



CCBE COMMENTS ON EUROPEAN LEGAL TRAINING

CCBE COMMENTS ON EUROPEAN LEGAL TRAINING

Introduction

The CCBE supports the efforts of the European Union to create a European judicial culture and an area of shared values and fundamental rights and principles. It welcomes the entry into force of the Treaty of Lisbon and the Charter of Fundamental Rights, through which the European Union has the capability and the tools to strengthen the Union as an area of law, rights and justice.

Lawyers, who have an essential role in the administration of justice, are a fundamental pillar for the creation of confidence in the European judicial area. Lawyers are the competent advisors and defenders of citizens and upholders of the rule of law. This requires the continuing development of lawyers' skills and knowledge, which the CCBE strongly supports (see Annexes 1-3). The organisation of such training must fully respect the independence of lawyers in Europe and the diverging systems of training under national law. The Bars and Law Societies have always committed themselves to the highest standards in the training of lawyers. The training and qualification of lawyers is a national competence as recognised by the principle of subsidiarity.

The citizens living in the European Union are at the heart of all European lawyers' activities. The EU should guarantee easy access to justice, based on the rule of law, in order to ensure that all citizens and businesses have confidence in its legal system(s). Such confidence requires lawyers to have a sound understanding of the needs of European citizens and businesses whereas clients need to understand what lawyers are and what they do.

It is essential that training of European lawyers enables them to acquire knowledge and mutual understanding that will further the creation of a common European judicial culture. In a European Single Market the need for lawyers who are capable of interpreting and effectively enforcing EU law alongside their own domestic law is evident. Therefore it is important that lawyers have a good understanding of all applicable law and procedures.

There is an ever increasing free movement of citizens and businesses in the European Single Market leading to a need for lawyers from the different member states to familiarize themselves with the legal systems of their neighbours and the organisation of their professions, including the free movement of lawyers themselves which has been promoted by the legal professions and the CCBE.

To this end, European support for additional high quality training initiatives is desirable and the CCBE welcomes the European Commission's steps in this direction (see Annexes 4 and 5). Such initiatives should be made available to all lawyers and should allow, as appropriate, the interaction for training purposes with the other actors in the rule of law society, for example judges and prosecutors. Political priorities must be accompanied by adequate financial resources in order to implement the Stockholm programme successfully.

Knowledge and skills

The CCBE believes that the following suggestions of skills and knowledge might help to contribute to the realisation of a common European judicial area.

- Knowledge of the legal order, procedures and institutions of the European Union
 - Knowledge of main doctrines of EU law (principles of supremacy, direct applicability and direct effect) and the methods of interpretation used by the Court of Justice of the European Union
 - Knowledge of the legal order and procedure of the Court of Justice of the European Union
 - Knowledge of the EU's decision-making process

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- Knowledge of how to find, research and use EU law
- Practical advocacy skills regarding the EU institutions
- Ability to recognise the relevance of EU law for lawyers' practice
- Knowledge of substantive EU law relevant to the lawyers' area of practice
- Knowledge of the relation between EU institutions and national authorities and various instruments facilitating exchange of information (for example, regarding the European arrest warrant)
- Implementation of EU law into national law in comparative national terms
- Knowledge of legal aid instruments
- Knowledge of basic procedural and alternative dispute resolution systems within the EU
- Knowledge of the legal order and procedure of the European Court of Human Rights
- Knowledge of European legal languages
- Comparisons between different legal systems of EU Member States, for example:
 - a compilation of materials which could be contained e.g. on the e-Justice portal (and/or European Judicial Network) including information on the profession itself;
 - a mapping of the differences between the legal systems could also contain an indication of how the EU in its organisation and legislation has drawn on various legal systems.

Methodology

General

Courses, seminars and conferences continue to be valid methods of theoretical and practical training, especially when combined with more interactive methods such as round table discussions and moot courts.

The meeting of lawyers with members of the judiciary and other legal professionals to exchange knowledge and experience can add tremendous value to the learning environment.

These could be run in existing facilities provided by European institutions or by Bars and Law Societies (rotating venue).

Furthermore, it is generally viewed as an asset that the trainers themselves, in addition to being skilled teachers, have hands-on experience with the subject taught. It is therefore considered that it would be of interest to lawyers if courses could be held by EU personnel, specialised lawyers and qualified trainers who are dealing with the relevant subject on a daily basis and can place the theory in a practical context. It could add value if the course could be conducted in the relevant physical settings.

