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CCBE Presidency 2012



Marcella Prunbauer-Glaser
CCBE President 2012

At its last Plenary Session in November 2011, the CCBE elected Dr. Marcella Prunbauer-Glaser, formerly First Vice-President, as its President for 2012.

Marcella Prunbauer-Glaser is an Austrian lawyer, partner of Prunbauer & Romig, Vienna. A CCBE Vice-President since 2010, she is also Vice-President of the Austrian Bar and a member of the Vienna Bar Council. Her main practice areas are: intellectual property law, trademarks, unfair competition, general corporate law and international transactions. She is a lecturer at the Austrian Lawyers Academy and was formerly a lecturer at the Vienna Business School.

Marcella Prunbauer-Glaser will be assisted by three Vice-Presidents: Evangelos Tsouroulis (Greece), Aldo Bulgarelli (Italy) and Maria Ślężak (Poland).

The main challenges of the CCBE under her presidency will include the following: the definition of minimum common procedural rights for suspects and defendants in Europe, in particular as regards the right of access to a lawyer and its connection with the right to legal aid; upholding the confidentiality of lawyer-client communications wherever it is threatened, particularly in anti-money laundering initiatives expected in 2012; lobbying on reforms imposed by the ECB-European Commission-IMF 'Troika' on bail-out countries which affect the principle of self-regulation of the legal profession; fair participation of lawyers in European judicial training initiatives; mutual recognition of legal acts in Europe; the modernisation of the Professional Qualifications Directive and issues regarding collective redress and Alternative Dispute Resolution.

ernisation of the Professional Qualifications Directive and issues regarding collective redress and Alternative Dispute Resolution.

Message from the CCBE President, Marcella Prunbauer-Glaser

Dear colleagues,

Our profession is facing major challenges and is subject to various and opposing kinds of pressure. On the one hand, market regulators attempt to regulate the profession in the same way as any service provider, without regard to the role of lawyers as actors of justice. Bars and lawyers are requested – among others – to be more competitive and as a consequence fundamental values of the profession, for example, confidentiality of communications with clients, are impacted upon. On the other hand, and in order to remove their own responsibility, governments do not hesitate to ask lawyers to sacrifice their economic interests in the interests of justice, especially regarding the financing of legal aid. In truth, these two types of pressure are contradictory.

Fortunately, there is also reason for satisfaction. In some countries, the profession is modernising and organising itself to enter new business areas beyond the image of the litigant lawyer. Another source of satisfaction for me is that more and more women exercise our great profession. This is reflected in the CCBE Presidency, which now has as many women as men.

Under my Presidency, the CCBE will remain faithful to its mission, namely to monitor the impact of European legislation on the profession, but also increasingly to ensure compliance with the rule of law and fundamental values defended by the profession and to contribute to high-quality legislation. With this background, our main 2012 activities will largely follow those of 2011.

We will continue to denounce the reforms imposed on the profession in EU Member States by the 'Troika' European Central Bank-European Commission-International Monetary Fund as part of the assistance given to them to deal with the debt crisis. We will keep watch over the development of minimum procedural rights in criminal matters, especially regarding the right of access to a lawyer. This issue is closely related in everybody's mind to the issue of legal aid, which is one of the core concerns of the CCBE. When we presented our recommendations on the matter in November 2009, we called upon States to be ambitious in ensuring the right of access to justice for all; nowadays,

our message is certainly not as audible due to the financial environment, but it is even more essential. We will continue to defend confidential communications between lawyers and their clients' whenever it is threatened, particularly in anti-money laundering initiatives where the authorities tend to confuse lawyer and accomplice, or lawyer and informer. Fair participation of lawyers in European judicial training initiatives, as key actors of justice, will remain an important issue for us as the Commission has presented its Green Paper on the issue this year. We should also work on mutual recognition of legal acts in Europe, beyond authentic acts.

The CCBE will commit to offering the expertise of lawyers in those areas of substantive law which are marked by an ambitious and difficult legislative activity, such as European sales law and family and succession law. We will also pursue projects in which we are engaged in the framework of e-Justice: Find-a-Lawyer - the European directory for lawyers; factsheets on the rights of defendants in the EU Member States; e-CODEX - the European Commission funded initiative by 14 Member States plus Turkey to interconnect national e-Justice systems to allow cross-border electronic transactions for lawyers and other professions.

