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Law Practice in a Globalized World: The European Experience

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This paper honors and remembers the author, Professor Mullerat, a dear friend and an esteemed scholar and who passed away in June 2013.

Law Practice in a Globalized World: The European Experience

By Ramon Mullerat¹

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This paper is partly based on chapter 23 of his book International Corporate Social Responsibility. The Role of Corporations in the Economic Order of the 21st century, 2010 and European Commission's CSR. National Public policies in the European Union, 2010.

I. Presentation

In this paper I plan to give a simple overview on how the legal profession is integrating in a globalized world within the European Union (“EU”).

II. Globalization

Globalization means different things to different people.²

For a Peruvian farmer unable to compete with the low prices of imported foodstuffs, it means losing his income.

For a Czech car worker earning enough to buy his own home, it means prosperity. For a poor Ugandan woman tilling her family plot, it means absolutely nothing.

N.A. Ngoni³

Globalization was originally an economic notion. In this sense, globalization is a process of increasing the connectivity and interdependence of the world’s markets and business. In today’s world, however, globalization already affects all sorts of human activities: politics, arts, food, music, religion, even crime and terrorism.

Due to its all-encompassing nature, we find hundreds of definitions of globalization. Beth Kytte and John Ruggie⁴ classified the different perspectives on globalization into three groups: a) “economists”, who see globalization as a march toward a more fully integrated world market⁵; b) “political scientists”, who conceive it as a shift away from traditional state sovereignty to a more complex system of ‘multi-layered’ governance in which non-state actors are increasingly gaining roles in shaping world order⁶; and c) “business schools and companies” alike, who typically think of it in terms of a borderless world for corporate operations^{7 8}.

² Excerpts from my book International Corporate Social Responsibility. The Role of Corporations in the Economic Order of the 21st century, 2010, pp. 129.

³ N.A. Ngongi, ‘Lotta alla poverta e all’esclusione nel contesto dell’economia globale’, in Globalization: solidarita o esclusione, ed. R. Papini (Napoli: Edizioni Scientifiche Italiane, 2001), cited by M. Caselli, ‘Some Reflections on Globalization, Development and the Less Developed Countries’, Centre for the Study of Globalization and Regionalization (CSGR), Working Paper no. 152/04, Oct. 2004..

⁴ B. Kytte & J.G. Ruggie, “CSR and Risk Management: A Model for Multinationals”, CSR Initiative Working Paper no. 10, John F. Kennedy School of Government, Harvard University, 2005.

⁵ D. Julius, ‘Globalisation and Stakeholders Conflicts: A Corporate Perspective’, International Affairs, 73, no. 3 (1997). D. Julius, Globalization and International Relations, 1997, 453, cited by B. Kytte & J.G. Ruggie, ‘CSR and Risk Management: A Model for Multinationals’, CSR Initiative Working Paper no. 10, John F. Kennedy School of Government, Harvard University, 2005.

⁶ J.G. Ruggie, “Reconstituting the Global Public Domain – Issues, Actors and Practices”, European Journal of International Relations, 10 Dec. 2004, cited by B. Kytte & J.G. Ruggie, “CSR and Risk Management: A Model for Multinationals”, CSR Initiative Working Paper no. 10, John F. Kennedy School of Government, Harvard University, 2005.

⁷ K. Ormae, The Borderless World Reviewed: Power and Strategy in Interlinked Economy (Harper Collins, 1999), cited by B. Kytte & J.G. Ruggie, ‘CSR and Risk Management: A Model for Multinationals’, CSR Initiative Working Paper no. 10, John F. Kennedy School of Government, Harvard University, 2005.

⁸ M. Wolf, ‘Financial Crisis Tests Durability of Globalisation’, Financial Times, Special Report World Economy, 10 Oct. 2008, questioned whether globalization will survive the financial crisis. Globalization has been, in his view, the great economic and political theme of the past three decades, because it has brought the labour supplies of Asia into

The legal profession has experienced a steady and expansive growth in the past decades as a consequence of the growth in international trade and emergence of new fields of practice, particular in the area of business and transactional law. At least from the viewpoint of the last of the three perspectives, the legal profession has also globalized and integrated. We will see how such phenomenon has taken place in the EU⁹.

