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

[European Lawyers Day \(ELD\)](#) is an event that raises awareness on the common values of lawyers, their essential contribution to the justice system, and their role in the defence and the promotion of the rule of law. It takes place every year on 25 October 2018, the same day as the [European Day of Justice](#). This year's European Lawyers Day theme is “Why lawyers matter: Defending the defenders of the Rule of Law”.

The 2018 edition of ELD sheds light on the increasing attacks against the legal profession and the need to tackle this problem, so that lawyers can perform their duty as defenders of the rule of law. Lawyers are essential actors in upholding the rule of law; they take initiative against unlawful situations and defend citizens' rights. Nonetheless, they are increasingly subject to serious attacks worldwide, also in European countries. These attacks include threats, surveillance, harassment, and even murder.

Such a situation deeply affects society, as citizens may not have access to a proper defence of their rights. All lawyers should be able to carry out their professional activities without fear of reprisal, hindrance, intimidation, or any other type of undue interference.

The CCBE and several European lawyers' organisations, as well as Bars and Law Societies, are very active in the support of threatened lawyers. The CCBE's activities in the defence of the defenders (lawyers - the defenders of rule of law) include an annual CCBE Human Rights Award. The award is given to distinguished lawyers or lawyer organisations that demonstrate their outstanding commitment and sacrifice to uphold fundamental values. It is based on human rights activities: addressing national authorities in case of violations of lawyers' rights, raising awareness at the EU and international level about lawyers who are victims of human rights violations, etc.

In this context, an important initiative supported by the CCBE is a proposal to adopt a European Convention on the Profession of the Lawyer. The existing international and European instruments regarding the profession of the lawyer are non-binding. A binding instrument protecting lawyers' role and, through them, citizens' rights, would be a major step forward in the protection of human rights and the rule of law.

The Parliamentary Assembly of the Council of Europe adopted a recommendation in that sense in January 2018. The Council of Europe's Committee of Ministers is expected to decide on the matter at the beginning of 2019. The CCBE has expressed its view on the importance of an European Convention on the Profession of Lawyer in its position, which is available in the following [link](#).

What can citizens expect from ELD?

On European Lawyers Day, Bar Associations from all over Europe, as well as any person or group working with a Bar (members, courts, law schools, students, youth groups, and community organizations) draft relevant publications and organise activities to raise citizen awareness about lawyers' role in promoting the rule of law.

CCBE Member Bars and Law Societies are thus encouraged to organise events, publish educational material and conduct programs to promote European Lawyers Day. The event is open to any person with an interest in the rule of law and lawyers' role in defending citizens.

Several online resources are available at the [CCBE's website concerning ELD](#). The CCBE invites you to participate in European Lawyers Day on 25 October 2018. If you'd like to express your views on the event in social media, please hashtag your publications with **#EuropeanLawyersDay** to interact with others about the event!

Would you like to know more about European Lawyers Day?

If so, please contact Paula Garrido, the CCBE Communications and Public Affairs Officer, at garrido@ccbe.eu.

THE CCBE REVIEWS ITS STATUTES

On 27 August, the CCBE Presidency created the Statutes Review Working Group, which will go through the CCBE's statutes to keep them relevant and up to date. Ms. Anne Birgitte Gammeljord, from Denmark, was named Chair of the Working Group. The Secretary will be Simone Cuomo, a CCBE Senior Legal Advisor, with the Working Group's members being the following:

- Marcella Prunbauer – Austria
- Dirk Van Gerven – Belgium
- Evangelos Tsouroulis – Greece
- Marco Vianello – Italy
- Hans Vogels – Netherlands

MULTILATERAL EXCHANGE OF LAWYERS



The European Lawyers Foundation has led the effort for the establishment of a comprehensive and provenly effective multilateral exchange scheme for lawyers in Europe. The Multilateral Exchange of Lawyers project, which is co-funded by the Justice Programme of the European Union, commenced with high hopes and has now the necessary results to prove its feasibility and success. In the first year of the project (July 2017 – July 2018), 33 lawyers from 7 EU Member States have benefited from the possibility of working abroad in host institutions of the legal sector and have rated their experience with an average of 4.8 out of 5.