Finally, in 2012 the CCBE will continue its efforts to promote the rule of law in third countries, including sending letters to the concerned authorities about human rights violations against lawyers and giving its annual Human Rights Award, supporting European neighboring countries in their efforts to establish independent legal professions, and exploring how to assist the emerging democracies of the Arab Spring.

Marcella Prunbauer-Glaser
CCBE President 2012

▶▶ Important national regulatory developments

Troika bail-out agreements



The CCBE has followed with great concern over the past year the developments which have taken place in a number of European countries - Greece, Ireland and Portugal - where the economic crisis and the intervention of the Troika have led Governments to propose radical reforms of the legal profession, based on a purely economic approach. The CCBE has the impression that these proposals have been hammered out within a few weeks without taking account of the purpose or justification of professional regulation and without analysing the impact of such proposals on the administration of justice.

In Ireland, for instance, the Government approved the publication on 4 October 2011 of a new [Legal Services Regulation Bill](#). The Bill provides for far-reaching changes and reforms which are unprecedented in Europe. Most importantly, it calls for the establishment of an Independent Regulator – the Regulator will consist of 11 members: 7 non-lawyers, 2 representatives from the Bar Council and 2 representatives from the Law Society. All 11 representatives will be appointed by the Irish Minister for Justice, Equality and Defence. The Government may also at any time remove a member if the member's approval appears to be necessary for the effective performance of the functions of the Authority. The new authority will have all powers of regulation including conduct, discipline and complaints handling.



Important developments are also taking place in Greece and Portugal which have caused concern. The Bar Association of Portugal has reported, for instance, about a reform to the current legal aid system – the Government plans to hire lawyers directly to perform legal aid services (whereas it is currently within the Bar's competence to appoint a lawyer to a specific case). These lawyers would receive a monthly salary and become employees of the state.

The CCBE is analysing all these proposals thoroughly and in detail. A preliminary study has however raised serious doubts about the reforms' conformity with European and international standards (most importantly the independence of the profession).

Italy

The economic crisis has led to the Italian Government revisiting the rules of the lawyers' profession - although Italy is not a bailed-out country. On 12 November 2011, the Italian Parliament - at the urging of the European institutions - introduced alternative business structures. In summary, the new rules include the following:

- i. any kind of corporate structure is permitted for law firms (including limited companies and stock corporations);
- ii. the exclusive purpose must be the exercise of professional activities (including any multi-disciplinary partnerships);
- iii. the partners/shareholders may be
 - a) professionals admitted to the relevant professional organizations,
 - b) citizens of other EU member states with the requisite professional qualifications, or
 - c) non-professionals for a list of technical services or investment purposes.



This means that outside ownership is now permitted, including apparently in a majority position. Further reforms may be expected.

The Netherlands



In the Netherlands, the Dutch Ministry of Justice published a [consultation](#) in July, asking for views with regard to a legislative proposal aimed at establishing a Supervisory Board, composed of three non-lawyers, which would have special guidance powers over local Bar Presidents. Under the proposal, the Netherlands Bar is entitled to only recommend candidates for membership of the Board, whereas it will be the Government's decision to make the actual appointments. The proposal would also allow for professional secrecy to be set aside to a certain extent in the interest of supervision. The new Board could also delegate its supervisory powers to "others" beyond the local Bar Presidents, and it seems that these "others" could query the files of a lawyer regardless of professional secrecy.

The CCBE has voiced its concerns in a [letter](#) to the Dutch Minister of Security and Justice, Mr. I.W. Opstelten, pointing out that the proposed reforms would go against European and international standards which provide for the independence of Bars and Law Societies and of lawyers (i.e. to be free from any external influence, the authorities and the public) and which require lawyers to keep information concerning a client's case confidential.

For further questions, please contact Sieglinde Gamsjäger (gamsjaeger@ccbe.eu).

▶▶ Anti-money laundering

European Commission - proposal for a new Anti-Money Laundering Directive

The European Commission aims to present a proposal for a new Anti-Money Laundering Directive between September and December 2012. The Commission is currently carrying out an impact assessment on the 3rd Money Laundering Directive. This impact assessment must be completed before any new legislation can be proposed. The Commission expects the impact assessment to be completed in Spring 2012, and following this, the Commission will present its proposal.

