

#91 MAR- APR 2021

# CCBE-INFO

## Newsletter



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# CCBE March Standing Committee

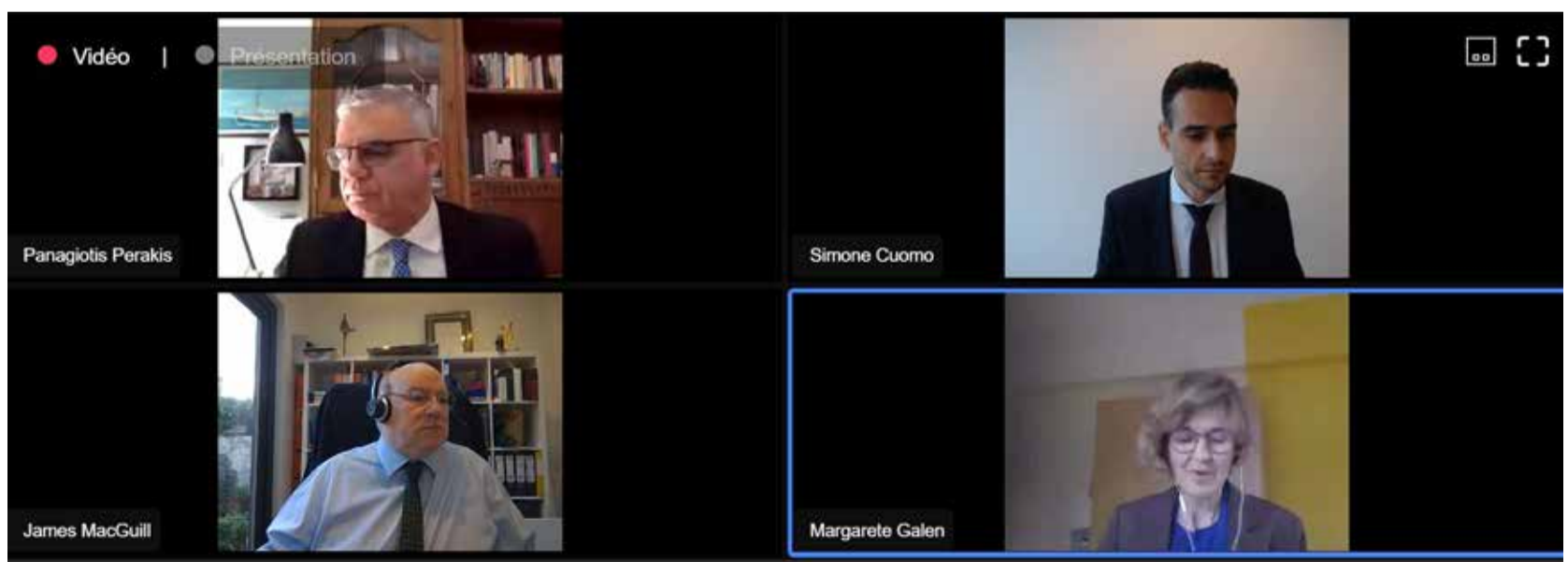
The CCBE held an online Standing Committee on 26 March during which Anabela Pedrosa, the Portuguese Secretary of State for Justice, gave a keynote speech on the digitalisation of Justice in the EU.



*Anabela Pedrosa, the Portuguese Secretary of State for Justice*

After explaining the importance and challenges of digitisation in today's world and the context of pandemic, Anabela Pedrosa recalled that the joint work of all justice actors, such as judges and lawyers, is fundamental in our democratic systems. The Secretary of State presented the programme of the Portuguese Presidency of the Council of the European Union in the field of justice and digitalisation. She emphasised the objective of promoting resilience, efficiency and innovation of the judicial system, placing people at its centre. She highlighted the common objectives of the CCBE and the Portuguese Presidency, in particular in the field of access to justice and protection of the rule of law. Anabela Pedrosa explained that a priority of the Portuguese Presidency is to put people at the centre of the digitalisation of justice. In addition, the Presidency will continue to promote technological cohesion and the strengthening of the interoperability of national systems, especially through the negotiations on the e-CODEX

system. In order to achieve the objective of "Justice for all", Anabela Pedrosa concluded that one of the major challenges of digitalisation is to take advantage of technological opportunities, while leaving no one behind, adopting a vision that goes beyond immediacy, helping to guarantee dignity and opportunities for all.



