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**THE STOCKHOLM PROGRAMME (2010 TO 2014)  
ON THE FURTHER DEVELOPMENT OF THE UNION'S "AREA OF  
FREEDOM, SECURITY AND JUSTICE"**

**CCBE RECOMMENDATIONS**

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## **The Stockholm Programme (2010 to 2014) on the further development of the Union's "area of freedom, security and justice"**

### **CCBE recommendations**

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The European Commission published its communication to the European Parliament and the EU Council on "An area of freedom, security and justice serving the citizen" on 10 June 2009, in which it outlines its vision for the future Stockholm Programme and defines the priorities for the next five years.

The CCBE would like to respond to this communication and make its own recommendations to the drafters and implementers of the Stockholm Programme. In doing so, we build in part on our [manifesto](#) from March 2009, calling for 'The right kind of justice for Europe', in which we present our main concerns about the way that justice is currently addressed at EU level as well as suggestions for improvement in the future. We will, though, continue to follow developments in this important area and update our recommendations to decision-makers.

#### DG Justice

The Commission writes that "*the policies followed in the fields of justice and home affairs (...) should support each other and grow in consistency (and) fit smoothly together with the other policies of the Union.*" The Commission further writes that "*Priority must also be given to improving the quality of European legislation.*" The CCBE believes that consistency between policies is a sound objective, but not one that justifies concentrating under one and the same responsibility portfolios with divergent interests such as justice and home affairs. They should have their own and separately-led departments. The CCBE therefore calls for the establishment at the European Commission of a DG Justice that will be solely competent *for all* justice matters in order to ensure that justice is dealt with effectively and comprehensively. We believe that this is the best way to ensure coherence and consistency of legislation, certainly in the area of justice and with regard to fundamental rights and the principles of separation of powers already followed in most of the Member States. For instance, the CCBE is disappointed that the setting up of a mechanism of collective redress at EU level is not being considered within the future Stockholm Programme only because it is not dealt with by DG Justice, Freedom and Security, and although it is clearly a justice issue. This, in our view, is a good example of the negative effect of the absence of a DG Justice.

#### Professional secrecy and legal professional privilege

The Commission also indicates that, to improve the quality of legislation, "*thought must be given to the potential impact on citizens and their fundamental rights.*" The CCBE fully supports this statement, and would like to remind EU decision-makers that, when pursuing other objectives in legislation, however important, they must uphold the right of a citizen/client to consult a lawyer in full confidence as a cornerstone of the rule of law in a democratic society.

#### Human rights

The CCBE calls on the European institutions to ensure that Member States and the EU, when adopting legislation against terrorism and organised crime, comply with their European and international legal obligations to uphold human rights. The Union's accession to the European Convention on Human Rights would be important progress in that direction, as the Commission rightly points out. Further, the CCBE supports the necessary resources being allocated to the Fundamental Rights Agency, as well as the enlargement of its mandate and the proper participation of professional organisations in its structure.

## Procedural guarantees in criminal proceedings

The CCBE attaches great importance to the established principles of criminal law and the protection of procedural rights of suspects and defendants in criminal proceedings in all Member States. With regard to procedural safeguards, we emphasise that the rights of suspects and defendants have been marginalised for too long, and that Member States should now adopt *inter alia* the minimum procedural safeguards - as identified by the Commission - across the board. The basic minimum procedural safeguards identified by the Commission are: access to legal advice, both before the trial and at trial; access to free interpretation and translation; ensuring that persons who are not capable of understanding or following the proceedings receive appropriate attention; the right to communicate, *inter alia*, with consular authorities in the case of foreign suspects, and notifying suspected persons of their rights (by giving them a written "Letter of Rights"). These are basic rights that are immediately necessary in order for mutual recognition to succeed and should be adopted without delay as a whole package and not separately on a step by step basis. The CCBE notes from the Commission communication that the work on common minimum guarantees could be extended to protection of the presumption of innocence and to pre-trial detention (duration and revision of the grounds for detention). The CCBE urges the European institutions to introduce further measures that would strengthen fundamental principles of criminal law, for example the right to silence, as in recent years certain Member States have tried to dilute and weaken these essential rights. The CCBE also urges the European institutions to introduce any measures that would improve access to a defence lawyer at the earliest possible stage, on the basis that procedural safeguards are of little value if citizens cannot enforce their rights. In addition, it is of the utmost importance that the confidentiality of communications between a lawyer and client be protected.