In October 2011, the CCBE submitted a paper to the Commission. The paper feeds into the Commission impact assessment by addressing the general remarks in the "Deloitte report" (the Deloitte report had been commissioned by the Commission as part of the impact assessment) and also the individual Recommendations in the Deloitte

report as they impact on the legal profession. The CCBE paper identified problematic areas of the current Money Laundering Directive and suggested practical suggestions on how these problematic areas can be remedied.

The Commission organised a stakeholders meeting on 9 December in Brussels on the Revision of the Anti-Money Laundering Directive. The CCBE was represented at this meeting and the CCBE is watching developments and providing input where possible.

FATF - review of the 40+9 Recommendations



The FATF is nearing completion of the review of the 40+9 Recommendations. Work on this review has been underway for over two years. The FATF organised a Consultative Meeting in Milan on 5-6 December to discuss the proposed revisions, and the CCBE participated. The following issues were discussed at this meeting - beneficial ownership, PEPs, life insurance beneficiaries, and wire transfers. The CCBE submitted two papers to the FATF in 2011 (in January and September) in response to two previous FATF Consultation Papers. It is expected that the FATF will adopt the revised Recommendations in February 2012.

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



Collective redress

The CCBE adopted a [response](#) to the Commission's consultation: "Towards a Coherent European Approach to Collective Redress" in September.

Important preparatory work and several meetings were necessary to reach a common position, as the consultation raised sensitive issues where national delegations had sometimes divergent approaches. As a result, the CCBE position was adopted after the deadline for responses, but was nevertheless sent to the Commission.

In its response, the CCBE stressed in particular the importance of respect for due process and the importance of the role of lawyers in collective redress proceedings.

It also considered that any possible EU initiative on collective redress should comply with a set of common principles including the following:

- the fair trial principle, according to Article 6 of the European Human Rights Convention, which must also apply in civil proceedings;
- the principles applicable as regards ADR, i.e. principles of independence and of transparency, the adversarial principle, as well as the principles of effectiveness, of legality, of liberty, and of representation, which need to apply to any collective redress mechanism as well;
- the loser pays principle
- equality of arms
- open proceedings
- compensatory nature of consumer redress
- freedom of contract implies freedom of enforcement
- freedom for citizens to pursue their rights individually or through an association

As regards representation of the parties, the CCBE insisted on the parties' right to select freely the way they want to be represented in line with national law.

The CCBE also underlined the safeguards attached to representation by a lawyer, such as competence, expertise, independence, professional secrecy and professional liability insurance.

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

Criminal Law

Procedural safeguards for suspects and defendants in criminal proceedings

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

On 8 June 2011, the Commission presented a proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest. The Commission proposal is the third in a line of measures called for by the EU Council to ensure that citizens have the same basic rights in their dealings with criminal justice systems, regardless of the Member State where they are suspected or accused of having committed a criminal offence. The CCBE welcomed the proposal of 8 June, which would create for the first time an EU enforceable right to have early and continuous access to a lawyer throughout criminal proceedings.

Since its publication 6 months ago, the proposal has faced some opposition from a number of Member States, with five Member States in particular adopting a position against the proposal. The five Member States – France, Belgium, the Netherlands, United Kingdom and Ireland - expressed serious reservations about the Commission's approach which, in their view, would present substantial difficulties for the effective conduct of criminal proceedings. The CCBE prepared a response to this paper which addressed in a comprehensive manner each of the arguments raised by the five Member States.



The Criminal Law Committee has been following all developments regarding this proposal and will continue to follow developments and provide input to the European institutions in order to ensure that the proposal progresses in a way that will result in effective rights.

Measure B – Right to Information/Letter of Rights

The inter-institutional discussions on Measure B (Right to information/letter of Rights) have been concluded after many inter-institutional meetings. A text was voted on by the European Parliament Civil Liberties, Justice and Home Affairs committee on 23 November and the text was approved by the European Parliament plenary session in December 2011.

Green Paper on detention

In June 2011 the Commission published a Green Paper on detention. The CCBE submitted a [response](#) to this Green Paper. In its Green Paper, the Commission wished to explore the extent to which detention issues (following a criminal offence) impact on mutual trust, and consequently on mutual recognition and judicial cooperation generally within the European Union. It should be noted that whilst detention conditions and prison management are the responsibility of Member States, the Commission is interested in this issue because of the central importance of the principle of mutual recognition of judicial decisions for the EU area of freedom, security and justice.