III. A still diversified profession

Diversity in the world is a basic characteristic of human society
Jinato Hu

The globalized world is a diverse world. The legal profession is still a diverse profession.

The main obstacle to unify or harmonize legal services is represented by the national character of the law, the territorial jurisdiction of the courts and the national character of legal education. The principal role of the lawyer was that of an advocate, and the legal profession was organized around the courts with each bar associated to a specific local court. Lawyers were required to maintain physical establishment in the territory of the local court in order to be accessible to other members of the bar and to the court itself. This paradigm changed in the last century with the expansion of trade and with the emergence of new fields of the law such as business and trade law for which representation before local courts is relatively less important. Most of the times, clients require legal counseling in matters involving transactions, relationships and disputes not necessary entailing court proceedings.

In spite that the fundamental mission of all lawyers in the world is the defense of the rights and liberties of the citizens and that their fundamental functions are legal representation in court and legal advice, the reality is that the identity, training, ethics, organization and methods of practice vary significantly from one country to another.

With regard to Europe, a classic error, particularly when viewed from the outside, consists to consider the European Union (EU) as a full political and economic unit. The EU

the world economy and has transformed the operations of companies and financial markets. He referred to the precedents of the First World War, which did not destroy the globalization of the late nineteenth and early twentieth centuries, and to the US stock market crisis in the 1920s and the financial meltdown of the 1930s, which left the integrated economy little more than a memory. The good news is that globalization has already survived terrorism, war, and a series of financial crises. The bad news is that the current financial crisis affects the US and Europe, which account of more than half the world output. Wolf said that the financial crisis of today threatens globalization in three ways. *First*, it will reduce willingness to liberalize financial markets. *Second*, it will undermine the credibility of free-market capitalism, which will affect not just finance, but, quite possibly, trade and direct investment as well. *Finally*, it will worsen the performance of the world economy, and a rise of economic nationalism is to be expected and feared.

⁹ I will exclusively focus on the EU and on purpose I shall disregard globalization outside the EU which is gradually taking place through the GATS. About the GATS and the legal profession see the formidable study that professor Laurel Terry of Pennsylvania University has been carrying out.

is certainly a unit, but not a perfect or final drive. Each Member State, with its own history and culture, still has its own lawyers' organization and policies.

There are approximately 1.000,000 lawyers in the EU. Their names are different: *Rechtsanwalt* (Austria and Germany), *avocat, advocaat, Rechtsanwalt* (Belgium), *advokat* (Denmark, Norway and Sweden), *asianajaja* (Finland), *avocat* (France), *dikigoros* (Greece), *barrister* or *solicitor* (Ireland and United Kingdom), *Lögmaour* (Iceland), *avvocato* (Italy), *avocat, avoué, Rechtsanwalt* (Luxembourg), *advocate or solicitor* (Scotland), *advogado* (Portugal), *abogado* (Spain), *advocaat* (Netherlands), etc. But more importantly, the differences between lawyers in Europe are manifest and depend on various factors: the lawyers' training, the rules for admission to practice, the ethical rules of conduct, the organization, methods of work and particularly the law they apply

However, despite such differences the European lawyer tends progressively to evolve towards a set of values, interests, doctrinal principles and methods of work that transcend national barriers

IV. The two legal traditions

In Europe, the main Western legal traditions – common law (UK and Ireland), civil law (Continental Europe) and a mixture (Scandinavian countries) - coexist with their substantive and procedural differences. Even within such traditions each country has its own different law.

But in spite of the obvious differences between these two traditions, generally civil law and common law are slowly converging in the world.

The signs of this confluence are manifold. One may mention a flow of world international conventions such as the Convention on International Sales of Goods, the Convention on the Applicable Law no Contractual Obligations, the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, the Lugano Convention on the same subject, the Uncitral Model Law on Commercial International Arbitration, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and a myriad of others which are unifying important areas of law.

Civil law countries have also accepted institutions like factoring, franchising, forfeiting which have been revised by common law, by adjusting old notions common to the two legal systems (such as the assignment of credits and licensing of know-how) to the needs of modern trade. In the real estate area, common law long-term leases have become more frequent in several civil law systems; the sale of the mere right of surface is commonly used even in the latter¹⁰; the treatment of mortgages and their foreclosure is also converging. Other areas of law, such as financial law, are becoming universal.

