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AN EVENT YOU CAN'T MISS: THE CCBE CONFERENCE ON AI AND HUMANE JUSTICE

Artificial intelligence (AI) is increasingly used by legal services and justice systems and this will directly impact the exercise of the legal profession. AI-driven "automated decision-making applications" and the use of AI in justice does, however, raise many legal questions and ethical concerns about data collection and the use of algorithms, blockchain and smart contracts, the delivery of digitalised legal services, access to justice and the right to a fair trial.

These concerns will be addressed during the CCBE conference "Artificial Intelligence- Humane Justice" on 30 November at the Catholic University of Lille, in France. Tech company experts, members of the European Commission, European agencies and the Council of Europe will introduce the questions and topics of concern. The practical implications for legal professionals will then be discussed with the audience in workshops.

After lunch, three key note speakers will present an academic, regulatory and industry approach to ethics in the use of AI in justice applications: Mathieu Coulaud, Head of the Legal Department at Microsoft France; Gregory Lewkowicz, Professor at the Université Libre de Bruxelles and director of the global law program at the Perelman Centre; and Paul Nemitz, the European Commission's principal advisor on strategies for cross-cutting justice policies or legal actions.

The Commissioner for Justice, Consumers and Gender Equality, Věra Jourová, will also discuss these relevant topics in a video addressed to justice and legal professionals. Finally, Thierry Wickers, the Head of the French Delegation to the CCBE, and Christian Lemke, Vice-Chair of the CCBE Future of Legal Profession Committee will close the conference with the findings from the workshops.

Join us for a lively discussing on AI in the field of justice! We look forward to welcoming you in Lille on 30 November. Registration is open until 21 November on the CCBE conference website: <http://cbeconference.eu/en/>.



THE CCBE STANDING COMMITTEE WELCOMES SPEAKERS KEES STERK, THE PRESIDENT OF ENCJ, AND GÁBOR MAGYAR, THE JUSTICE POLICY AND RULE OF LAW OFFICER OF THE EUROPEAN COMMISSION

The CCBE welcome two special guests during its Standing Committee on 19 October in Brussels: Mr. Magyar, Justice policy and rule of law Policy Officer at the European Commission, and Mr. Sterk, President of the European Networks of Councils for the Judiciary (ENCJ).

Policy Officer Mr. Magyar presented the EU Justice Scoreboard for 2018 to members and explained it in depth. ENCJ President Kees Sterk delivered a timely speech on judges and lawyers' situation in the EU concerning the rule of law.

Members welcomed Mr. Magyar and Mr. Sterk with great interest and engaged in fruitful discussions with both speakers. The CCBE looks forward to further cooperation with the European Commission and the European Networks of Councils for the Judiciary.

The CCBE President, Antonín Mokry, then lead discussions on matters such as the rule of law in Hungary and Romania. In addition, the following texts were adopted:

- [CCBE Guidance on certain aspects of the Tax Intermediaries Directive](#)
- [CCBE Position on the proposals for amending the regulations on service of documents and the taking of evidence in civil and commercial matters](#)
- [CCBE Statement on the need to guarantee legal assistance to all persons requesting international protection](#)
- [CCBE position on Commission proposal Regulation on European Production and Preservation Orders for e evidence in criminal matters](#)
- [CCBE remarks on the Commission consultation "Stocktaking of the Commission's 'better regulation' approach".](#)

Upcoming CCBE events were also addressed at the Standing Committee. Specifically, European Lawyers' Day, celebrated on 25th October, and the [conference on Artificial Intelligence – Humane Justice](#), on 30th November in Lille, France.

The CCBE encourages all readers to register for the conference in Lille, which will address the impact of AI in the judicial field and the legal profession.



CCBE members in the Standing Committee

E-EVIDENCE: THE CCBE'S POSITION ON THE COMMISSION'S PROPOSAL ON ELECTRONIC EVIDENCE IN CRIMINAL MATTERS

On 19 October the CCBE adopted its [position](#) on the [Commission proposal](#) for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters. This important proposal aims to make it easier and faster for police and judicial authorities to obtain electronic evidence (such as e-mails or documents located on the cloud) from a service provider in another Member State to investigate, prosecute and convict criminals and terrorists.

According to the CCBE, it is not possible on the stated legal basis for the EU institutions to adopt a legal instrument enabling national authorities in one Member State to order the production of electronic evidence to private entities in another jurisdiction. It also considers that the choice of a Regulation instead of a Directive as the legal instrument might lead to a paradigm shift in the criminal law area which involves a high risk that higher national standards could be lowered by EU legislation.