Provision of "Training kits" about EU law instruments (for instance, DVDs) would be helpful as would training on new instruments promoted by the EU. This could back the political agenda of the EU in a practical way and help improve implementation.

Web portals

Support for Web portals (linked to or part of the e-Justice portal) containing a secure Intranet:

- Providing information about EU training programmes scheduled by Bars and Law Societies and by other qualified training providers
- Where DVDs, seminar and conference documents and other material can be uploaded
- Supporting a forum where participants can share ideas
- Providing information about the structure of the lawyer's profession

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- Listing or linking to legal textbooks on national law and national legislation, especially those which already exist in other European languages

E-learning

In order to facilitate participation by lawyers, especially sole practitioners or lawyers from small firms, e-learning could be used as a training method. It would be highly consistent with the general e-Justice agenda if the EU also backed the development of e-learning by promoting, for example:

- E-learning courses, seminars and conferences
- Recorded trials that can be analysed through online fora
- Online demonstrations on the use of existing and/or upcoming website research tools (for instance, EurLex)

Placement programmes

It is important to develop placement programmes in other Member states as they are a key tool to foster mutual confidence and trust in the European legal systems. They help improving academic and practical knowledge and skills as well as legal language abilities at the same time. Several national lawyer organisations have carried out such placement programmes.

Such programmes should cover:

- Practical placements in law firms
- Practical placements in national courts
- Placements in EU institutions and bodies
- Short study trips to familiarise with the EU institutions and bodies

In order for these placement programmes to work, it is important to:

- Prepare written guidelines for placement programmes which should include the following elements:
 - A comprehensive description of knowledge and skills to be obtained
 - An indication of the length of such programmes: depending on the purpose of the programme and the specific needs of the lawyer, placements could range from a few days (short study trips of 2-3 days, for instance), a few weeks to a few months or up to 1 year.
- Introduce a duty for participants to disseminate their experience and the knowledge obtained on arrival home
- Make publicity of the placement opportunities and their purpose

Conclusions

The legal professions and CCBE would welcome support for such initiatives and stress that the procedures for accessing EU assistance should be made straight-forward and easy with the provision of good publicity for any programme adopted.



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CCBE Recommendation on Training Outcomes for European Lawyers

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Preamble

The Bars and Law Societies of the CCBE, taking account of the ongoing construction of the European Qualification Framework and the development of a Higher Education Area in Europe as well as the *CCBE Resolution on Training for Lawyers in the European Union*¹ and wishing to promote the development of national training outcomes and to facilitate the free movement of lawyers hereby recognises²

- that free movement of lawyers has now advanced to allow, in appropriate cases, access to professional training as well as to the legal professions themselves; and
- that the exercise of the profession of lawyer requires a very high standard of professional competence of their members, and those aspiring to become members of the legal profession. Such a high standard of professional competence of lawyers is a cornerstone for the furtherance of the rule of law and democratic society; and
- that all CCBE Bars and Law Societies embrace and wish to promote through their training the core principles recognised in the *CCBE Charter of Core Principles of the European legal profession*;³ and
- that Bars and Law Societies recognise the need to promote, through training, the essential deontological rules and practices of the legal profession;
- and recognising therefore the importance of promoting a transparent set of training outcomes for lawyers in Europe;

hereby sets out its view of the main training outcomes necessary for a European lawyer.

The training outcomes below are organised in three sections.

1. The first section sets out the outcomes relating to deontology and professional rules. Their function is to make future lawyers aware of their professional identity and of the role of the profession within the administration of justice and in society at large. Through mastering these outcomes future lawyers learn **who lawyers are**.

2. The second section's outcomes relate to the execution of the mission of lawyers. They describe, in general terms, the theoretical and practical knowledge that lawyers should have in order successfully to perform their functions. Through mastering these outcomes future lawyers learn **what lawyers do**.

3. The third section's outcomes are related to the organisation of the activities of lawyers. If lawyers, fully aware of their mission and role, and in possession of all the necessary technical skills are to perform their functions more effectively, they must understand these outcomes as they explain **how lawyers should work**.