¹⁰ M. Rubino-Sammartano, "Language and the law: Civil and common law", International Legal Practitioner, March 2000, pp. 21 and ss.

There is also a continuous interchange of legal concepts, for example the increasing use of the “reasonability” concept in civil law and the growing acceptance of *bona fides* in common law. The approach is also visible by the increasing written steps in the common law judicial proceedings and orality growing in the civil law ones.

The EU is a great catalyst of the two legal cultures through the three sources of EU law (primary law, secondary law and supplementary law). The main sources of primary law are the treaties establishing the EU. Secondary sources include regulations, directives and decision which are based on the treaties. Indeed, the EU directives have acted as catalysts of both the EU common law countries and the civil law ones. Most areas of the law have been harmonized through directives such as anti-discrimination, company law, environment, anti-trust, intellectual property, privacy and data protection, technology and safety, transport, pharmaceuticals, culture and many others.

With regard to civil procedures, as professor Kerameus rightly pointed out, although there exist some apparently irreducible differences between the two systems (and mainly in trial by jury, and in the conception of jurisdiction), other reveal some signs of convergence particularly in the scope of appellate review or even in discovery devices^{11 12}.

In international arbitration in particular the two legal systems are rapidly converging in a globalized world thanks to many initiatives such as the Uncitral Model Law 1985, which has harmonized different traditions in arbitration and also the symbiosis of legal cultures developed through arbitration rules of major arbitration institutions (ICC, AAA, LCIA, ICSID, etc.) matching of both traditions.

¹¹ K. D. Kerameus, “A civilian lawyer looks at common law procedure”, *Louisiana Law Review*, 1987 , pp. 497.

¹² G. Hazard Jr., H. Jescheck, T. Weigend, S. C. Yeazell, Stuart C. Yudofsky, M.D, "Procedural law", *Encyclopedia Britannica*: "Despite the distinctions between civil and common law just described, there arguably have been recent trends toward convergence. In private-law matters, courts in civil-law countries do not initiate proceedings on their own; rather, they decide only claims brought forward by the parties and normally only on the basis of evidence proposed by them. Indeed, in practice they give the parties much of the responsibility for suggesting lines of proof. Nor do judges in common-law countries always play merely the role of an impartial arbiter. In some cases, such as those involving the welfare of children, they often take a more active role in seeking out the facts. Because a series of separate hearings make a proceeding unduly long, procedural reforms in some civil-law countries favor (but do not mandate) a single, well-prepared, main hearing at which the decision is reached. By contrast, in England, where the civil jury trial originated, the jury has fallen into almost complete disuse in civil cases, except in suits of defamation. In the United States, although trial by jury is a constitutional right, jury trials occur in fewer than 5 percent of filed civil actions. Many civil actions in the United States consist of a series of pretrial motions, often involving discovery, at the end of which the case is terminated by settlement or by pretrial judgment. In such cases—the great majority—the process in many respects resembles the civil law system: a series of staged judicial rulings rather than a compressed trial of the entire case".

V. The Council of the Bars and Law Societies of the European Union (CCBE)

The great promoter and facilitator of the integration of the legal profession in Europe has unquestionably been the Council of the Bars and Law Societies of the European Union (CCBE). All the national bars and law societies of the 27 Members of the EU and of the 3 members of the European Economic Area (Norway, Liechtenstein and Iceland) are full members of the CCBE, together with Switzerland. In addition, bars from a number of other European countries are associate members (Council of Europe countries in official negotiations for accession to the EU) or observer members (other Council of Europe countries).

Each national member has its own delegation consisting of up to six individuals, depending on the size of the country and the organization of its legal profession. The associate and observer countries are entitled to one representative at the plenary sessions and to attend other committee meetings. The CCBE's funding is provided through annual dues paid by all national members.

