of the European legal community, focusing on lawyers. In his speech, he stressed that legal practice needed to be at the heart of the ELI’s work for this Institute to bring added value, and that the current under-representation of legal practitioners compared to academics needed to be corrected. The CCBE will during the summer indicate the names of prominent lawyers from different legal cultures and with expertise in different areas of law, based on recommendations from its member bars and law societies, as participants in the Institute. More information on the ELI is available on the ELI website: [http://www.europeanlawinstitute.eu/](http://www.europeanlawinstitute.eu/)

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

**European Transparency Initiative**

Members of the European Parliament backed, on 11 May, the draft interinstitutional agreement (IIA) on the creation of a joint Commission and Parliament transparency register (formerly known as the lobbyist register), which was subsequently launched in June. It will not be mandatory and the Council, which is likely to issue a political declaration in support, will not join in.

The IIA was unchanged from the version that was negotiated in the working group chaired by Interinstitutional Commissioner Maroš Šefčovič and EP Vice-President Diana Wallis (ALDE, UK), in November 2010. It was a ‘take it or leave it’ situation as rapporteur Carlo Casini (EPP, Italy) had explained.

The joint register combines the two institutions’ existing registers, dating from 1996 and 2008 respectively. The register concerns all organisations whose activities aim at influencing the decision-making processes of the EU. This includes business lobbyists, think tanks and NGOs, and also churches and lawyers. However, a distinction is made between corporate and non-corporate interests. In addition, certain activities of lawyers have been excluded from the scope of the register. By registering, organisations agree to publish not only basic information about themselves but also details on their activities in the EU institutions, as well as financial figures on activities that fall within the scope of the register.

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

**Family Law & Successions**

**Cross-border ownership**

On 16 March, Justice Commissioner Viviane Reding presented a Communication and two draft regulations to facilitate legal procedures in cases concerning cross-border ownership. One regulation concerns European or international married couples with property in an EU state other than their state of origin, and the other registered couples, although only 14 member states recognise unions other than marriage. With these proposals the European Commission aims to bring legal clarity to the property rights for married international couples and for registered partnerships with an international dimension. The two proposed Regulations would help identify which law applies
to a couple’s property rights and the responsible court. The Regulations also provide for rules for recognising and enforcing court judgments on a couple’s property in all EU Member States through a single procedure.

In 2006, the CCBE already adopted a position paper on this topic, when responding to 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 (EN and FR).

- Communication from the Commission - Bringing legal clarity to property rights for international couples (EN, FR)
- Proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (EN, FR)
- Proposal for a Council regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships (EN, FR)

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

### Interconnection of business registers

On 21 May, the CCBE adopted a position paper regarding the proposal earlier this year from the European Commission to interconnect business registers within the EU. The CCBE welcomes the initiative to facilitate cross-border electronic access to business information, by ensuring business registers are updated, and business information is more easily and readily accessible. Company registers provide company information that is essential for consumers and business partners alike, such as information on a company’s legal form, its seat, capital and legal representatives. Lawyers are in all Member States companies’ source of legal advice. As such, they constantly use information from business registers to determine the legal and economic position of companies involved in the cases they handle. Moreover, they provide on behalf of their clients legal regularity of their operations and draw up corporate documents required by company law. Once established, a consultation tool for legal data concerning all European companies will facilitate the work of lawyers to their clients’ benefit and support the provision of their services throughout the community area, including legal support for cross-border transactions.

In its position paper the CCBE proposes some concrete changes in order to improve the text of the proposed directive.

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

### Permanent Delegation to the Court of Justice and General Court (PD Lux)

#### Rules of Procedure

The Court of Justice is in the process of carrying out a major review of its Rules of Procedure. The proposed changes are available at the following address [http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-05/en_rp_cjue.pdf](http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-05/en_rp_cjue.pdf). The CCBE Permanent Delegation to the Court of Justice and General Court (PD Lux) is currently examining the proposed changes and will present a paper for approval in the near future. The paper, once approved, will be put onto the CCBE website.

#### Statute of the Court of Justice

The Court of Justice has proposed amendments to the Statute of the Court of Justice. The proposed changes are available at the following address [http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-04/projet_en.pdf](http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-04/projet_en.pdf). The proposed amendments concern the three courts composing the Court of Justice of the European Union, and are intended, in essence, to amend the rules relating to the composition of the Grand Chamber and to establish the office of Vice-President of the Court of Justice, to increase the number of Judges of the General Court and to provide for the possibility of attaching temporary Judges to the specialised courts. The PD Lux is examining the proposed changes.
**e-Curia**

The Court has been working for some time to introduce an electronic filing system. The proposed system is a simple model for the filing of pre-existing documents using a password protected system. The technical side is ready to go. The court is in the process of finalising its decision to implement the system, and the terms and conditions for lawyers to sign up if they wish to use it.