House of Lords

The CCBE participated in a hearing in December in the House of Lords on aspects of EU criminal justice policy. The CCBE was represented by the chair of its Criminal Law Committee, Ilias Anagnostopoulos. The CCBE also submitted [written evidence](#) to the inquiry.

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

CSR Communication

European Commission's Communication on corporate social responsibility - 25 October 2011

The European Commission has published a new policy on corporate social responsibility (CSR). The Commission's new strategy on CSR aims to create conditions favourable to sustainable growth and employment generation in the medium and long-term. The Commission has put forward a new, simpler definition of corporate social responsibility as *"the responsibility of enterprises for their impacts on society"*. The Commission then goes on to define, in generic terms, what an enterprise should do to meet that responsibility. The new policy also puts forward an agenda for action covering a number of areas, including the need to recognise and support CSR in European firms, to encourage market rewards for CSR, to improve disclosure of social and environmental information by companies, to highlight the importance of national and infra-national CSR policies, to align European and global approaches to CSR, to improve and monitor levels of confidence in companies and to develop CSR further in education, training and research. One of the measures contained in the Communication is a legislative proposal in 2012 on the transparency of social and environmental information provided by firms from all sectors. The Committee on CSR is examining the Communication.

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

e-justice

Find-A-Lawyer project

The project Find-A-Lawyer (FAL) – which will eventually permit citizens to find lawyers on the European Commission's e-Justice portal, through a variety of criteria and in all official languages of the EU - is progressing as scheduled. Some 8 Bars have already completed their work in the FAL search engine, which is currently in its testing phase. Around 11 further Bars are carrying out the necessary work to be ready before the pilot project comes to an end in April 2012.

The CCBE, which is in regular contact with the Directorate-General of Justice of the European Commission, is now working on getting more Bars involved in FAL. The work is also focused on consistency (all Bars collecting the same information and providing it to the FAL in the same way) and on issues surrounding data protection and the security of the system.

e-CODEX

The CCBE continues its active participation in the e-CODEX project, which is run by a number of Member State governments and aims to make national e-justice systems inter-operable. The project will soon start to develop the trial cases on small claims, the European Payment Order and the European Arrest Warrant. The CCBE is glad to see that so far lawyers have been fully integrated into these trial cases as main actors in e-justice applications.

In addition, the CCBE is carrying out a study on lawyers' e-identity, as the issue of e-identity is becoming central within the e-CODEX project. The CCBE study will describe the different solutions that the Member States and the Bars are using for checking lawyers' identity in e-procedures, and make recommendations.



Cross border networking for defence lawyers

The final draft report on the Cross border networking project for defence lawyers was presented to the European Commission during November 2011, as foreseen in the contract signed between the European Commission and the CCBE. The aim of the project was to see what kind of network could be useful to defence lawyers, given the

resources that exist for the prosecution and judiciary in criminal matters at EU level.

The draft report was prepared after two meetings with national defence experts (June and September 2011), and other meetings with the European Commission and other networks like the European Judicial Network on criminal matters and the European Judicial Training Network.

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

European Contract Law

Proposal for an optional Common European Sales Law

On 11 October, the European Commission [published](#) its draft proposal for a Regulation on a Common European Sales Law. The objective of this proposal is to facilitate trade by offering a single set of rules for cross border contracts in all 27 EU countries. If traders offer their products on the basis of the Common European Sales law, consumers would have the option of choosing a European contract. The Commission's proposal now needs approval from EU Member States and the European Parliament, the last of which already signalled its overwhelming support in a vote earlier this year.

The Common European Sales Law will be applicable:

- only if both parties voluntarily and expressly agree to it;
- to cross-border contracts where most of the problems of additional transaction costs and legal complexity arise; Member States will have the choice to make the Common European Sales Law applicable to domestic contracts as well;
- to contracts for the sale of goods – the bulk of intra-EU trade – as well as digital content contracts, such as music, movies, software or smart-phone applications;
- for both business-to-consumer and business-to-business transactions;
- if one party is established in a Member State of the EU. Traders could use the same set of contract terms when dealing with other traders from within and from outside the EU, giving the Common European Sales Law an international dimension.



Over recent years, experts have been working with the Commission to develop a set of contract law principles, called the 'common frame of reference' (CFR). In parallel, the CCBE has been active in the area of European Contract Law and adopted a series of position papers which are available at this [link](#).

As to the current proposal, the CCBE's European Contract Law Working Group is still analysing the various provisions and is expected to release a position paper early next year.