The Presidency consists of a president and three vice presidents elected for one-year terms. The Standing Committee is the executive body of the CCBE, composed of heads of national delegations, makes policy decisions and meets around five times a year. Plenary sessions attended by all members of the national delegations, are held twice a year, and the most important issues are referred to it by the Standing Committee for approval. A permanent Secretariat provides full assistance and promotes many initiatives

The chief work of the CCBE is to develop policies within its democratic structure in response to current issues. Specialist committees and working groups made up of experts from the national delegations research and report on a wide range of areas affecting the European legal profession. Topics include lawyers' ethics, competition as it affects the legal profession, the free movement of lawyers, training of lawyers, international trade in legal services, and human rights. In recent years, working groups have focused on such subjects as money laundering, legal aid, divorce, contract law, alternative dispute resolution and corporate social responsibility.

A very efficient committee is the Pecos (*Pays d'Europe Central et Oriental*) Committee, which aims to promote the rule of law and support the law reform process in Central and Eastern Europe.

Through its close relationships with the European Commission and the European Parliament, the CCBE is able to influence legislation in a number of areas of substantive law, too, such as criminal law and company law.

The CCBE publishes position papers addressing EU legislation and initiatives which impact upon the legal profession or upon the users of legal services. These papers cover such disparate issues as competition, money-laundering, the core values of the profession, VAT on legal services, organized crime, and the ramifications of a European constitution.

The CCBE also holds numerous conferences on relevant legal issues as the recent one on 6-7 December in Brussels on “Justice in austerity: challenges and opportunities for access to justice”.

VI. Training of lawyers

Training of lawyers in Europe is also diverse. In this regard countries can be generally classified into three groups: a) in the first group, the Latin countries (Italy, Spain, Portugal and France), develop a classical legal culture based on the Roman law heritage; b) in the second group, the Anglo-Saxon and Nordic countries, where the training is mostly geared towards the practical aspects of law and procedure; c) in a third group, the Benelux countries, which represent a combination of the two systems.

The reforms recently undertaken in the EU and the internationalization of the economy require harmonization of systems of training and access to the profession. University education gives increasing importance to EU law, the European dimension of law studies and exchange between students and between teachers.

The Bologna Process launched the European Higher Education Area in 201 allows students to choose from a wide range of courses and benefit from smooth recognition procedures. The Bologna Declaration of June 1999 put in motion a series of reforms needed to make European Higher Education more compatible and comparable, more competitive and more attractive for Europeans and for students and scholars from other continents.

The three overarching objectives of the Bologna process have been from the start: introduction of the three cycle system (bachelor/master/doctorate), quality assurance and recognition of qualifications and periods of study.

The Bucharest Communiqué, April 2012, identified three key priorities - mobility, employability and quality, and emphasized the importance of higher education for Europe's capacity to deal with the economic crisis and to contribute to growth and jobs. It also committed to making automatic recognition of comparable academic degrees a long-term goal of the European Higher Education Area.

VII. Organization of lawyers

The advocacy organization in Europe can be also generally classified into three groups: a) the system of the Scandinavian countries (*advokat*); b) the system of the United Kingdom and Ireland with a profession differentiated between *solicitors* (basically legal advice and transactions) and *barristers* (*advocates* in Scotland) (basically representation before courts), which are the act in the courts, and the c) civil law system of other countries with a unified

profession of lawyers and a separate one of notaries public (documents authentication function on behalf of the state).

A good example of the divergences still existing in the EU legal profession is what has been unfortunately called the "monopoly of law". Within the EU we can identify three systems: i) complete monopoly: advice and defense (eg, Spain, France, Germany, Austria), where lawyers exercise a complete monopoly of legal services, both in legal representation and legal advice; ii) partial monopoly (eg, Belgium, Italy, Netherlands, United Kingdom, Ireland), where lawyers have a monopoly on legal defense or representation in court but not in legal advice; and iii) no monopoly (eg Finland, Sweden) where lawyers exercise no monopoly on defense before courts or on advice, so that any non-lawyer can exercise legal functions (although without using the title of *advokat*).

Another example of such disparity is the status of corporate in-house lawyers in different EU Member States: i) in some countries (eg Spain), in-house lawyers have full status as a lawyer, as they are members of the bar and can advise and defend their clients in court, either on behalf of the company that they work with or other clients; ii) in other countries (eg UK, Ireland) in-house lawyers are members of bars or law societies but can not advise or defend anyone outside their employers, and iii) in other countries (eg France, Belgium), in-house lawyers are not members of the bar, cannot appear in court, and cannot even be called lawyers (*avocat*) but "corporate jurists" (*juriste d'entreprise*)¹³

There are other significant differences in the role of bar associations and in other important issues such as advertising, incompatible professions, attorney-client-privilege ("professional secrecy"), multidisciplinary practices, the regulation of fees, etc.