This is how the exchange mechanism roughly works: lawyers who have passed a national selection process are offered a placement in host institutions abroad (in bars or law firms) according to their preferences, profile, spoken languages and areas of expertise. During their

placement, which lasts 10 working days, participants are supervised by a lawyer in the host institution, who is responsible for giving them assignments, providing information and insights on national legislation and accompanying them in day-to-day professional work. Further to this, participants may be able to attend court hearings, to participate in conferences and seminars, to visit national institutions based in the host country, or to attend networking events.

Alongside the excellent ratings, participating lawyers and host institutions stress the added value of the project in the following regards: a) greater mobility of lawyers in Europe b) increased knowledge of foreign legal systems c) consolidation of cross-border networks of lawyers and law firms and d) contribution to the development of a European judicial culture.

But the effort cannot stop here. Based on the successful mechanism in place, the European Lawyers Foundation is working on the continuation of this project, so that more European lawyers can benefit from the knowledge and experience gained from the exchanges abroad.

THE EUROPEAN COMMISSION'S PROPOSALS ON COMPANY LAW

Achieving a deeper and fairer internal market is one of the 10 key priorities of the Commission, together with the development of the Digital Single Market. The 2015 Digital Single Market Strategy and the 2016 e-Government Action Plan stressed the role of public administrations in helping companies to easily start business, operate online and expand across borders, according to the Commission.

Following such a trend, on 25 April 2018, the Commission published two proposals as part of the [“company law package”](#) : (1) the Proposal for a Directive amending Directive (EU) 2017/1132 regarding cross-border company conversions, mergers and divisions, and (2) the Proposal for a Directive amending Directive (EU) 2017/1132 regarding the use of digital tools and processes in company law.



The CCBE actively follows and analyses the Commission's proposals. In fact, on 26 June 2018, the CCBE's Standing Committee adopted [two papers](#) with comments about the Commission's proposals.

In the first proposal, the Commission wishes to introduce a common procedure at EU level for cross-border conversions and divisions and update existing rules on cross-border mergers. According to the Commission, companies should be able to exercise their right to freedom of establishment effectively i.e. merge, divide or transfer their registered seat from one Member State to another («conversion») without having to go through liquidation and losing their legal personality, as recognised by the Court of Justice in the Polbud ruling (C-106/16) of October 2017. The Commission, to prevent potential abuses, proposes to set up strong safeguards to protect the

rights and interests of employees, shareholders and creditors, and to prevent these procedures being used to set up artificial arrangements, including those aimed at obtaining undue tax advantages.

When it comes to digitalisation, according to the Commission's [press release](#), only 17 Member States provide a complete online procedure for company registration. The Commission's proposal on digital tools in company law introduces a groundbreaking possibility: companies will be able to register, set up new branches and file documents online in all Member States. As the Commission's press release points out, “going digital makes the process of setting up a business more efficient and cost effective”. The rules will stimulate the growth potential of companies in the EU thanks creating and running businesses online.

The CCBE welcomes the two proposals, as they intend to facilitate cross-border operations and modernise company law rules. Nonetheless, the CCBE Company Law Committee analysed the proposals in depth and acknowledges legal pitfalls in the Commission's proposals, which are extensively commented in the [papers adopted by the CCBE](#).

The next step concerning the Commission's proposals involve the two co-legislators: the European Parliament (EP) and the Council of the EU, which is now under the Austrian Presidency. Both institutions will now discuss and negotiate the Commission's proposals through the ordinary legislative procedure. The Council has already begun its legislative work. The EP has appointed two rapporteurs to draft a report for each of the proposals to amend them and prepare a position at first reading.

The CCBE follows these proposals with great interest and shares its observations in the [CCBE comments](#), which express the concerns of Bars and lawyers in the relevant area that is company law in an ever-growing digital environment.