Adoption of the Consumer Rights Directive

The EU Council endorsed without debate on 10 October the compromise worked out with the European Parliament in June on the [consumer rights directive](#). Spain was the only state to vote against the measure. The European Parliament approved the compromise on 23 June.

The directive will enter into force 20 days after its publication in the Official Journal. The member states will then have two years to transpose it into national law.

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

CCBE Human Rights Award

The Human Rights Award 2011 was granted to the President of the Tunisian Bar Association, Mr. Abderrazak Kilani, for his commitment and that of his Bar to human rights, in particular during the Jasmine Revolution (2010-2011).



Georges-Albert Dal, CCBE President 2011 and Abderrazak Kilani, President of the Tunisian Bar Association

The CCBE highlighted the importance of the role of the Bar in this difficult context; and the fight of Tunisian lawyers for the preservation of democratic principles and human rights, involving the use of non-violent means of protest.

The overwhelming majority of Tunisia's lawyers joined a pacific national strike to protest against police violence in repression of demonstrations against shortage of jobs and restrictions on civil liberties, and many endured violence and were themselves arrested. The Tunisian Bar Association was represented in the Conseil national pour la protection de la révolution (CNPR) and, through the voice of Mr Kilani, it contributed to a return to normality and the restoration of security and peace for citizens. For the last two decades before the Arab Spring, Tunisian lawyers had made repeated appeals to initiate essential reforms in the areas of civil liberties, human rights and justice.

The Award was officially delivered by the CCBE President to Mr Kilani during the Plenary Session, in the presence of the Ambassador of Tunisia in Belgium, as well as several Tunisian lawyers. Mr Kilani delivered a [speech](#).

Background :

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. The 2010 Award went to Mexican lawyers David Peña Rodríguez and Karla Micheel Salas Ramírez, who represented the families of the victims of the uninvestigated assassinations of women in the Campo Algodonero case, also known as the Ciudad Juárez femicides. The 2009 award was granted posthumously to assassinated Russian lawyer Stanislav Markelov. In 2008, the Award went jointly to a Chinese lawyer, Li Heping, and to the group of Spanish lawyers who intervened in the 11/3 Madrid bombing trial. The first Award, in 2007, went to the organisation Avocats Sans Frontières (Lawyers Without Borders).

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

International Private Law

Revision of Brussels I

On 24 June 2011, the CCBE adopted a [position paper](#) regarding the legislative [proposal](#), aimed at revising and improving the functioning of the Regulation on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters (also known as the Brussels I Regulation).

With the proposed revision of the Brussels I regulation, the Commission aims at:

- an abolition of the intermediate procedure for the recognition and enforcement of judgements (exequatur) with the exception of judgments in defamation cases and judgments rendered in collective compensatory proceedings;
- extension of the scope of the jurisdiction rules of the Brussels I regulation to disputes involving third country defendants;
- enhancement of the effectiveness of choice of court agreements;
- improvement of the "interface" between the Brussels I regulation and arbitration;

- better coordination of proceedings before the courts of Member States;
- improvement of access to justice for certain specific disputes such as
 - » claims of rights *in rem*,
 - » claims of employees against multiple defendants,
 - » the possibility to choose the court for disputes concerning the tenancy of premises for professional use and
 - » mandatory information to be given to defendants entering an appearance about the legal consequences of not contesting the court's jurisdiction;
- clarification of the conditions under which provisional and protective measures can circulate in the EU.

In its position paper the CCBE generally welcomes these objectives, but considers that the current proposal only partially contains the proper means and provisions to accomplish these aims. The CCBE paper therefore sets out a number of recommendations, including some concrete amendments to the draft proposal.

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

IT Law

On 9 September, the CCBE adopted a [response](#) regarding the European Commission [Public Consultation](#) on Cloud Computing. Instead of responding to the specific set of questions, the CCBE drew the Commission's attention to a number of more general issues and points of concern from the legal profession's point of view.

Despite its benefits, cloud computing also entails major risks for lawyers, which are mostly related to the security of client information. Lawyers have professional obligations with respect to managing their clients' information. These obligations include the need to preserve confidential and privileged information, and also the requirement to comply with data protection legislation. In addition to these obligations, lawyers are subject to the regulatory authority of their respective Bar or Law Society. When a lawyer uses cloud computing his or her ability to comply with these obligations may be affected.