VIII. Human rights and the rule of law

The CCBE considers that the legal profession is not another market but has a vital role in the administration of justice and the protection and promotion of human rights and the rule of law.

On behalf of lawyers in Europe the CCBE demands from the EU and national authorities that all citizens' fundamental rights, freedoms and basic rights, are and will be, protected by the

¹³ The ECJ (cases *AM&S 1988* and *Akzo Nobel 2010*) decided that corporate in-house lawyers did not enjoy the right and duty of confidentiality. Recently, on 6 September 2012, the Court of Justice of the EU expressed its views on the standing of in-house counsel before the Luxembourg Courts. The Polish telecommunications regulator was represented before the General Court by its in-house legal advisors, which had an employment relationship with the entity. The General Court considered that this fell short from the requirement in art. 19 of the Statute of the Court of Justice (which requires representation by a 'lawyer'); the General Court's decision was appealed to the Court of Justice which – concurring with the views of the General Court - stated that "The requirement of independence of a lawyer implies that there must be no employment relationship between the lawyer and his client (...)" and that "although (...) the conception of the lawyer's role in the legal order of the EU derives from the legal traditions common to the Member States, in the context of disputes brought before the Courts of the EU, that conception is implemented objectively and is necessarily independent from the national legal orders."

unconditional observance of the principles of democracy and the rule of law. In addition, every year the CCBE grants a Human Rights Award to lawyers or organizations which have distinguished themselves for their involvement in the defense of human rights.

IX. Legal ethics

One of the most relevant contributions of the CCBE to the integration of law and lawyers in the EU is unquestionably the adoption of the European Code of Conduct for European Lawyers in 1988. Based on a previous Perugia Declaration, the drafting and consultation of the Code required six years in order to bring the most diverse positions in advertising, conflicts of interest, etc. needed to help resolve cross-border conflicts between Europe's widely varying national codes. The Code governs professional contacts between lawyers within the EU and the activities of lawyers working in Member States other than their own.

The Code is binding only when adopted by a particular bar. CCBE members and observers have done this, making it the applicable code for EU cross-border activities. Moreover, the Code has been recognized by the European Commission and European courts and is beginning to be treated as authoritative by national courts.

The Code is a framework of the three fundamental principles of independence, confidentiality and loyalty (avoidance of conflicts of interests) and other derived professional duties such as advertising of services, fees and behavior towards clients, courts and other lawyers. Since its debut, and through two subsequent revisions, it has been widely adopted across Europe, has helped resolve differences between national codes, and has greatly facilitated the cross-border movement of legal services. A Charter of Core Principles summarizes the quintessence of the Code.

X. Cross-border practice

Glocalisation, the complexity of the law and clients demands, the impact of technology (that leads to paperless offices and courts), increasing specialisation and the increase in international transactions have created a broader legal market. The world in general is responding through the implementation of the General Agreement in Trade and Services (GATS). Europe started previously responding to this needs with the concept of the “European lawyer”, which requires the harmonisation of practice at all levels of legal work and particularly through the Services Directive (1977), the Diplomas Directive (1988), and the Establishment Directive (1999).

Unlike other liberal professions (physicians, architects, auditors, etc.) which have a common subject matter of their practice around the world, the specificity of the profession of lawyer requires precise knowledge of national law since different legal systems apply in the various Member States.

The Service Directive 77/249 allows lawyers to cross borders within the EU, and provide temporary services, including advocacy services in local courts. In essence, it has permitted lawyers to follow their clients across borders in individual cases without prior notification or registration with the host bar. Only in connection with court procedures, Member States may require lawyers to be introduced to the presiding judge and to the president of the relevant Bar, and to work in conjunction with a local lawyer or with an “*avoué*” or “*procurador*”.

The Diploma Directive 89/48 allows all professions (including lawyers) which have completed a university training over three years to obtain the diploma of a Member State other than his own through either an aptitude test or a period of adaptation. With regard to the legal profession, all Member States have opted for the aptitude test with the exception of Denmark that has opted for an adaptation period.

