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Message from the CCBE President

Despite facing an unprecedented international economic and institutional crisis, I am confident that the people of Europe, and more specifically the members of the legal profession, will, with hard work and a healthy dose of optimism tempered with realism, overcome the present difficulties, leading us to more prosperous times in 2013.

This year, apart from those **projects** already underway and which should prove useful for our profession as a whole, the CCBE will concentrate on the following missions:

- (i) To continue to demand from the EU and national authorities that all **citizen's fundamental rights, freedoms and basic rights, are and will be, protected** by the unconditional observance of the principles of democracy and the rule of law. The CCBE will strive to enhance its important role in the fields of criminal law acting to ensure minimum procedural rights for accused and suspects, victims' rights, access to justice and legal aid; proving yet again that it is the legal profession that protects individual rights and liberal ideas as the natural guarantor of the rule of law and the independence of justice throughout Europe.
- (ii) To widen and strengthen the **channels of communication** with EU and national authorities in order to convince such authorities (including the TROIKA in the relevant countries) that the legal profession is not just another market

player in the EU's economic strategy, but that it has a **vital role in the administration of justice and the promotion of the Rule of Law**.

- (iii) To continue proactive consultations with the EU authorities on the subject of the **Lawyers' Directives** (Directive 77/249 on services and Directive 98/5 on establishment), whilst carefully taking into account the needs of society and the profession itself. We shall continue to stress that the Lawyers' Directives (already the most advanced and liberal instruments for cross-border activities for all professions) provide a model of a liberalised market for professional services in the EU. This system has led to easy cross-border mobility for lawyers, notwithstanding the wide diversity of legal systems among the Member States.
- (iv) To make every effort to strengthen the strong links of cooperation that already exist with the European Courts of Justice and Human Rights, with the principle aim of protecting and promoting the principles of the rule of law and the rendering of all possible assistance to the members of the Judiciary and the legal profession in the performance of their duties.
- (v) To promote gender equality in the fields of law, employment, business and more particularly in family matters. We cannot, as guarantors of the law and guardians of civil liberties and human rights, remain apathetic and we have a duty to strive

to remedy the unacceptable phenomenon of discrimination.

Finally, a feeling of optimism arises from the recent move of our offices to new leased premises in rue Joseph II, 40 Brussels (with an option to buy), which will allow our Secretariat's personnel and our Committees to continue to perform their duties effectively in more modern surroundings.



Evangelos Tsouroulis (Greece)
CCBE President 2013

CCBE Presidency for 2013

The CCBE November Plenary Session elected the Presidency for 2013.

The new President as of 1st January 2013 is Evangelos Tsouroulis (Greece).

The Vice-Presidency is as follows: Aldo Bulgarelli (Italy), Maria Ślęzak (Poland) and Michel Benichou (France), respectively First, Second and Third Vice-Presidents.

For further questions, please contact Hugo Roebroek (roebroek@ccbe.eu)

CCBE new premises

The CCBE moved into new premises in December 2012. The premises are located in the EU quarter, at 40 Rue Joseph II, 1000 Brussels, and provide modern facilities and more space to host the growing CCBE staff (due to the expansion of policy and project matters).

Access to justice : Conference on 'Justice in austerity: challenges and opportunities for access to justice'

As announced in our previous newsletter, the European Parliament and the Fundamental Rights Agency of the European Union (FRA) held their annual human rights conference in Brussels on 6-7 December, on 'Justice in austerity: challenges and opportunities for access to justice'. Marcella Prunbauer-Glaser, 2012 CCBE President, spoke in the panel addressing the question of whether the current crisis offers op-

portunities for reform.

The programme and some of the speeches can be found [here](#) on the FRA's website.