At the moment, the CCBE is developing a set of guidelines for lawyers about how to avoid risks related to cloud computing. However, the CCBE believes that a major responsibility also rests on the shoulders of the EU and, therefore, urges the European Commission to take into account the following guidelines in its work on a European Cloud Computing Strategy:

- to guarantee absolute protection for legal professional privilege as a safeguard for citizens' right to privacy.
- to ensure the maximum level of data protection;
- to take into account the specific situation of lawyers by considering their stringent deontological and legal rules;
- to engage in negotiating binding international agreements with non-EU states so as to increase internationally the extent of the protection of personal data;
- to ensure that EU data protection rules can be effectively enforced and that third country legislation does not take precedence over EU legislation;
- to develop model terms and conditions that could be incorporated into agreements between cloud computing providers and their clients;
- to urge cloud computing service providers to adhere to the maximum level of technological security requirements.



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

Legal aid



The CCBE was the co-organiser, jointly with the Polish Presidency of the EU, the European Commission and the European Academy of Law, of a conference in Warsaw on 5 and 6 December 2011 on "The Financial Aspects of Legal Aid in Criminal Matters in the EU Member States". The programme is available at this page: <http://ms.gov.pl/en/legal-aid>. This event should be seen in the context of a proposal for legislative measures regarding legal aid in criminal proceedings foreseen for 2013, but also, more immediately, of assessing the financial impact of the proposed directive on the right of access to a lawyer in criminal proceedings. Represented by its President Georges-Albert Dal and members of its Criminal Law Committee, the CCBE used the event as an opportunity to circulate its general recommendations on

legal aid and voice its support for the Commission's proposal. Our experts were also available to the participants to answer any questions they had on the role of defence lawyers in cross-border situations, namely in the context of the European arrest warrant. The CCBE had two stands at the conference: one to present the organisation and its various activities; another on the Defendants' Rights Factsheets which it has prepared with funding from the Commission and the great assistance of experts and members from all CCBE delegations of the EU 27.

For further information, please contact Antoine Fobe (fobe@ccbe.eu).

Meeting with Viviane Reding

On 5 October 2011, a CCBE delegation met with the Vice-President of the Commission and Commissioner for Justice, Fundamental Rights and Citizenship to discuss our organisation's concerns with regard to the following:

- recent initiatives of the Directorate-General responsible for the Internal Market and Services aiming to liberalise the legal profession, which are characterised by an essentially economic approach with little regard for the lawyers' special role as actors of justice;
- the on-going impact assessment and review of the Third Anti-money Laundering Directive, taking place in parallel with international discussions aimed at revising the FATF standards, both of which raise continuing concerns that the reporting duties currently imposed on lawyers ignore the fundamental principle of confidentiality of communications between the client and the lawyer;
- the pressure exerted by the Commission-European Central Bank-International Monetary Fund 'Troika' in some Member States (i.e. Greece, Ireland, Portugal) to reform their legal systems as a condition of bail-out from their financial crisis, and the consequences on justice in general and on the legal profession in particular.



Viviane Reding
Vice-President of the Commission and Commissioner
for Justice, Fundamental Rights and Citizenship

The CCBE has asked Commissioner Reding to echo these concerns to her colleagues, Commissioners Michel Barnier (Internal Market and Services) and Olli Rehn (Economic and Monetary Affairs) respectively.

For further information, please contact Antoine Fobe (fobe@ccbe.eu).

▶▶ Patents

Proposal for a European Union Patent Court and the Unitary Patent with its language regime

The CCBE Working Group on Patents submitted a position paper in December 2011 regarding the proposal for a European Union Patent Court and the Unitary Patent with its language regime.

The Working Group has been following discussions taking place at a Council level concerning the proposal. Developments have taken place recently that caused great concern to the CCBE. Essentially, the Polish Presidency was trying to push very hard for the conclusion of this issue. The members of the Working Group believed that this ambition was wrong as there were, and continues to be, many outstanding issues with regard to the latest proposal.

These outstanding issues have been set out in a CCBE [position paper](#).

The CCBE is alarmed that the jurisdiction of the Court of Justice is not defined, no rules of procedure have been agreed, the roles of the local and central divisions are not clearly specified and balanced, there are uncertainties regarding cost, there are outstanding language issues, there are issues relating to ratification that have to be addressed, issues relating to the selection and training of judges are outstanding as are issues regarding the compulsory licensing regime (for example, would it be possible for a local division or the national court to grant a compulsory license for the whole territory?). In addition, provisions relating to the liability of a third party for an infringement committed (i.e. accessory liability) are absent, and there are no provisions regarding disputes over ownership.