**EU accession to the European Convention on Human Rights**

The CCBE is following discussions regarding the European Union’s accession to the European Convention on Human Rights (ECHR). Currently a draft agreement had been drawn up. The accession by the EU to the ECHR will enhance the coherence in human rights protection in Europe. The accession should also ensure that an individual will have the right to submit the acts, measures or omissions of the European Union to the external control of the European Court of Human Rights.

The draft agreement allows for the EU to abide by rulings issued by the ECHR. It envisages that the European Court of Justice and the ECHR will be involved, alongside national courts, in reviewing challenges to EU laws, questioning whether they are compatible with the convention. However, the ECHR will have the final say on cases it handles.

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

**High-level speakers at the CCBE Plenary Session of 20-21 May in Luxembourg**

This Plenary Session was hosted in a highly symbolical place: the main hearing room of the Court of Justice of the European Union. The court’s President, Vassilios Skouris, delivered an opening speech in which he stated, inter alia, that the Court’s exchanges with the CCBE had not only an institutional dimension, but also a very functional dimension, underlining the role of lawyers in justice and the development of EU law. The Vice-President of the European Commission and Commissioner for Justice, Viviane Reding, in turn opened the second day of the Plenary Session. She also saluted the CCBE’s “frontline work” to promote law and justice at EU level, before presenting the Commission’s “Justice for Growth” proposals. She concluded her speech by urging lawyers not to forget victims’ rights, which should be at the heart of the judicial system, and called for “a change of culture” in this respect. The full text of her speech is available here: [http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/371&format=HTML&aged=0&language=EN&guiLanguage=en](http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/371&format=HTML&aged=0&language=EN&guiLanguage=en)

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

Vassilios Skouris, President of the Court of Justice of the European Union

Viviane Reding, Vice-President of the European Commission and Commissioner for Justice
Fiscal (cash) registers

Over the last two years the CCBE has received requests for assistance from a number of PECO countries where the governments have tried to take legislative steps in order to oblige lawyers to record all cash and/or other payment transactions via fiscal registers. The CCBE has reported about cases of Serbia, FYROM, the Federation of Bosnia and Herzegovina, Albania and Armenia. To date, Serbia remains the only country where this issue has been positively resolved.

The CCBE reported in the last CCBE-INFO about its letter of concern to the Albanian authorities and a letter to the Armenian authorities; it was also mentioned that a response from the Albanian Ministry of Finance has been received indicating that they would undertake the necessary steps in order to exempt lawyers from the obligation to install and use fiscal cash registers. However, in February, the Albanian Chamber of Advocacy informed the CCBE that the Albanian Council of Ministers has decided not to exempt lawyers from the above-mentioned obligation. Therefore the CCBE sent an additional letter to the Prime Minister of Albania pointing out once more the negative implications if fiscal cash registers were introduced. The CCBE also sent a letter of concern about the provision which imposes 20% VAT on legal services regardless of lawyers’ annual turnover (for other professions and businesses the law provides for a certain threshold). The CCBE emphasised that the Albanian proposal would be contrary to the existing standards and practices of other European countries.

On 17 March, the new government of the Federation of Bosnia and Herzegovina was appointed. Since the lawyers’ profession is still not explicitly exempted from the obligation to use fiscal cash registers, the CCBE sent a letter of concern to the new Prime Minister of the Federation of Bosnia and Herzegovina, Mr. Nermin Nikšić. Evangelos Tsouroulis, the Second Vice-President of the CCBE, also held a meeting on this matter with the Prime Minister on 4 July in Sarajevo.

In May the CCBE has also received a request for assistance from the Slovenian Bar Association; in June the CCBE sent a letter to the Prime Minister of the Republic of Slovenia pointing out the negative implications to the administration of justice if fiscal cash registers for lawyers were introduced.

The CCBE will continue monitoring developments in the above mentioned countries.

Georgia – human rights violations of lawyers

The CCBE reported in the last CCBE-INFO about the International Observatory for Lawyers mission to Georgia of last November and its report which highlighted an important destabilisation of the legal profession and a number of violations of lawyers’ daily practice. The CCBE also reported about its assistance to the Georgian Bar Association: a letter of last December to the President of Georgia where concerns about the reported human rights violations against a number of Georgian lawyers were expressed and a letter where the President of Georgia was urged to consider the situation of the Georgian lawyer, Ms. Mariana Ivelashvili, and to grant her clemency. The CCBE has been informed that Ms. Mariana Ivelashvili has been sentenced for 7 years in prison for not providing legal service for her client (this is regarded as being a political case); she suffers from a life-threatening illness and has already been in prison for 3 years.

Since the CCBE did not receive any response to its letters of last December, in March a follow-up letter to the President of Georgia was sent. The CCBE also sent a letter to the Ambassador of Georgia to the Kingdom of Belgium asking for the opportunity to have a meeting in order to discuss the situation of lawyers in Georgia. In addition to these initiatives, in March and April nine national Bar Associations reacted on Ms. Mariana Ivelashvili’s case by sending letters of concern to the President of Georgia and to their national authorities.