For further questions, please contact Hugo Roebroek (roebroek@ccbe.eu)



Corporate Social Responsibility

Update on Corporate Social Responsibility (CSR)

The CSR discussion has been accelerated recently by developments at the international, European and national levels, which affects European lawyers, both in their capacity as diligent advisors to their clients and suppliers of services, and with respect to the qualification of law firms, bars and law societies as "enterprises" or even "multinational enterprises" to which CSR requirements apply.

Of particular importance for European lawyers is the EU Strategy 2011 - 2014 for CSR, which provides that all large enterprises (including law firms) take account of at least one of the following sets of principles: the UN Global Compact, the OECD Guidelines for Multinational Enterprises or the ISO 26000 Guidance on Social Responsibility. In addition, all European enterprises (including law firms, bars and law societies) are expected to respect human rights as defined in the UN Guiding Principles on Business and Human Rights.

Given the substantial developments at the international, European and national level with regard to Corporate Social Responsibility, the CCBE has developed a report in order to reflect the growing relevance of CSR for the legal profession. This report will be followed by a "Best Practice Guidance".

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

Anti-money laundering

Proposal for a new anti-money laundering Directive

The CCBE expects a proposal for a new anti-money laundering directive to be published towards the end of January or the beginning of February. It will probably take between 12 – 18 months following publication before a new directive will be concluded. It is understood that DG Internal Market will organise a hearing on the proposal in March in which the CCBE will be invited to participate. The CCBE will prepare an analysis of the proposal and a response.

FATF

The Financial Action Task Force (FATF) has started a new typology project that will look at Money Laundering and Terrorist Financing vulnerabilities with regard to the legal profession. The FATF prepared a questionnaire aimed specifically at the legal profession. The questionnaire deals with:

- The application of anti-money laundering requirements
- Perceptions of risk and advice to members
- Supervision of members and ethical expectations
- Relationships with Financial Intelligence Units

The CCBE sent the questionnaire to delegations inviting member Bars and Law Societies to respond. Following the questionnaire, it is expected that the FATF will develop a typologies report identifying the money laundering and terrorist financing vulnerabilities of the legal profession. The FATF has indicated that the report could be a basis for a "Best practices paper" in the field of regulation and supervision of the legal profession. The CCBE is following developments.

Michaud case

In January 2011 a French lawyer, Patrick Michaud, brought a case to the European Court of Human Rights to complain about the lack of conformity with the Convention between the rules on suspicious reporting under the money laundering legislation and the right to legal advice. The case concerned the obligation on French lawyers to report their "suspicions" regarding possible money laundering activities by their clients. Among other things, the applicant submitted that this obligation, which resulted from the transposition of European directives, was in conflict with Article 8 of the Convention, which protects the confidentiality of lawyer-client relations.

The Court concluded that the obligation to report suspicions in the specific circumstances of the French implementing law did not represent a disproportionate interference with lawyers' professional privilege and that there had therefore been no violation of Article 8 by France:

"The Court stressed the importance of the confidentiality of lawyer-client relations and of legal professional privilege. It considered, however, that the obligation to report suspicions pursued the legitimate aim of prevention of disorder or crime, since it was intended to combat money laundering and related criminal offences, and that it was necessary in pursuit of that aim. On the latter point, it held that the obligation to report suspicions, as implemented in France, did not interfere disproportionately with legal professional privilege, since lawyers were not subject to the above requirement when defending litigants and the legislation had put in place a filter to protect professional privilege, thus ensuring that lawyers did not submit their reports directly to the authorities, but to the president of their Bar association."

The CCBE will analyse the judgement further in the coming months.

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

HELP Programme

The CCBE met with representatives of the Council of Europe (CoE) in order to analyse a possible closer cooperation between both organisations regarding the [HELP Programme](#) (the CoE's Programme for Human Rights Education for Legal Professionals). This programme, which supports CoE member states in implementing the European Convention on Human Rights at national level, enhances the capacity of judges, lawyers and prosecutors in all 47 member states to apply the ECHR in their daily work. The CCBE will support CoE's efforts to spread the word about the HELP programme's courses addressed to lawyers.