In the view of the CCBE, the proposal essentially introduces a mechanism through which the established systems of judicial assistance are bypassed, and the protection of fundamental rights is delegated partly or in full to private parties. The CCBE strongly disagrees with this approach as it undermines the essential duties of national judicial authorities to ensure that the

rights of its citizens are not compromised or undermined. Such undermining does arise, by reason that it would be no longer possible for national judicial authorities to undertake a legality check of requests for judicial cooperation emanating from the authority of another Member State. Hence, the CCBE considers that, instead of curtailing the role and responsibilities of national judicial authorities, a more appropriate approach would be to make Mutual Legal Assistance and the European Investigation Order procedures faster through digitisation and by better equipping national authorities to respond to cross-border requests.

Consequently, the CCBE stresses that the proposal should be restricted in its scope to European Preservation Orders and that the objectives pursued by the Commission could be equally attained by using the procedures provided for under the existing European Investigation Order and Mutual Legal Assistance Treaties.

Finally, the position paper also sets out a number of issues and concerns that the CCBE wishes to see addressed in the course of the legislative process, particularly concerning the protection of confidentiality of lawyer-client communications; judicial validation; grounds for refusal of the execution of the order; the need for a sufficient degree of suspicion; the importance of notifying data subjects, and rights of the defence.

PUBLICATION OF THE CEPEJ REPORT EVALUATING THE EUROPEAN JUDICIAL SYSTEMS

With a [report](#) and an interactive database, [the CEPEJ-STAT](#), the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe published on 4 October 2018 its findings concerning the main trends in 45 European countries in the functioning of judicial systems.

The report provides a detailed picture of the performance of the judicial systems, their budgets, the situation concerning judges, prosecutors and lawyers, and the organisation of courts in the 45 participating member States and in one CEPEJ observer State (Israel). The report and the database constitute a reference point for all policy makers and justice professionals, to be used when developing public policies on the organisation of judicial systems.

For this cycle, the CEPEJ also measures emerging policies and technologies in the courts (open data, artificial intelligence and blockchains, see page 217).

Furthermore, chapter 3.5 (page 171) of the report deals with lawyers.

About the report :

- [2018 edition of the CEPEJ report «European judicial systems - Efficiency and quality of justice»](#)
- [Overview of the report](#)
- [Presentation note of the report \(main trends and conclusions\)](#)
- [Powerpoint presentation](#)
- [Press release](#)

MODERNISING AND DIGITILISING EU CIVIL JUDICIAL COOPERATION

On 19 October, the CCBE published its [position](#) on the Commission proposals for amendment of the regulations on [service of documents](#) and the [taking of evidence](#) in civil and commercial matters. The Commission proposal aims to make access to civil justice cheaper, more efficient and more accessible to citizens and businesses by making it obligatory for courts to exchange documents electronically and promoting the use of videoconferencing to hear witnesses based in another country.

Whilst the CCBE supports that the use of electronic means becomes the default standard in communication between the competent authorities involved in cross-border judicial cooperation in civil and commercial matters, it stresses that such a move must be coupled with safeguards and due process procedures, including the protection of professional secrecy and legal professional privilege. To this end, various proposals for amendments are suggested in the position paper.

CONSUMERS' COLLECTIVE INTERESTS: THE CCBE'S POSITION

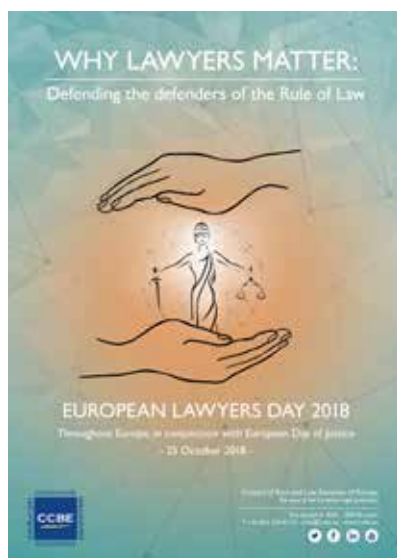
On 24 September the CCBE published its [position paper](#) concerning [the proposal](#) for a Directive on representative actions for the protection of the collective interests of consumers repealing Directive 2009/22/EC.

The principal issue addressed by the CCBE in its position is that the proposal reserves the possibility to initiate representative actions aimed at the protection of the collective interests of consumers to qualified entities to avoid abusive or unmerited litigation. The CCBE considers that there are other and less restrictive mechanisms to prevent unreasonable, artificial and vexatious actions, such as introducing the loser-pays-principle or by prohibiting the right of representative entities or lawyers to receive a share of what was obtained in the proceedings. The proceedings are likelier to be treated diligently and efficiently, if those who are bringing the collective redress proceeding are qualified legal professionals. Moreover, the monopoly provided to qualified entities raises various difficulties, for example, in case of absence or inaction of qualified entities, conflict of interest, or refusal or obstruction of qualified entities.