¹ CCBE Resolution on training for lawyers in the European Union (November 2000), see http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/form_enpdf1_1183977205.pdf

² In this Recommendation the term "lawyer" is used in the sense mentioned in article 1 of Directive 1998/5/EC (1998) OJ L77/36 as amended.

³ CCBE Charter of Core Principles of the European legal profession (November 2006), see http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Charter_of_core_prin1_1183986811.pdf.

1. Deontology and professional status

It is of fundamental importance for lawyers to have full knowledge and understanding of professional and ethical rules, as expressed in national codes of conduct, as well as in the CCBE cross border code of conduct. They must act in accordance with such rules so that they can fulfil their mission in the public interest. Lawyers should not only comply with such rules but also should be able to develop their own professional identity by applying such rules in their everyday actions. Adherence to the principles and values of the profession allows lawyers to serve, in the best possible way, both the interest of their clients and the public interest in the promotion of justice and the upholding of rule of law at the same time.

The CCBE believes that the mission of promoting the rule of law can be fulfilled by individual lawyers only if professional rules and principles are used as a guidance for day to day activities of lawyers.

Future lawyers should not only have regard to the specific technical legal problems with which they are dealing, but should also deal with their tasks in a wider ethical context, taking into account that the functions which lawyers perform are not only for the benefit of their clients but also for society at large. Professional rules must be used as a guide to foster the quality of such legal services.

In this regard, for instance, a lawyer should be aware of rules on communication and publicity not only to avoid behaviour incompatible with professional ethics but also to learn how to communicate effectively with the public in order to protect the interest of clients.

1.1. Substantive knowledge

1.1.1. Deontology

- [a] understanding of the function and the role of the legal profession;
- [b] understanding of professional and ethical rules, including the meaning of terms like independence, professional secrecy, client confidentiality, legal professional privilege and representation of interests;
- [c] understanding of the rights and duties arising from the collegiate nature of the legal profession, especially those derived from relationships with colleagues, clients, opposing parties courts and other public bodies and Bars and Law Societies;
- [d] understanding of the rights and duties arising out of the giving of advice;
- [e] understanding of rights and duties in the mission of assistance and representation before courts;
- [f] understanding of standards applicable to lawyers' fees;
- [g] understanding of standards applicable to handling clients' funds;
- [h] understanding of rules relating to communication and publicity.

1.1.2. Professional status

- [a] understanding of the organisation of and the services provided by the Bars and Law Societies;
- [b] understanding of the disciplinary and sanctioning regime;
- [c] understanding of professional liability and of professional civil indemnity insurance;
- [d] understanding of the various legal forms which a legal practice may take;
- [e] understanding of the status of colleagues and partners.

1.2. Practical knowledge and skills

- [a] ability to work in the framework of professional deontology and to respect it;
- [b] ability to assess one's own competence regarding the request of a client for advice or representation;
- [c] ability to make a reasoned decision as to the choice of legal form and mode of governance of the law firm or practice;
- [d] ability to behave professionally and with integrity.

2. Implementing the work of the lawyer

A high level of professional competence is one of the core principles of the legal profession. It is confirmed in the CCBE Charter of Core Principles,⁴ the Council of Europe Recommendation on the freedom of exercise of the profession of lawyer⁵, the European Parliament resolution on the legal professions and the general interest in the functioning of legal systems⁶ and the United Nations Basic Principles on the Role of Lawyers.⁷ Lawyers cannot effectively advise or represent the client unless they have had the training necessary to enable a professional to keep pace with continuous changes in law and practice and in the related technological, social and economic environments.

Future lawyers should master the major concepts of the legal system in which they are working and use such concepts to provide their clients with the most effective solutions to their problems. This implies not only a knowledge of the law, but also a mastery of methods which ensure that the law itself is used correctly. Lawyers should be able to orient the client towards timely and cost effective solutions.

Future lawyers should learn not only how to conduct a critical analysis of the law, but also how to ascertain the necessary details of situations which they are asked to handle. After having analysed the facts, and in the light of the law, it is fundamental that they know how to communicate the result of their analysis to their clients and – if necessary – to other parties with an interest.

The credibility of the legal profession, and ultimately of a legal system, is closely linked to the practical ability of individuals and organisations to enjoy the full and effective protection of the law in the most affordable and timely manner. Future lawyers should learn how to ensure that such full and effective protection is made available. In so doing they will fulfil their duty of loyalty to the client, and thereby uphold the dignity and honour of the legal profession, the rule of law and the fair administration of justice.