For further information, please contact Alonso Hernández-Pinzón (pinzon@ccbe.eu) or Sieglinde Gamsjäger (gamsjager@ccbe.eu).

Criminal Law

Measures C and D on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest

The CCBE has been following developments regarding the Commission proposal on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest. The three institutions have their position, and three trilogues (discussions between the Council, Parliament and Commission) have

taken place. It is believed that the current Irish Presidency is keen to reach a conclusion, and the trilogues will resume on 23rd January. It is expected that further trilogues will take place in February, March and April - with a view to completing the discussions.

European Public Prosecutor's Office (EPPO)

The Commission is planning to submit a legislative proposal in 2013 on the setting up of a European

Public Prosecutor's Office (EPPO), whose competence will be the prosecution of those who commit fraud against the EU's financial interests. The Commission is currently in the phase of consultations with stakeholders and invited the CCBE to a meeting in November in order to receive the views of defence practitioners. It is hoped that the CCBE will approve a position paper in February.

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

e-CODEX

The [e-CODEX](#) project, which is a government-led EU-funded project to link national e-justice systems in Europe, is entering its pilot phase. During this pilot phase (scheduled to start in January 2013), real life scenarios will be tested extensively in two civil uses cases: the small claims procedure and the European Payment order. The CCBE continues its active participation in this project as the organisation which represents EU lawyers through national bars and law societies. The e-CODEX General Assembly met on 15 and 16 November in Berlin (Germany). This event was also the kick-off meeting for the extension phase of e-CODEX, providing a great opportunity for the new partners to get to know the project better and to meet with many of the current participants.

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



e-CODEX General Assembly

e-Justice projects

The European Commission and the CCBE have signed the grant agreements that will allow the implementation of the Find-A-Lawyer 2 (FAL 2) and the European Training Platform (ETP) projects, both co-financed by the Directorate-General of Justice. The ETP project will of-

ficially start on 1st February 2013 whilst FAL 2 will start on 1st March 2013. ETP involves the building of a website which will allow lawyers to find relevant professional training in other Member States. FAL 2 will build a system whereby lawyer e-identity will be able to be proved

for the purpose of cross-border electronic legal transactions.

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

European Private Law

CCBE debate on the Common European Sales Law

On 17 December, the CCBE organised a debate on "The Common European Sales Law - lawyers buying into the process" in Brussels, with the keynote speech given by Viviane Reding, Vice-President of the European Commission and Commissioner for Justice, Fundamental Rights and Citizenship. The CCBE used this occasion officially to present its position to the Commissioner. The CCBE received very direct replies to its recommendations to improve the proposed text. The aim of the debate was also to stimulate dialogue as to how the proposed Regulation for a CESL should be taken forward, after having raised divergent reactions from various stakeholders across Europe.

The event was well attended by a variety of participants, mostly lawyers, but also representatives of the EU Institutions and of other NGOs. The discussions confirmed that lawyers largely support the CESL and that this is felt to be necessary for the success of the proposed instrument since they will be the ones advising their clients about it. Further

background information and texts of the speeches that were delivered are available at this [link](#).

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

Adoption Recast of the Brussels I Regulation – towards easier and faster circulation of judgments in civil and commercial matters within the EU

The Council adopted on 6 December 2012 the recast of a regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the so-called "Brussels I" regulation). The purpose of this [regulation](#) is to make the circulation of judgments in civil and commercial matters easier and faster within the Union, in line with the principle of mutual recognition and the Stockholm Programme guidelines.

The recast regulation will simplify the system put in place by "Brussels I" as it will abolish exequatur, i.e. the procedure for the declaration of enforceability of a judgment in another member state. According to the new provisions, a judgment given in a member state will be recognised in the other member states without any specific procedure and, if enforceable in the member state of origin, will be enforceable in the other member states without any declaration of enforceability.