## E-Justice

The CCBE recognises the value of e-Justice as a tool to improve citizens' access to justice, and wishes to participate actively in this project. In this respect, the CCBE welcomes that the EU Council has already announced the creation of a 'legal practitioners' section of the portal. In developing e-Justice, however, the CCBE is concerned that there should be, among other issues, a proper balance between facilitating access to justice and ensuring respect for procedural guarantees and data protection. For instance, the use of video-conferencing in cross-border criminal cases and the linking of criminal databases raise some very delicate questions. The e-Justice portal should provide a single access point for finding a lawyer in Europe through national bar databases of lawyers, and it should offer professional e-identity management in order to allow lawyers to have secure e-transactions with official registries or judicial authorities in other Member States. This requires major technical and financial resources. The CCBE would therefore welcome specific financial programmes and projects to facilitate this project.

## Cross-border users of legal acts

When considering ways to enhance legal security for cross-border users of legal acts, the differences in legal cultures and systems should be considered. The mechanisms for mutual recognition should benefit all citizens and residents of all Member States. Some Member States have notaries who can deliver authentic acts and lawyers and other professionals who can perform acts with equivalent legal effect. Some Member States do not have notaries. Moreover, some Member States have authentic acts that are not notarial acts. It is important for citizens and businesses that mutual recognition should not be restricted to authentic acts delivered by notaries but also cover analogous legal acts (deed, legal act by a lawyer or equivalent) which exist under national law. 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.

## Networks in the area of justice

The CCBE notes the Commission's call for "*(increased) opportunities for exchanges between professionals working in the justice system*", namely through the various networks supported by the EU. The Commission asserts that "*(...) the European civil and criminal law networks must be more actively involved in improving the effective application of EU law by all practitioners.*" The CCBE emphasises that lawyers should be included also in the European Judicial Network in criminal matters,

## **Conseil des barreaux européens – Council of Bars and Law Societies of Europe**

*association internationale sans but lucratif*

Avenue de la Joyeuse Entrée 1-5 – B 1040 Brussels – Belgium – Tel.+32 (0)2 234 65 10 – Fax.+32 (0)2 234 65 11/12 – E-mail [ccbe@ccbe.eu](mailto:ccbe@ccbe.eu) – [www.ccbe.eu](http://www.ccbe.eu)

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from which they are currently excluded. The CCBE welcomes the Commission's intention to build on progress in the Justice Forum as an additional tool, and to improve the way it operates.

### Training

The European Commission indicates that "*It is essential to step up training and make it systematic for all legal professions*". The CCBE would like to highlight that lawyers too should benefit from European-funded training as they are essential actors in the administration of justice and indeed the first persons that users of justice contact. Lawyers should be on an equal footing with judges and prosecutors in initiatives to provide funding for training to legal practitioners in EU substantive and procedural law. Such training could be delivered through existing training bodies at the national and European levels. The organisation of such training, which should be optional, must fully respect the independence of lawyers in Europe. It is also important that training programmes for the accession and neighbouring countries of the European Union include lawyers and not focus only on judges and prosecutors. This should fall under what the Commission indicates as one of the five main tools for implementing the Stockholm Programme, i.e. that "*political priorities must be accompanied by adequate financial resources*".

### Mutual recognition

Moves towards greater use of mutual recognition should be accompanied by increased mutual trust in the civil and criminal systems of the Member States. At present, there are mutual recognition instruments that are applied differently in different Member States due to mistrust in other legal systems. The CCBE welcomes the initiative to abolish the exequatur procedure in civil and commercial matters to facilitate enforcement, provided minimum standards of procedural safeguards for the defendants in cross-border cases are defined, such as minimum standards relating to proper service of judgments and judicial documents and a process of verification to ensure the judgment is a valid one. Regarding mutual recognition of disqualification judgements, the CCBE has concerns – similar to those with linking criminal databases above – about privacy, access and human rights issues.

### Legal aid

The right of access to justice is a fundamental right and is of the utmost importance to the protection of the citizen's right in a democratic society. It requires that a litigant has real and effective access to the court and a real opportunity to present the case he/she seeks to make. It implies that where the means of a litigant do not allow him to engage a lawyer, the right to a fair hearing guaranteed by the European Convention on Human Rights also requires that he/she be provided with legal aid. A natural consequence of these rights is that there should be equality of arms between litigants. Access to legal aid should be guaranteed to all EU citizens, but also to third country nationals habitually resident in a Member State, as recommended by the Hague Convention of 1980 on International Access to Justice (extension of the "non discrimination principle"). The CCBE calls upon the EU to ensure common developments of European legal aid schemes both nationally and in cross border matters for beneficiaries as defined above.