The CCBE paper does not go into the substance of the issues but rather points out the danger of agreeing anything when so many fundamental questions remain outstanding. The CCBE strongly calls for the slowdown of the political decision-making process with a view to facilitating serious consideration to be given to the outstanding issues.

Essentially, the CCBE believes that the proposed design of the system contradicts the objective of having an accessible and affordable system, especially for SME's. Until the Unified Patent Court has been established as being both an accessible and affordable alternative for patent disputes, the CCBE believes that the use of national systems will be reinforced. The CCBE will continue to follow developments.

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

▶▶ Permanent Delegation to the Court of Justice

Amendment to the Statute of the Court of Justice of the European Union

The CCBE is following developments regarding the proposed changes to the Statute of the Court of Justice. In particular, there is a proposal by the Court that twelve further judges be nominated to the General Court. The CCBE sent a letter to the EU institutions and EU governments on this particular point. The CCBE's focus is on the method of selection for the new judges. As the CCBE has observed in the past, given the existing backlog of cases and the workload of the General Court, the priority is to find a structural solution which makes a step-change in the productivity of the General Court.

Since the General Court is the Administrative Court of the EU - dealing with often multiple labour-intensive points of fact and law - it requires above all judges who are able to deal as efficiently as possible with the ever increasing range of issues that come before that Court. In that context, and in the CCBE's opinion, three factors appear critical to achieving a real efficiency gain. The first is the stability of the bench, in the sense that the arrival and departure of judges causes substantial losses of productivity in the relevant chambers in which the judges participate. The second is to harness as far as possible the experience of existing judges, which is higher than that of new judges. The third factor is to focus firmly on competence of judges through a selection system which would produce a list of candidates ranked by the Article 255 panel in order of merit. In the context in which the General Court operates, a selection system based exclusively on the rotation of posts between Member States risks failing



to deliver the best judicial service available to citizens of the EU, and depriving the Court of the benefit of judges with more experience. In its letter, the CCBE requests that these factors are taken into account with regard to the discussions on this important issue.

Proposed revisions to the Rules of Procedure of the European Court of Justice

The Court of Justice is in the process of reviewing its Rules of Procedure. The CCBE was consulted on this exercise and submitted its [comments](#) to the Court (the CCBE comments were also communicated to the Permanent Representatives of the Member States given that it is the Council that is currently debating the proposed changes).

The CCBE welcomes most of the proposed changes. In addition, the CCBE recognises that the resources of the Court are limited. However, the CCBE believes that a small number of the proposals would create an unacceptable limitation on access to justice for EU citizens, and the CCBE has put forward specific comments in this regard. When submitting its comments to the Member States, the CCBE also took the opportunity to express its strong support for the Court's request for further resources to assist with the backlog of cases before the General Court. The CCBE believes that this is a high priority and that Member States must recognise that, in ever extending the scope of EU law, the European Union must also provide adequate resources for judicial protection in the context of an ever broader EU legal system.

e-Curia

User conditions



The Court of Justice has introduced e-Curia, which is an information technology application which allows procedural documents to be lodged and served electronically. It also allows such documents to be consulted on-line. The Court has developed user conditions which deal with issues like the lodging of procedural documents, the service of procedural documents, consultation of procedural documents etc. e-Curia is common to the three constituent courts of the Court of Justice and consequently an access account opened by the Registry of one of those courts is equally valid as regards the Registries of the other two courts. The user conditions are available at the following address: <http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-10/en08602.pdf>

Practice Directions regarding e-curia

The Court is in the process of reviewing its Practice Directions in order to take account of the introduction of e-Curia. The CCBE has provided its input to the Court with regard to the proposed changes.

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

PECO

Georgia

In the last two editions of CCBE-INFO, the CCBE reported about its assistance to the Georgian Bar Association in relation to human rights violations against a number of Georgian lawyers which had been brought to the CCBE's attention in 2010 (see CCBE [letter](#) to the President of Georgia).

On 11 July, the CCBE had an opportunity to meet the Ambassador of Georgia to the Kingdom of Belgium and discuss the situation of lawyers in Georgia in more detail.