2.1. Substantive knowledge

- [a] thorough understanding of the principal features and the major concepts, values and principles of the legal system, including the European dimension (including institutions, procedures);
- [b] detailed knowledge beyond the core of the basic legal system⁸ and knowledge in at least some specialised fields of law;
- [c] knowledge of procedural law and of alternative dispute resolution mechanisms;
- [d] knowledge of techniques of drafting, in particular drafting of contracts;
- [e] knowledge of negotiation techniques.

⁴ See footnote 3 above.

⁵ Recommendation Rec(2000)21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer, see <https://wcd.coe.int/com.instranet.InstraServlet?Command=com.instranet.CmdBlobGet&DocId=370284&SecMode=1&Admin=0&Usage=4&InstranetImage=62250>.

⁶ European Parliament resolution on the legal professions and the general interest in the functioning of legal systems, see <http://www.europarl.europa.eu/sides/getDoc.do?sessionid=398C892CD33BF59E9DB3BF3AE2362941.node2?language=EN&pubRef=-//EP//TEXT+TA+P6-TA-2006-0108+0+DOC+XML+V0//EN>.

⁷ United Nations Basic Principles on the Role of Lawyers, see http://www.unhchr.ch/html/menu3/b/h_comp44.htm.

⁸ The core knowledge includes in particular knowledge of civil law (obligations, tort, property law and the law of succession), constitutional and administrative law, human rights law, criminal law and European Law.

2.2. Practical knowledge and skills

2.2.1. Skills for the acquisition of knowledge

2.2.1.1. Ability in legal research

- [a] ability to identify legal issues;
- [b] ability to locate primary and secondary legal resources.

2.2.1.2. Skills in updating knowledge

- [a] ability to produce a synthesis of relevant doctrinal and policy issues in relation to a legal topic;
- [b] ability to make a critical assessment of the merits of particular arguments;
- [c] ability to identify elements of a problem which need further research;
- [d] ability to apply knowledge of the law to the facts of a new case.

2.2.2. Analytical ability

- [a] ability to analyse problems from various perspectives;
- [b] ability to establish logical relationships between various sub-aspects;
- [c] ability to make a coherent analysis of complex information;
- [d] ability to appreciate the long-term consequences of decisions.

2.2.3. Ability to consider the client's needs

2.2.3.1. Ability to listen to the client's request and to analyse the client's request

- [a] ability to make a comparative assessment having taken account of all relevant factors;
- [b] ability to form an opinion in complex situations;
- [c] ability to evaluate the interests of the opposing party;
- [d] ability to form an independent opinion in the interests of the client;
- [e] ability to provide objective advice to the client.

2.2.3.2. Customer focus

- [a] ability to focus on the client's needs and circumstances;
- [b] ability to master the necessary means of communication with the client;
- [c] ability to analyse and be able to offer solutions to legal problems;
- [d] ability to present reasoned advice as to the choice between alternative solutions;
- [e] ability to communicate knowledge to and on behalf of clients in a structured way;
- [f] ability to develop non legal knowledge useful to the understanding of the requests of the clients and the professional practice.

2.2.4. Ability to communicate

- [a] ability to provide clear and sound advice;
- [b] ability to communicate effectively both verbally and in writing;
- [c] ability to plead;
- [d] ability to present a coherent argument both verbally and in writing;
- [e] ability to work efficiently either alone or as a member of a team;
- [f] ability to negotiate;
- [g] ability to chair meetings and conduct interviews.

3. Means of performing the lawyer's mission

Efficient and effective organisation is a key element for a lawyer wanting to protect the client's interest.

Clients should be confident that their documents and commercial secrets are well protected, that cases are allocated within a firm according to competence and that they can obtain legal assistance from their lawyer when they need it and in the most effective manner.

Future lawyers should be aware that strict legal competence alone is not enough: they should learn and observe all procedures aimed at protecting clients' interests (notably professional secrecy/client confidentiality, avoidance of conflicts of interests etc.) and at ensuring that the office runs as smoothly and effectively as possible. Future lawyers should learn to observe the duty of loyalty towards their colleagues. This is a basic principle of the profession. Its observance will facilitate their success in the profession and will benefit their clients.