The Establishment Directive 98/5 is a radical liberalising instrument which permits lawyers from one Member State establish themselves in another Member State under their home title, without integrating themselves in the local profession. Moreover, an established EU lawyer can acquire the local title by practising local, including community law, for a period of three years. Therefore, by being established and practising local law for three years, lawyers can forego the necessity to take an aptitude test and can acquire the local title more or less automatically.

In spite of its complexity, the system which has been created is simple, unbureaucratic and very liberal and has therefore led to a high level of cross-border mobility of lawyers. This system provides a model of a liberalised market for professional services in the EU.

XI. Cooperation with the European Courts of Justice and the Human Rights Court

The CCBE has strong links of cooperation with the European Courts of Justice and European Court of 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.

Through its long dealings with the European Court of Justice, and European Court of Human Rights, it is regularly consulted about procedural changes in those courts.

XII. Anti-money laundering

The fight against money-laundering, started in the US with the “Gatekeeper initiative” and followed by the Financial Action Task Force (FATF) and the UE Directives, originates difficult problems for the protection of lawyers’ confidentiality.

As an example, 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. The applicant submitted that this obligation, which resulted from the transposition of EU directives, was in conflict with art. 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 art. 8 by France.

A proposal for a new anti-money laundering directive is expected to be published soon. It is understood that DG Internal Market will organize a hearing on the proposal in which the CCBE will be invited to participate.

XIII. Corporate social responsibility (CSR).

The lawyer has two roles in CSR. First as advisor on CSR to clients. Second within his own firm. The CCBE has dedicated important efforts to CSR. On the one hand analyzing, comparing and promoting CSR among the various Member States¹⁴. On the other hand the CCBE published in 2008 a Guide for European Lawyers¹⁵ distinguishing lawyers as advisors on CSR to their clients and lawyers activities in CSR in their respective offices¹⁶. A “Best Practice Guidance” is currently being prepared.

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.

XIV. Other achievements and projects

The CCBE has developed a great number of activities and instruments to harmonize the legal profession and promote the European lawyer, a few examples are the following:

1. Identity card for European lawyers. The CCBE produces such card but does not issue it to the individual lawyer. The card is delivered to the national bar according to the

¹⁴ See for instance, Overview Table. Corporate Social Responsibility.

¹⁵ CCBE, CSR and the Role for the Legal Profession. A Guide for European Lawyers, 2008

¹⁶ R. Mullerat, International Corporate Social Responsibility. The Role of Corporations in the Economic Order of the 21st century, 2010, pp. 343 and ss.

conditions fixed in each Member State. The national bar then issues it to the registered lawyer in the CCBE's name. The card facilitates access to courts and institutions for lawyers outside their home jurisdiction and identifies the card holder in the official languages of the CCBE

2. Continuing professional education ("CPE"). Although CPE is not mandatory in all Member States, the CCBE has published recommendations on continuing training for lawyers.
3. Cross-border co-operation in disciplinary matters. A list of contact points in the different Member States has been created so that bars know whom to contact in case of disciplinary problems with a cross-border dimension. The database also includes a summary of disciplinary proceedings in the various Member States.
4. Recognition of professional qualifications. In December 2011, the European Commission adopted a legislative proposal for modernizing Directive 2005/36/EC to further facilitate mobility of professionals in general across the EU. Due to the specificity of the legal profession, which requires comprehensive knowledge of national law and practice, and the differences between jurisdictions of the Member States, the CCBE presented some proposals of modification particularly on the European professional card, the remunerated trainship and the partial access to the professions¹⁷.
5. Legal outsourcing (a practice in which a regulated legal professional outsources legal work which is done by lawyers, trainee lawyers, paralegals e.g. research, due diligence, litigation discovery, etc. to a service provider in another country who is not a regulated legal service provider) poses serious challenges to bars responsible for regulating lawyers, in order that it is carried out in conformity with the core values of the legal profession and the ethical rules applicable to the outsourcing lawyer. The outsourcing lawyer must comply with all professional ethical rules of his home country, as well as with the CCBE Code of Conduct¹⁸.
6. The EU Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession was adopted. The CCBE welcomed this regulation of an identical connecting factor concerning jurisdiction and applicable law as well as the proposed single scheme for the estate as a whole, avoiding the system of scission. The CCBE shared the Commission's intention to minimize the present possibilities for forum shopping and to provide legal certainty in cross border succession cases.
7. European judicial training. The CCBE responded with several suggestions to the European Commission consultation paper on the issue of European judicial training.¹⁹
8. Comparative study on authentic acts and instruments. In April 2011 the CCBE delivered a study with comparable status and effect according to national legislation, considering in particular the role of lawyers. The CCBE considered important for citizens and business alike that mutual recognition should not be restricted to authentic acts delivered in a notarial system but also cover analogous legal acts (deed, legal act by a lawyer or equivalent) which exist under national law to avoid discrimination²⁰.
9. Joint practice within the EU with non-EU lawyers. The CCBE has agreed a position which provides for the foreign legal practitioner may associate with host country lawyers