During the Standing Committee, the following position papers were adopted :

## CCBE comments on the Communication on the Digitalisation of Justice in the EU

[The CCBE adopted its comments on this Communication](#) which was presented by the European Commission in December 2020. The CCBE calls for the effective application of the eIDAS regulation, as many national authorities refuse to verify electronic signatures from another Member State. In order to provide EU-wide legal certainty, the CCBE points out the necessity to have EU-wide minimum standards to ensure that national e-justice systems are able to guarantee rights to a fair trial (structured monitoring of national

e-justice systems, development of a process to test national e-justice systems). Regarding the use of Artificial Intelligence in the Justice field, the CCBE stresses the need to uphold minimum safeguards and principles to counter the potential risks and biases (identification of the use of AI; non delegation of the judge's decision-making power; the possibility to verify the data input and reasoning of the AI tool; the possibility to discuss and contest AI outcomes; the neutrality and objectivity of AI tools). Regarding the use of videoconferencing, the

CCBE calls to develop EU mandatory minimum standards as to the technical arrangements that should be in place for the use of videoconferencing to ensure as much as possible a true-to-life hearing experience including full communication/interaction of all the parties to the procedure with the examined person. Such standards should also ensure protection of professional secrecy and legal professional privilege during the videoconferencing session.

## CCBE Position paper on the e-CODEX proposal

The CCBE adopted its [position paper on the proposal for a Regulation on a computerised system for communication in cross-border civil and criminal proceedings \(e-CODEX system\) and amending Regulation \(EU\) 2018/1726 \(the "e-CODEX proposal"\)](#). The CCBE, as a member of the current managing consortium of e-CODEX, strongly welcomes this proposal which establishes a legal basis of the e-CODEX system and entrusts its operational management to eu-LISA. In its paper, the CCBE makes comments regarding the operating conditions of e-CODEX access points, stressing that the proposal does not contain clear and concrete provisions regarding the operating conditions of access points. Also, it does not provide for the financing conditions of entities operating an e-CODEX access point. Furthermore, the CCBE welcomes the involvement of legal professions and stakeholders in the governance and management of the system. However, the proposal needs to be clarified regarding the conditions and the effectiveness of such necessary involvement. Moreover, the CCBE asks for clarifications on how the proposed

governance structure of e-CODEX will effectively ensure the independence of the judiciary in practice. Indeed, the regulation might need stronger requirements to ensure this principle. Finally, the CCBE considers that the provisions of the proposal are not adequate when it comes to the protection of fundamental rights. Explicit references should therefore be included as regards the applicability of the Charter of fundamental rights of the EU.



## CCBE position paper on the Digital Services Act (DSA) and the Digital Markets Acts (DMA)

Both the DSA and the DMA were presented by the European Commission in December 2020. Some aspects of the DSA are of particular interest to lawyers, such as the definition of “online illegal content” which can also include unauthorised practice of law. Also, according to the proposal, Bars can be considered as “trusted flaggers”. Regarding the implementation of alternative dispute resolution mechanisms, the DSA should provide for more developed conditions of clear and fair rules of procedures and should not deprive the parties to be represented or assisted by a lawyer. Furthermore, the CCBE stresses that professional secrecy and the protection of rights to a fair trial should be effectively ensured in the procedures set up by the proposal before the national digital coordinators and the Commission. The CCBE considers that the same guarantees should apply to all intermediary service providers, whether they are small or very large online platforms, and regardless of whether the procedure is conducted by national authorities or by the Commission. Regarding the DMA, the CCBE points out that the proposal should provide for the Commission to ensure a fair and impartial procedure before taking any final decision, including the right to be heard of the persons concerned, and the right to have access to the file, while respecting confidentiality, professional secrecy and legal professional privilege, as well as the obligation to give meaningful reasons for the decisions.

More information on the CCBE position paper available [here](#).

## CCBE Contribution for the Rule of Law Report 2021

This [contribution](#) was adopted in response to the invitation of the European Commission and the public consultation that was launched. In its submission, the CCBE highlights the most important rule of law developments and concerns involving the profession of lawyer which were identified by its members, and calls for the recognition of independence of

lawyers and Bars as an indispensable component of the independence of justice systems and of the rule of law. In addition, the CCBE referred to its [CCBE statement on the 2020 Rule of Law Report which was published in December 2020](#) after intensive internal discussions and exchanges following the publication of the first annual Rule of Law Report.



## CCBE comments on the European Judicial Training Strategy

These [comments](#) were adopted following the [Communication of the Commission 'Ensuring justice in the EU – a European judicial training strategy for 2021-2024'](#) which was published on 2 December 2020. The CCBE has always promoted the high-quality training for lawyers which is even underlined in the CCBE Code of Conduct. Therefore, the CCBE welcomed the European Judicial Training strategy to guarantee the political commitment and to draw the attention to the importance of a regular professional development of justice professionals, including lawyers. The CCBE calls for adequate EU funding to be made available for the training of lawyers in order to ensure equal access to training opportunities for all legal professionals. The ambitious objective to train 15% of lawyers by 2024 on EU law-related matters is strongly needed, but this can only be achieved if it is accompanied with appropriate resources and appropriate procedures to obtain these resources. In its comments, the CCBE also refers to the difficulty of collecting data on the number of trained lawyers for the annual report.