3.1. Substantive knowledge

Knowledge relevant to the running of a law firm or an individual practice: application of practical elements, inter alia, in accountancy law, tax law, company law, social law, and insurance law.

3.2. Practical knowledge and skills

3.2.1. Abilities regarding relationships

- [a] ability to develop and maintain personal relationships with clients, colleagues and other contact persons;
- [b] ability to create a time schedule or establish priorities for personal work or that of others.

Conclusions

Lawyers trained to achieve the outcomes outlined in this document will be able to make a positive contribution to the protection of the interests of their clients as well as to the rule of law and protection of fundamental rights and freedoms of everyone. This set of training outcomes should ease the free movement of lawyers, as well as free movement for potential lawyers who have not yet completed their training.

Annex

Definitions

Educational terms

The diversity existing between the European Member States of the EU, EEA and Switzerland with respect to the education and training of lawyers allows such education and training to be attributed to several discrete phases. The education and training provided in each of the phases has varying contents depending on the country or system of reference. Therefore, with a view to acquiring a better and more uniform understanding and in avoiding errors of interpretation resulting from the use of the same terminology with different meanings, the following definitions are proposed:

Pre-professional education

This consists of the education which permits one to obtain a qualification at university level. This is the university law degree or alternative equivalent route usually necessary before commencing professional training.

The aim of university legal studies is primarily to teach the academic knowledge of law rather than its practical application. The latter can be taught during the post-graduate practical legal training which is necessary in most jurisdictions.

We note here that "employability", a term used in the Bologna-Sorbonne-discussion to describe one aim of academic education, should not be interpreted as the "ability to practice as a lawyer".⁹ In the context of legal education the term should rather be interpreted as "the competence to join the labour market" or "the competence to undertake professional training".

Professional training

Professional training normally starts after university studies and lasts as long as required in order to enable registration in the corresponding professional body as a practising or fully qualified lawyer.

When, in a particular legal system, there are various possible forms of registration, the relevant registration will be the one that does not establish any difference or limitation in the exercise of the legal profession with regard to the senior qualified lawyer, with the exception of access to higher appeal courts, in those countries/systems which require complementary professional experience or training for this purpose.

For the purposes of this document, those registered as apprentices, trainee lawyers or under any similar expression that would have as a consequence a limitation of the exercise of the profession of lawyer shall also be considered as under professional training.

The fact that in certain jurisdictions professional training might involve the granting of an additional academic qualification (e.g. an LLM) would not prevent that training of being considered professional for the purposes of this Recommendation.

Continuing education

This refers to training which is undergone after the completion of professional training for the purpose of maintaining, perfecting and assuring the quality of the service provided to end users, whether it is obligatory or not. Training for a recognised specialised status and its maintenance is also included here.

In those countries in which additional training or exams are compulsory in order to have a right of audience before superior courts, the training undertaken for that aim shall be considered continuing education.

⁹ Lawyer as defined in footnote 2 above.



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CCBE RECOMMENDATION ON CONTINUING TRAINING

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The European Bars and Law Societies represented in the CCBE

➤ **RECOGNISE:**

- that lawyers, given their role of defending rights and freedoms, are obliged to guarantee the highest standards of professional practice;
- that all lawyers have to promote the ideals and ethical standards of their profession and maintain their professional competence in order to fulfil their professional obligations to society;
- that lawyers, Bars and Law Societies play an important role in lifelong professional learning which is recognised as a core element of the EU's strategy, established at the Lisbon Summit of 2000, to enable Europe to become "the most competitive and dynamic knowledge-based economy in the world, capable of sustained economic growth with more and better jobs and greater social cohesion" and that the European Commission's *Communication on Making a European Area of Lifelong Learning a Reality* of 21 November 2001, seeks "to promote life long learning for all";
- that lawyers always have to bear in mind their professional training, maintaining and increasing their knowledge in the fields in which they practise, as is recognised in particular by the CCBE Code of Conduct Article 3.1.3. which requires a lawyer not to "... handle a matter which he knows or ought to know he is not competent to handle...";
- that lawyers should always extend their knowledge and skills in new directions, bearing in mind Article 5.8 of the CCBE Code of Deontology that encourages the improvement of trust, mutual confidence and co-operation between European lawyers, which is promoted by extending their knowledge of each other's' national procedures and laws and by participating in the training of lawyers from other Member States;
- that lawyers should be encouraged to study any laws, legal systems or legal methods and other subjects and skills that seem appropriate to their needs in providing legal services;
- that for European Economic Area migrant lawyers double continuing education requirements should not be required in accordance with the CCBE Guidelines on the Implementation of the Establishment Directive (98/5/EC of 16th February 1998) paragraph 13, thus promoting the mutual recognition of training;
- that this Recommendation is not intended to impose a solution or obligation, but to encourage the adoption of continuing training regimes and to confirm a culture of quality and training for lawyers, in the public interest.