Since the CCBE has not received any reply from the Georgian authorities, it has decided to organise a seminar in Tbilisi for the Georgian lawyers. The seminar, which will most probably be taking place at the end of September or beginning of October, will focus on matters linked to the problems which have been reported to the CCBE (e.g. about the role of a lawyer in society, the core values of the legal profession and access to justice).
Belarus – disbarment of lawyers

In January, the CCBE was informed that a number of detained participants of the demonstration on the presidential election in Minsk have had difficulties in receiving the assistance of a lawyer. Moreover, the Ministry of Justice of Belarus has sent requests to the Minsk City Bar questioning the initiating of disciplinary proceedings against several lawyers (they face a real threat of being debarred). These developments have also been addressed in the European Parliament resolution of 20 January 2011 on the situation in Belarus.

At the end of January, the CCBE sent a letter to the Minister of Justice of Belarus urging the Belarusian authorities to guarantee full respect for the international standards envisaged in the United Nations Basic Principles on the Role of Lawyers (1990), in particular regarding adequate access to lawyers and legal services, freedom of expression of lawyers, independence of professional associations of lawyers and impartiality of disciplinary proceedings. In March, the CCBE sent an additional letter to the Minister of Justice of Belarus expressing its concerns regarding the removal of the licence from several Belarusian lawyers and attempts at preventing them from carrying out their professional duties; the CCBE has urged the relevant Belarusian authorities to reinstate the licences of the disbarred lawyers and to ensure that lawyers in Belarus are able to perform their professional functions without fear of retaliation or any other negative consequences such as disciplinary sanctions.

In May, the CCBE received information that no further letters should be sent to the Belarusian authorities since they could have a counterproductive effect. The CCBE is currently looking into other possibilities on how to assist the Belarusian lawyers.

Serbia – draft law ”The Legal Profession Act”

In February, the CCBE secretariat received a request from the Bar Association of Serbia to provide expertise on whether the Serbian draft law ”The Legal Profession Act” is in line with European and international standards.

The PECO committee has concluded that the draft law is clearly aiming to ensure modern regulation of the legal profession and that it also seems to reach a good equilibrium between state rules and self-regulation. The committee underlined the importance of the draft law to guarantee the confidentiality of lawyers, one of the core values of the profession. Furthermore, it noted that Serbia would need to amend the law if and when joining the European Union in order to bring the provisions in line with the European Lawyers’ Directives. These comments were sent to the Bar Association of Serbia at the beginning of March.

In the beginning of April, the Bar Association of Serbia organised a round-table discussion about the draft law (in Belgrade, Serbia). The CCBE was represented by four experts: Mr. Jokubauskas, Vice-Chair of the PECO committee, Mr. Sorcinelli, member of the PECO committee (main drafter of the PECO committee comments), Mr. Pohl, Chair of the Free Movement of Lawyers committee and Mr. Scassellati Sforzolini, Chair of the Competition committee and member of the GATS committee.

In the beginning of May the law “Legal Profession Act” was adopted by the Serbian parliament; it came into force on 17 May. Since the Serbian parliament has made several amendments to the act, the CCBE experts have been asked by the Bar Association of Serbia to comment on them.

European Commission – 2011 Enlargement package

In April the CCBE was informed that the European Commission (EC) has started work on the preparation of its 2011 Enlargement package covering the candidate countries and the potential candidate countries. The EC would take stock of progress made since 1 October 2010, in particular concerning the quality of democracy, the rule of law, guarantee of human rights and respect for/protection of human rights.

The CCBE has provided input in the consultation process with the EC through its member Bars from Albania, Croatia, Iceland and the Federation of Bosnia and Herzegovina.

For further information, please contact Sieglinde Gamsjaeger (gamsjaeger@ccbe.eu).
Evaluation of the Professional Qualification Directive

The reform of the system of recognition of professional qualifications as a means to facilitate mobility is one of the priority actions proposed by the Commission in the Single Market Act. With a view to preparing this reform, the Commission launched in March 2010 an evaluation of the Professional Qualifications Directive (Directive 2005/36/EC).

In its response to the Commission’s consultation, the CCBE mainly stressed the specific regime governing lawyers under the lawyers’ Directives, i.e. Directive 77/249 on services and Directive 98/5 on establishment (the lawyers’ Directives). The combination of these Directives, complemented by the case law of the Court of Justice, provides a model of a liberalised market for professional services in the EU.

As regards the issue of a European Professional Card, the CCBE pointed out that the legal profession is already well advanced in using its own professional identity card for many years. The CCBE professional identity card was created in 1978. The CCBE card facilitates access to courts and institutions for lawyers active outside their home jurisdiction. The card is also recognised by the Court of Justice and the Civil Service Tribunal.

The result of the consultation will be taken into account by the Commission in the preparation of its Evaluation Report.

A Green Paper was published in June with a view to a legislative proposal on the modernisation of the Professional Qualifications Directive in 2012.

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