¹⁷ CCBE position on the Commission's Proposal for a Directive amending Directive 2005/36/EC, 30 March 2012

¹⁸ CCBE Guidelines on Legal Outsourcing, 24 June 2010

¹⁹ CCBE response to European Commission Consultation of Stakeholders on European judicial training, 21 January 2011.

²⁰ CCBE Comparative study on authentic acts and instruments with comparable status and effect according to national legislation within the EU, considering in particular the role of lawyers, 8 April 2011.

(from a EU Member State) and may be employed by host country lawyers, to the extent permitted by host country law for the joint exercise of the profession.

10. Access to a lawyer in criminal proceedings. 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.
11. IT law. In September 2012 the CCBE adopted its position on the data protection reform package proposed by the European Commission and consisting of: a General Data Protection Regulation (replacing Directive 95/46/EC) setting out a general EU framework for data protection; and a Directive (replacing Framework Decision 2008/977/JHA) setting out rules on the protection of personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences and related judicial activities.

XV. Corollary. A good lawyer

Vir bonus, disceptandi peritus, qui non solum scientia et omnia facultate dicendi perfectus, sed moribus

(a good man, expert in deciding the dispute, who not only is said to be perfect in knowledge and all the faculties but in his behavior)

Quintilian

I would like to take this opportunity to encourage lawyers to contribute to the betterment of this world.

Good lawyers are always essential particularly in the current world society. *True* -John W. Davis, the founder of Davis Polk and president of the New York City Bar Association, said *once-we build no bridges. We raise no towers. We construct no engines. We paint no pictures ... There is little of all that we do which the eye of man can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men's burdens and by our efforts we make possible the peaceful life of men in a peaceful state.*

Too often the ideal model that law schools, bars and firms put before the student and young lawyer is the lawyer functionally and worldly successful, if not the lawyer shark, the lawyer hired gun that adapts to whatever requirements of the client, the lawyer who fights to annihilates the adversary. In other words, the lawyer gladiator, far from the lawyer solution-finder or peacemaker. The popular view is that lawyers are cut-throat competitors taking the duty of zealous advocacy to the extreme, heedless of the cost to others or to society as a whole. Who, as hired *condottieri*, are prepared to defend any cause depending on the salary.

A good lawyer is a good man, a virtuous man, an honorable man, benevolent, kind, patient and loving. A good lawyer is a peacemaker, who believes that the best litigation is the one that is avoided, who has the courage to say no when his conscience so demands. The one who exhibits goodness and correctness of character and behavior, who loves others and treats them as he would like to be treated an agent of goodness by working for the well-being of his/her clients and society in general, who refuses simple hedonist happiness and seeks happiness in the

development of his responsibilities. A lawyer, pursuant to Roscoe Pound, follows a calling for the public service.

Our present world is still an unjust, violent and selfish world, where one third of its population are living in poverty, where social order fosters inequality and ignores the need for human freedom, where too often the ruling law supports the will of the victors or the powerful²¹.

Lawyers must contribute to globalization with the values of justice, peace and equality. We are six million lawyers in the world. All of us, in different times, places, and languages, have sworn to defend these values. If all of us could unite and get together, we would make the world a better place and would be proud to be lawyers.

²¹ R. Mullerat, "A good lawyer. A philosophical reflection on the practice of law", IBA