➤ **AND THEREFORE THE BARS AND LAW SOCIETIES OF THE CCBE ADOPT THE FOLLOWING RECOMMENDATION IN ORDER TO FACILITATE their role in helping their MEMBERS fulfil THESE GOALS:**

I SCOPE

This Recommendation covers all lawyers practising in the European Economic Area.

II AREAS OF CONTINUING TRAINING

Lawyers should undergo continuing training in their chosen area of practice, including the applicable European Community law, and deontology.

III METHOD OF CONTINUING TRAINING

The following activities can be taken into consideration for continuing training:

- Attendance at lectures, seminars, meetings, conferences and congresses
- E-learning
- Writing of articles, essays, books
- Teaching
- Any other activity recognised by the profession.

IV EVALUATION AND MONITORING OF CONTINUING TRAINING

Continuing training undertaken by lawyers should be regularly evaluated, which could be done with a weighted allotment of hours/credit points being given for the various methods and duration of training. Control over fulfilment of continuing training obligations (including the consequences of non-completion) could include a system of self-certification by lawyers subject to checks and should be administered by the competent Bar or Law Society on the basis of domestic law or other rules or regulations where appropriate.

CCBE

**CONSEIL DES BARREAUX DE
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ORDINI FORENSI DELL'UNIONE
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DE EUROPESE UNIE CONSELHO DAS
ORDENS DE ADVOGADOS DA UNIÃO
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FELLESSKAP RÅDET FOR
ADVOKATSAMFUNDEN I DEN EUROPEISKA
UNIONEN COUNCIL OF THE BARS AND
LAW SOCIETIES OF THE EUROPEAN
UNION**

**CCBE RESOLUTION ON TRAINING
FOR LAWYERS IN THE EU**

CCBE Resolution on training for lawyers in the EU

Acknowledgement

1. The Directives on the free provision of services, recognition of diplomas and free establishment, create a legislative framework greatly facilitating lawyers' mobility in the whole European Union.
2. If this legislative framework is an essential condition for mobility, there is still another condition which no text may decree: confidence in the quality of the lawyer coming from another Member State.
3. The report set out by the CCBE at the Vienna Presidents' Conference held in February 1998 proves that notable differences exist in the preparation of young lawyers for the legal profession, as in the requirement of a continuing education for the Bar's members.
4. The organisation of Justice is within the exclusive competence of Member States and is still marked by notable differences between the States. It is the framework of a great part of lawyers and one may really think that those national differences shall not disappear before long.

General conclusions

1. The harmonisation of the training quality does not necessarily imply a harmonisation of its content. The priority aim is to be a harmonised quality.
2. However, it is essential to guarantee that every lawyer who gets to a Bar within the European Union, has received an education allowing him to apprehend the European dimension of his profession: this implies a training fitting to professional practice of Community law, basic knowledge of comparative law and competence while using modern techniques to accede to information and communication.
3. The competent authority of Member States must attend to put training in connection with each other rather than create new differences while reforming initial or continuing education of lawyers.
4. As the European Union is the legal framework within which the connection is to take place, it is the CCBE's responsibility to centralise pieces of information and to prepare decisions.

Action to be undertaken by the CCBE

The CCBE agrees that it will take steps to make detailed recommendations to the bars and law societies of the European Union on the harmonisation of the quality of legal training in the EU. These recommendations will cover the following principles:

1. training and examination in professional practice before gaining a legal professional qualification, and the duration and content of such training;
2. practical on-the-job training (such as a 'stage' or pupillage) under the supervision of a lawyer, before or where appropriate after, qualification;
3. all legal training in the EU to take account not only of domestic requirements but also of:
 - the use of Community law focused on concrete and practical applications of that law;
 - an introduction to characteristic features of great European legal systems;
 - knowledge of the European Code of Conduct;
4. training of trainers;
5. compulsory continuing training, with minimum components relating to the number of hours that all EU lawyers should complete annually and the proportion of hours dedicated to Community law and European comparative law.