Furthermore, on 29 September - 1 October, a CCBE delegation visited Tbilisi where meetings with Georgian lawyers and public officials were held. On 29 September, the CCBE met with the Georgian Bar Association, the Georgian Young Lawyers Association, "Georgian Lawyers for an Independent Profession" and individual lawyers who experienced problems in their daily practice. On 30 September, meetings with a number of public officials were held: Lasha Tordia, Chairman of the Human Rights and Civil Integration Committee of the Georgian Parliament, Chiora

Taktakishvili, Deputy chairperson of the Legal Issues Committee of the Georgian Parliament, Tina Burjaliani, the First Deputy Minister of Justice, and Giorgi Arsoshvili, Deputy Minister of the Corrections and Legal Assistance.

During these meetings the following main issues of concern were discussed: the significant number of arrested and imprisoned lawyers; limited access to clients in prisons and detention facilities; concerns about criminal justice system (equality of arms, interpretation and implementation of the Criminal Procedure Code), and the case of Mariana Ivelashvili¹.

Moreover, on 1 October, a PECO seminar for Georgian lawyers took place where such topics as the role of a lawyer in society, the core values of the lawyers' profession and access to justice were discussed. In the seminar, 70 Georgian lawyers from Tbilisi and other Georgian cities took part; a representative from the Council of Europe Tbilisi Office and public officials from the Georgian Ministry of Justice and Ministry of Corrections and Legal Assistance also participated in the seminar.



The meetings and discussions at the seminar were very productive and conducted in a positive manner. All the relevant parties expressed a desire to engage in constructive dialogue to address the issues of concern.

On 23 November, the CCBE was informed that the Georgian President has granted a pardon to Mariana Ivelashvili. The CCBE welcomes this decision and is looking forward to continue assisting the Georgian Bar Association in order to improve the situation of lawyers in Georgia.

In the last two editions of CCBE-INFO, the CCBE also reported on the International Observatory for Lawyers (IOL) mission to Georgia of last November and its [report](#) which highlighted an important destabilization of the legal profession and a number of violations of lawyers' daily practice. In October, the IOL published a report on its second mission to Georgia in June; the [report](#) focuses on a number of issues, e.g. difficulties the lawyers encounter in criminal cases, offences against lawyers and the individual cases of Mariana Ivelashvili and Lekso Arkania.

Fiscal (cash) registers

Over the last two years, the CCBE has received requests for assistance from a number of PECO countries where the governments have tried to take legislative steps in order to oblige lawyers to record all cash and/or other payment transactions via fiscal registers. The CCBE has reported about the cases of Serbia, FYROM, the Federation of Bosnia and Herzegovina, Albania, Armenia and Slovenia. To date, Serbia remains the only country where this issue has been positively resolved.

Following a request for assistance from the Slovenian Bar Association in May, the CCBE sent a [letter](#) to the Prime Minister of the Republic of Slovenia pointing out the negative implications to the administration of justice if fiscal cash registers for lawyers were introduced. In October, the CCBE sent an [additional letter](#) to the Prime Minister of Slovenia, expressing once again its concerns about fiscal cash registers and, in addition, also about amendments to the Act on the Prevention of Money Laundering and Financing of Terrorism, which put in danger respect for core values of the lawyers' profession, in particular professional secrecy.

In the last edition of CCBE-INFO, the CCBE reported also about its assistance to the Bar Association of the Federation of Bosnia and Herzegovina. In November, the CCBE received another request from this Bar Association; the CCBE is now looking into the possibilities of how better to assist the lawyers of the Federation of Bosnia and Herzegovina.

The CCBE will continue monitoring developments in Slovenia, the Federation of Bosnia and Herzegovina and, if required, also in other PECO countries.

¹ According to the judgment of the Criminal Cases Chamber of Tbilisi Appeal Court (25 February 2010), Mariana Ivelashvili is sentenced to imprisonment of 5 years and 9 months for fraud according to paragraphs 1 and 2b of Article 180 of the Criminal Code (for not providing legal service for her client).

Relations with the Mediterranean



This year, the CCBE has been active in establishing contacts with the Bars of the Mediterranean region.

On 5 April 2011, the CCBE met with representatives of the Arab Lawyers Union (ALU) in Brussels. During the meeting several matters of mutual interest were discussed, e.g. initial and continuous training regimes for lawyers, training on practice management and international transaction work.

It is likely that a second joint meeting between the CCBE and ALU will take place at the beginning of 2012.

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