THE REFOTRA PROJECT

The recognition of foreign training activities for lawyers (i.e. training pursued by EU lawyers in a Member State other than the one where they are registered) has been an issue discussed for some years by the Council of Bars and Law Societies (CCBE) and its Training Committee.

In February 2017 the CCBE [Memorandum on Mutual Recognition of Lawyers' Cross-Border Continuing Professional Development](#) was signed by 40 European Bars and Law Societies. Through this Memorandum, the signatory parties agreed that:

“The number of CPD course hours attended or CPD credits of the training courses obtained by lawyers enrolled in a Bar or Law Society of a member country, should be considered in their signatory jurisdiction of origin to help fulfil their requirements of CPD obligations, in accordance with national, regional or local rules or regulations and without prejudice to each national, regional or local evaluation system.”

In order to go to the next stage of recognition of cross-border training, further work needs to be carried out. In this regard the REFOTRA project is implemented by the European Lawyers Foundation and the Council of Bars and Law Societies of Europe and financed with the support of the Justice Programme of the European Union.

The REFOTRA project is divided into 3 different phases, and each phase deals with an important objective:

1. to complete the [research undertaken by the CCBE in 2015 and 2016 on national mandatory continuing training regimes](#) in order to have a full understanding of the current situation of mutual recognition of cross-border training in EU Member States;
2. to produce recommendation(s) that will aim at the principle of automatic recognition of training in another Member State;
3. to evaluate with Bars and Law Societies of some EU Member States as to how recognition based on the recommendation(s) would work.

In June 2018, the REFOTRA core team held their first meeting. The team is currently working on the questionnaire, which will be discussed in the next Training committee meeting in September. The questionnaire will then be sent to the CCBE delegations for their input.

E-JUSTICE: AN ERA OF ELECTRONIC INFORMATION

In an era of electronic information and growing artificial intelligence, the CCBE is taking important steps in lawyers' awareness and training on these issues. On 26 June 2018, the CCBE attended the Council of the EU's Working Party on e-Justice, which brought together practitioners for the upcoming European e-Justice Action Plan (2019-2023) which is currently being negotiated and should be adopted by the end of this year. As a relevant stakeholder, the CCBE was invited to propose projects for the new Action Plan. This article examines whether e-Justice matters to lawyers; why lawyers are important for e-Justice; and the projects the CCBE proposed for the 2019-2023 e-Justice Action Plan.



Does e-Justice matter to lawyers ?

The e-Justice system is very important for lawyers; e-Justice has the power to make life easier for legal professionals, by allowing them to work efficiently. Nonetheless, from a deontological perspective, e-Justice may entail practical and legal consequences for lawyers, particularly when it comes to data protection and professional liability. For these reasons, lawyers need to know how to use the e-Justice system safely and effectively.

Why are lawyers relevant for e-Justice ?

Not only is e-Justice an important tool for lawyers, but lawyers are relevant actors in the development of e-Justice. These professionals are one of the main users of e-Justice applications. As such, they have concerns and relevant input to provide: the e-Justice system needs to be secure and ensure an equal playing field for all parties. It also needs to grant lawyers and their clients the same procedural rights as paper-based systems.

Furthermore, e-Justice needs to consider lawyers' deontological and statutory duties. New technologies already impact the legal profession significantly; there are online lawyer directories and legal platforms, such as apps, developed by Bars and Law Societies in many Member States. In the context of an ever-growing e-Justice field, the CCBE proposes several projects for the 2019-2023 Programme.

CCBE project proposals for the 2019-2023 e-Justice Programme

In the meeting of the e-Justice Working Party, the CCBE submitted four project proposals for the upcoming Programme. Among the projects is a cross-border identification of European lawyers. As of today, there is not an EU identification for lawyers in Member States which could permit to identify and certify that the practitioner possesses the professional title as a lawyer of one Member State. The CCBE is aware of this complex situation and therefore proposes creating a European identification or ID for lawyers which would give professionals electronic access to judicial proceedings in all Member States.