The CCBE asks its Training Committee to prepare detailed recommendations along these lines, after further consultation with member bars and law societies.



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

CCBE RECOMMENDATIONS

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

CCBE recommendations

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

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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.



**CCBE RESPONSE TO EUROPEAN PARLIAMENT MOTION
FOR A RESOLUTION ON THE EUROPEAN COMMISSION
COMMUNICATION ‘AN AREA OF FREEDOM, SECURITY AND
JUSTICE SERVING THE CITIZEN - STOCKHOLM PROGRAMME’**

CCBE response to European Parliament motion for a resolution on the European Commission Communication ‘An area of freedom, security and justice serving the citizen - Stockholm programme’

The Council of Bars and Law Societies of Europe (CCBE) represents more than 700,000 European lawyers through its member bars and law societies of the European Union and the European Economic Area. In addition to membership from EU bars, it has also associate and observer representatives from a further ten European countries’ bars. The CCBE responds regularly on behalf of its members to policy consultations which affect European citizens and lawyers.

The CCBE welcomes, in principle, the European Union’s efforts to create a European judicial culture.

With regard to the specific proposals put forward by the European Parliament in its motion for a resolution of 6 October 2009, the CCBE has the following comments:

First paragraph of point 38

The CCBE calls for lawyers to be put on an equal footing with judges and prosecutors in funding initiatives. Training should be provided through existing training bodies at the national and European levels, taking into account the independence of the lawyer’s profession (see also [CCBE response to the Stockholm programme](#)).

The CCBE notes that the first paragraph of point 38 refers to ‘practitioners’ and the ‘judiciary’ but it is not entirely clear whether this also covers the lawyer’s profession. The CCBE suggests therefore the following wording.

- *the Network of the Presidents of the Supreme Judicial Courts, the European Network of the Councils for the Judiciary, the Association of the Councils of State and of the Supreme Administrative Courts and the Network of Prosecutors General to the Supreme Courts, officers of the court and practitioners have a huge amount to offer by coordinating and promoting professional training **for the judiciary** and mutual understanding of other Member States’ legal systems and making it easier to resolve cross-border disputes and problems, and their activities must be facilitated and receive sufficient funding; this must lead to a fully-funded plan for European **judicial** training drawn up in liaison with the above-mentioned judicial networks, **and** the European Judicial Training Network **and the relevant professional associations**;*

Second paragraph of point 38

The CCBE assumes that the second paragraph is also of relevance to lawyers (since it specifically refers to professional organisations) but again the CCBE would like to have clarification on this.

The CCBE would like to emphasise that the legal profession has always been at the forefront of promoting mutual recognition of training. In relation with the Establishment Directive 98/5/EC, the CCBE has developed [Guidelines](#) which deal with the issue of double continuing training obligations of lawyers who establish themselves in other than their home countries (point 13 of the Guidelines). The [CCBE Model Scheme for Continuing Professional Training](#) (25 November 2006) specifically mentions that Bars introducing continuing training regimes need to consider inter alia the mutual recognition of continuing training that is followed abroad. Bars and Law Societies should introduce a system of recognition of training followed in training institutions of other EEA jurisdictions.

The CCBE sees no need to create “a common system of training points/credits for legal practitioners” but rather considers that co-ordination of existing national regimes for legal training across the EU could provide for familiarisation courses in national law for practitioners and judges and therefore suggests the following wording:

- *there must be active policies designed to foster mutual knowledge and understanding of foreign law and so achieve more certainty in the law and foster the mutual trust essential for mutual recognition; these must provide for exchanges of experiences, exchanges, visits and information and courses for practitioners and the judiciary; the creation by the professional organisations of a common system of training points/credits for legal practitioners, coupled with a network of legal training bodies across the EU accredited to provide familiarisation courses in national law for practitioners and judges; co-ordination of existing national regimes for legal training across the EU could provide for familiarisation courses in national law for legal practitioners and judges.*