The recast regulation will provide that no national rules of jurisdiction may be applied any longer by member states in relation to consumers and employees domiciled outside the EU. Such uniform rules of jurisdiction will also apply in relation to parties domiciled outside the EU in situations where the courts of a member state have exclusive jurisdiction under the recast regulation or where such courts have had jurisdiction conferred on them by an agreement between the parties.

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

QUALETRA project

The project on Quality in Legal Translation (QUALETRA) held its kick-off meeting on 13th and 14th December 2012 in Trieste (Italy). The main objectives of this project, where the CCBE participates as one of the partners of the consortium, are the generic analysis of the essential documents listed in Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings and of the European



Arrest Warrant as well as the development of core curricula and training material for legal translators and for training of legal practitioners. The launch conference of the QUALETRA project will take place in London on 4th April 2013.

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

IT Law

CCBE position on the proposal for an EU Regulation on cross-border e-identification and trusted services

During its Plenary Session in November 2012, the CCBE adopted its [position paper](#) on the [proposal](#) for a Regulation "on electronic identification and trusted services for electronic transactions in the internal market".

The issue of electronic identification and trusted services is very topical today given all the developments that are taking place in the area of e-Justice, notably the [e-CO-DEX](#) project which aims to link national e-justice systems in Europe. European lawyers are users or at least potential users of electronic ID not only as citizens but also as organs of their judicial systems. Moreover, digital signatures and other forms of electronic identifica-

tion are often used to enable lawyers to perform a wide range of operations, such as filing documents with the courts and public administrations or conducting cross-border proceedings and transactions.

The CCBE already [expressed](#) its support for the European Commission's proposal to review the existing Electronic Signature Directive, taking into account the positive impact this may have on the development of effective e-justice systems and hence also on the improvement of access to justice in Europe. In relation to this regulation, the CCBE welcomes this proposal and generally agrees with the objectives stated therein. However, it considers that some provisions need to be revised and, therefore, makes certain recommendations, including a number of concrete amendments.

As explained in detail in the position, the CCBE stresses that any legal effect that the Regulation

may seek to lay down should be based on terms already existing in most of the jurisdictions of Member States, otherwise the provisions could cause uncertainty and in consequence further negatively affect the already fragmented market of electronic ID and trusted services, and as a result jeopardise the realisation of the main purpose of the regulation.

The CCBE therefore recommends two main issues, namely, the omission of that section of the Regulation which proposes the introduction of electronic seals and, secondly, to amend the provisions regarding the legal effects of electronic documents so as to ensure both internal consistency within the Regulation between those provisions and the provisions regarding the legal effect of electronic signatures.

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

Practical guidance for Advocates before the Court of Justice in Preliminary Reference Cases

The CCBE has developed practical guidance for advocates appearing before the Court of Justice of the EU in Preliminary Reference Cases. The guidance is addressed principally to those appearing for the first time. It has been drafted in order to enhance the efficiency of the preliminary reference procedure. The guidance is designed to complement the Court's own guidance set out on the Court's website under the heading "Procedure" and in particular in the Notes for the Guidance of Counsel.

The CCBE guidance can be found at the following address: http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Practical_guidances_1_1352985219.pdf

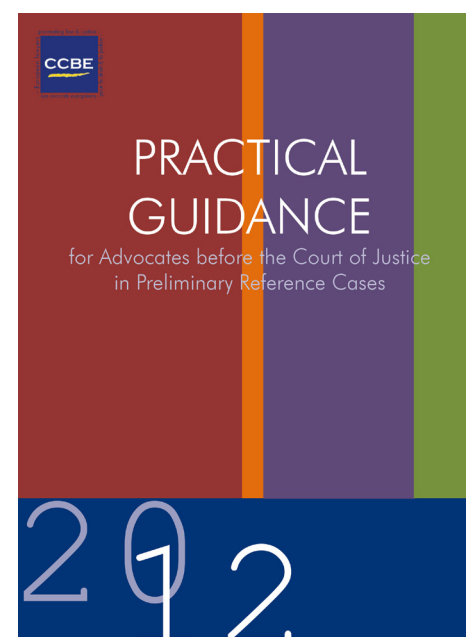
Court of Justice - new procedural rules

The Court of Justice has new procedural rules which entered into force on 1 November 2012 and are available on the Court of Justice Procedure page: http://curia.europa.eu/jcms/jcms/Jo2_7031/