The CCBE has also serious concerns about the assistance which qualified entities may receive from Member State authorities. This may lead to procedural inequality and actions that are politically motivated or, for reasons that are not made clear, target traders in certain Member States.

In addition, the CCBE disagrees with the decision of the Commission to establish an opt-out instead of an opt-in procedure. As collective redress is based on individual claims, the opt-in principle, whereby the natural or legal persons joining the action should do so based on their express consent only, is the only way to respect appropriately and guarantee the freedom of every single consumer to decide individually whether to pursue their claim or not in a self-determined and active way. Consumers should be required to say «yes» to opt-in to collective redress proceedings and should not be forced to take an action to not be part of a collective redress mechanism they do not agree with.

EUROPEAN LAWYERS DAY 2018 – WHY LAWYERS MATTER: DEFENDING THE DEFENDERS OF THE RULE OF LAW



On 25 October, the CCBE organised the 4th edition of European Lawyers Day.

For the 2018 edition, the CCBE proposed the theme: “Why lawyers matter: Defending the defenders of the rule of law”.

Human rights defenders and the rule of law are issues that the CCBE works hard for every day.

Many countries organised conferences, panels and other activities for European Lawyers Day, including, but not limited to: Belgium, Croatia, the Czech Republic, France, Ireland, Luxembourg, Poland, Spain and the United Kingdom.

More information and pictures of these activities will be available on the [CCBE's European Lawyers Day section of the website](#) shortly.

GUARANTEEING LEGAL ASSISTANCE TO ALL PERSONS REQUESTING INTERNATIONAL PROTECTION

On 19 October, the CCBE issued [a statement](#) expressing its concerns over the potential creation of controlled centres and landing platforms for migrants.

This idea, currently under consideration at the EU level, aims to set up controlled centres within the European Union, as well as regional landing platforms in third countries, specifically in Northern Africa.

In this regard, the CCBE recalls that the determination of refugee status must be accompanied by certain safeguards, such as legal assistance for asylum seekers, in accordance with European Asylum Directives. However, these safeguards are already not

guaranteed in existing hotspots, in particular on the Greek island of Lesbos, where legal assistance to migrants has to be provided by voluntary initiatives such as [European lawyers in Lesbos \(ELIL\)](#), launched by the CCBE and the German Bar Association in 2016.

Therefore, the CCBE concludes that, should new structures be created, they should provide the necessary human and financial resources to ensure legal assistance by qualified legal practitioners to all asylum seekers.



THE CCBE AUTUMN RECEPTION: “THE ROLE OF THE EU IN THE RULE OF LAW”

On 18 October, the CCBE held its 2018 Autumn Reception: “The role of the EU in the rule of law”, where distinguished guests and CCBE members gathered to discuss the EU’s role in the rule of law and what lawyers can do to further promote the rule of law in Europe.

The highlight of the reception were the speeches by CCBE President Antonín Mokrý’s and Mrs. Niovi Ringou, Head of the Justice policy and rule of law Unit at the European Commission, who spoke about the European Commission’s actions concerning the rule of law.

The CCBE would like to thank Mrs. Ringou’s participation in the reception as well as our guests’ attendance, which made the reception a very engaging event.



Members celebrating at the CCBE reception

TRADATA (TRAINING OF LAWYERS ON THE EU DATA PROTECTION REFORM)

Within the framework of the TRADATA project, the European Lawyers Foundation together with bars, law societies and training schools from 7 different Member States (Germany, France, Spain, Italy, United Kingdom, Belgium and Ireland) have joined efforts to organise 21 training seminars for lawyers on the new EU Data Protection Reform in different cities of all partner countries. Half-way through the project, the project's consortium has organised 10 well-attended seminars in 9 different cities in 6 different countries to train a total number of 430 lawyers, going far beyond our initial targets and objectives. But TRADATA is far from over: by the end of the project (November 2019), we are aiming to reach 20 different cities in 7 different countries and to train a total of 630 European lawyers. Training seminars are full-day events organised at national level, with a morning session dedicated to the European legal framework (mainly the GDPR) and an afternoon session focused on the national legal framework on data protection. Training material from our seminars is freely available on [the ELF's website](#) and accessible through the following link. TRADATA is one of the 6 European projects which received financial support from the European Union under the call for action grants to support training activities on the data protection reform and the only one solely addressed to lawyers.

UPCOMING EVENTS

29/11/2018 *CCBE Plenary Session - Lille*

30/11/2018 *CCBE conference : Artificial Intelligence – Humane Justice - Lille*