Bars and Law Societies of Member States could provide the necessary information for the European identification of lawyers, as they are the sole bodies that can identify these professionals and decide whether a lawyer can no longer practice under this title. Cross-border identification would enable lawyers to participate directly in electronic court procedures in all Member States. For such a project, it would be necessary to conduct a comparative study of Bars' and Law Societies' databases concerning lawyers in EU Member States.

A second project proposed by the CCBE focuses on lawyers' access and exchange of electronic evidence. The aim would be for lawyers to easily access and exchange electronic evidence with other lawyers and authorities, at a national and European level. The CCBE follows e-evidence developments closely and engages in important discussions on the matter. Proof of such an engagement is the CCBE's e-evidence roundtable on 28 June, held in the European Parliament, which you may read more about in our [June newsletter](#).

The CCBE also proposed drafting recommendations and guidelines on the use of artificial intelligence (AI) in the judicial field in coordination with relevant stakeholders. The recommendations would guide lawyers on the use and implementation of AI and its deontological and professional implications. The CCBE will be holding a Conference in Lille on Artificial Intelligence and Humane Justice on Friday, 30 November, which you may learn more about by contacting Paula Garrido, the CCBE Communications Officer, at garrido@ccbe.eu.

Due to the impact of e-Justice and AI in the legal field, the CCBE considers that training programmes for lawyers on such issues would be very beneficial, particularly on the digitalisation of legal processes and judicial proceedings. Bars and Law Societies would create a training programme to promote best practices in the field of electronic information, including workshops of 10 to 20 days for legal professionals.

The e-Justice projects mentioned in this article are the proposals outlined by the CCBE in the Council of the EU's Working Group. The CCBE is taking important steps on e-Justice and online platforms in a profession where new technologies' role is rapidly increasing, and where lawyers have an important role to play.

UPCOMING EVENTS

05-07/09/2018	European Law Institute General Assembly – Riga
05-07/09/2018	Young Lawyers Contest – Trier
14/09/2018	Standing Committee – Brussels
12/10/2018	Conference on the liability of elected officials and their co-workers, comparative law (b.cambier@cambieravocats.be) – Brussels
19/10/2018	Standing Committee – Brussels
25/10/2018	European Lawyers Day
28-29/10/2018	L5 Meeting – Porto

CCBE POSITIONS AND GUIDES ADOPTED BETWEEN JANUARY AND AUGUST 2018

- [Brief of the CCBE as amicus curiae in support of respondent in Microsoft Ireland Case](#) (January 2018)
- [CCBE Response to the Public Consultation on service of documents and taking of evidence in civil and commercial matters](#) (26/02/2018)
- [CCBE Recommendations on legal aid](#) (23/03/2018)
- [CCBE and FBE Joint Statement on the Rule of Law and the principle of mutual recognition](#) (18/05/2018)
- [Preliminary CCBE comments on the Proposal for a Directive on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC](#) (18/05/2018)
- [Interpretation of the Principles and Rules of the CCBE Charter of Core Principles of the European Legal Profession, Code of Conduct for European Lawyers and Model Code of Conduct](#) (18/05/2018)
- [CCBE comments on the Proposal for a Directive amending Directive 2017/1132 as regards cross border conversions mergers and divisions](#) (29/06/2018)
- [CCBE comments on the Proposal for a Directive amending Directive 2017/1132 as regards the use of digital tools and processes in company law](#) (29/06/2018)
- [CCBE comments on the Proposal for a Directive on the protection of persons reporting on breaches of Union law](#) (29/06/2018)
- [CCBE comments on the draft text of the amendments to Protocol No 3 on the Statute of the Court of Justice of the European Union](#) (29/06/2018)
- [CCBE Preliminary comments on the Commission proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters](#) (29/06/2018)
- [CCBE Guide on lawyers use of online legal platforms](#) (29/06/2018)