On the same page, one can also find:

- Notes for the Guidance of Counsel
- Advice to Counsel
- Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings

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



Human Rights Award 2012

The CCBE granted its Human Rights Award 2012 to the Belarus lawyer **Pavel Sapelko**, given his unwavering involvement in campaigning for human rights.

Pavel Sapelko studied law at the State University of Belarus. From 1994, he worked as a lawyer for different companies in Minsk. At the end of the 1990s, he started defending opposition members in smaller proceedings, most of them accused of participating in demonstrations. The main area of his ac-

tivity has been the conduct of cases in criminal and civil proceedings. In 2002-2003, he defended those accused of having offended the dignity of Alexander Lukashenko, President of Belarus since 1994.

During the period 2006-2010, Pavel Sapelko carried on with his legal work of similar nature and within that period was threatened multiple times by state authorities. In 2009, he supported the campaign "Human rights activists against death pen-

alty" for the abolition of the death penalty in Belarus, the only state in Europe where it is still practised.

In 2010, Pavel Sapelko was elected to join the Executive Committee of the Minsk Bar Association. He represented three well-known opposition members arrested after demonstrating on 19 December 2010 at the presidential elections: Andrei Sannikau (presidential candidate), Zmitser Dashkevich, (chairman of the pro-democracy opposition group "Malady Front" (Young Front)), and



Pavel Sapelko, Belarus
Winner of the Human Rights Award 2012

Pavel Sevarnyets, (member of the election team of presidential candidate Vital Rymasheusky). Pavel Sapelko expressed concerns in the western media over the mistreatment of his client Sannikau during detention and was afterwards put under pressure by the Belarusian Ministry of Justice.

In March 2011, Pavel Sapelko was excluded from the Minsk Bar Association as a result of pressure from the state and cannot, since then, exercise his profession as an independent lawyer in Belarus.

Today, Pavel Sapelko works as a consultant for the Human Rights Centre "Viasna" (Spring) and supports there, together with his colleagues, victims of the regime and their families. The Human Rights Centre has to work as an underground organisation due to the difficult political situation where the state authorities refuse to grant it the status of association, required by a new law. In November 2012, the Belarusian authorities ordered the human rights centre "Viasna", to vacate its premises. The authorities are going to confiscate the flat in Minsk used by the Viasna group as part of the sentence imposed on Ales Belyatski (Viasna President) last November. However, Viasna will continue its work.

The speech delivered by Pavel Sapelko is available [here](#) (unofficial English translation).

The CCBE Human Rights Award was created in 2007 in order to highlight the work of a lawyer or lawyers' organisation that brings honour to the legal profession by demonstrating outstanding commitment and sacrifice in upholding fundamental values. More information on the CCBE Award and previous winners is available [here](#).

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

CCBE Plenary at the European Court of Human Rights

The 117th CCBE Plenary Session was held in Strasbourg, for the first time ever at the European Court of Human Rights (ECtHR). The new President of the Court, Dean Spielmann, delivered a speech in which he welcomed a strengthening of the relations between the CCBE and the Court.

Also speaking were:

- the Vice-President of the European Commission and Commissioner for Justice, Fundamental Rights and Citizenship, Viviane Reding, in the form of a [video-message](#) on 'Justice for Growth' and
- the Secretary of the Council of Europe's Commission for the Efficiency of Justice (CEPEJ), Stéphane Leyenberger, on the role of lawyers in the efficiency of justice.

Human Rights roundtable

The day before the Plenary Session, the CCBE organised a roundtable, chaired by the CCBE President, also at the European Court of Human Rights. The topics addressed were the following:

(1) Recent developments in bringing the European Union closer to the Convention system

Both speakers - Julia Laffranque, Judge at the ECtHR and Hugh Mercer QC, chair of the CCBE Permanent Delegation to the European Court of Justice - agreed on the need to speed-up negotiations over the EU's accession to the European Convention on Human Rights, which became a legal obligation under the Lisbon Treaty.

(2) The role of lawyers before the Court

Pascal Dourneau-Josette, Head of Legal Division in the Registry of the ECtHR, explained the key functions of lawyers as correspondents, interlocutors, defenders of their client's rights and facilitators of friendly settlements. François Moysse, member of the CCBE Human Rights committee, stressed the crucial role of lawyers and their multiple aspects at procedural level. He also expressed concerns as regards the envisaged possibility to reduce the time limits for referring cases, and stressed the negative aspects of the inadmissibility letter sent by a single judge without any explanation. He finally mentioned the new challenges due to the growing complexity of fundamental rights litigation.

(3) Business Law and the European Convention on Human Rights

Michal Kučera, legal officer in the Registry of the ECtHR, identified the Convention's provisions which could have horizontal effect for private parties (businesses), whereas Birgit Spiesshofer, chair of the CCBE Corporate Social Responsibility committee, analysed the necessity for an effective system to safeguard human rights compliance of business behaviour.

In his concluding remarks, Laurent Pettiti, chair of the CCBE Human Rights committee, emphasized the need to strengthen dialogue between lawyers, judges and the registry.

More information on this event [here](#).

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

Study on the state of play of lawyers training in EU Law

The bid presented by a consortium composed by the CCBE and the European Institute of Public Administration (EIPA) to develop a study on the state of play of lawyers' training in EU Law has been awarded by the European Commission's Directorate-General of Justice. The study, which will analyse the situation in the 27 member States and Croatia, will start in February 2013 and will last a maximum of 12 months.

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

PECO

Membership

At its November Plenary Session, the CCBE approved an application from the Croatian Bar Association for full membership and an application from the Bar Association of Montenegro for associate membership due to changes of their status within the EU, *i.e.*, Croatia will join the EU on 1 July 2013 and the EU opened accession negotiations with Montenegro on 29 June 2012. The Croatian Bar Association's change of status within the CCBE will take effect as and when Croatia officially joins the European Union. The status of the Bar Association of Montenegro has been changed from an observer member to an associate member.



International conference on South Caucasus in Paris

On 14 November 2012, Rupert D'Cruz, Chair of the PECO committee, participated in an international conference organised by the Paris Bar to appraise the difficulties faced by the legal profession in South Caucasus to improve the structural independence of the judiciary and to guarantee its effective functioning.

Rupert D'Cruz commented that "the challenges facing the legal professions in Armenia, Azerbaijan and Georgia have some clear similarities:

- There are common problems in gaining access to clients in prison and conferring with them in private;
- There are similar issues relating to limited or late access to case files of the prosecution; and
- Perhaps, most striking, is the near identical complaint of the undue influence that the Procuracy has over the court in criminal trials and the lack of respect (and certainly equal respect) afforded to defence lawyers, which, to a large extent, is a legacy of Soviet times."

He also noted that one of the most important concerns is "the fact that lawyers can find their personal freedom and safety under threat for acting in sensitive cases" (you can see the full text of his conclusions [here](#)).

Following this Conference, the Paris Bar issued [Recommendations](#) with the aim of assisting in the development and strengthening of the independence of the Bar and legal profession, and the effective functioning of the justice system as a whole, in the South Caucasus.

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



SOUTH CAUCASUS

Armenia
Azerbaijan
Georgia

November 14th, 2012 from 8 am till 5 pm
Maison du barreau - room Gaston Monnerville