# High-Level Conference on e-Justice

The CCBE President, Margarete von Galen, addressed the issue of the digitalisation of Justice in Europe and the importance of the role of lawyers at the High-Level Conference "For a People-centred e-Justice" organised under the Portuguese Presidency of the Council of the EU. She stressed that digitalisation efforts should stay focused on improving the quality of justice systems and are not only introduced to achieve efficiency gains or cost savings. She also highlighted the importance of structural dialogue and collaboration among all justice stakeholders, including lawyers. For this purpose, she proposed the establishment of a kind of High-Level Expert Group on the digitalisation of justice and the use of AI in justice as advisory body to the European Commission.

Read her speech [here](#).

HIGH LEVEL CONFERENCE  
For a People-centred  
**e-Justice**

27th of April

**[SPEAKER]**  
**Margarete von Galen**  
President of the Council of Bars  
and Law Societies of Europe,  
Germany

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# Meeting with the Chair of European Parliament Committee on Civil Liberties, Justice and Home Affairs



*Juan Fernando López Aguilar,  
Chair of the European Parliament  
Committee on Civil Liberties,  
Justice and Home Affairs*

The CCBE President, Margarete von Galen, the First Vice-President, James MacGuill and the Secretary-General, Simone Cuomo, had an online meeting on 21 April with Juan Fernando López Aguilar, the Chair of the European Parliament Committee on Civil Liberties, Justice and Home Affairs (the LIBE Committee). They had a fruitful exchange on several topics including Europol,

e-Evidence, the European Arrest Warrant, migration/asylum and the rule of law, in particular in relation to the independence of lawyers and Bars. The CCBE looks forward to continuing the collaboration and to sharing the CCBE's suggestions and positions regarding several important files that the LIBE Committee is handling.

# CCBE workshop on available EU funds for Bars and lawyers

On 9 March 2021, a CCBE workshop took place on available EU funds for Bars and lawyers which gathered more than 100 participants from different national and local Bars. During this event, several interesting presentations were provided by the representatives of the European Commission, namely about the [EU Recovery and Resilience Facility \(RRF\)](#) (Communication of the Commission 'Ensuring justice in the EU – a European judicial training strategy for 2021-2024'), which is the key financial support instrument for various national reform programmes, including measures regarding the digitalisation of justice systems both in the national and cross-border context. The presentations also covered the [Justice](#) and the [Citizenship, Equality, Rights and Values \(CERV\)](#) programmes, as well as [open calls](#) under the Justice program. The full recording of the workshop as well as presentations provided are available on the [CCBE website](#).

Following this successful workshop, a second workshop was organised on 23 March 2021 to have an internal exchange of experience regarding the acquisition of EU

funds and to provide the opportunity for the members of the CCBE to exchange their ideas regarding the open calls for proposals for EU funds, including for the training of lawyers. During this workshop, presentations were made by the General Council of the Spanish Bars and its Foundation on their experience in applying for EU funds, as well as the European Lawyers Foundation. Future ideas were discussed for the calls of proposals for the training of justice professionals.



# CCBE/EWLA Webinar on Gender and the legal profession



On 8 March 2021, the CCBE was delighted to host an event, together with the European Women Lawyers Association (EWLA), on the occasion of International Women's Day. The event focussed on the topic of "Gender and the legal profession – where are we now, where do we want to be and how to get there?" With 80 participants, this event was a great success. The discussions were very lively, engaging and informative. The CCBE was delighted to focus its panel session on "Measures to address Gender imbalance within CCBE national Bars and Law Societies". The EWLA Panel Session focussed on "Legal Technology and the Future of Women in Law". Both panel sessions were followed by open discussions. Following its success, it is hoped that a similar event can be organised again in 2022.

# European Convention on the profession of lawyer

## State of play at the Council of Europe level

On 31 March 2021, the Committee of Ministers of the Council of Europe adopted the [“Feasibility study on a new, binding or non-binding, European legal instrument on the profession of lawyer - Possible added-value and effectiveness”](#) as well as [“the Report of the 95<sup>th</sup> meeting of the European committee on legal co-operation \(CDCJ\) containing the Draft Terms of Reference for a Committee of Experts tasked with drawing up a draft European legal instrument on the profession of lawyer”](#). The decision adopted by the Committee of Ministers is available [here](#). As regards the next steps, the Council of Europe will have to adopt a budget for the committee of experts to start its work in January 2022. A meeting of the CCBE European Convention Working Group will be held in May to prepare the organisation of the future work in this regard.

## 30<sup>th</sup> Anniversary of the UN Basic Principles on the Role of Lawyers

On 13 March 2021, the CCBE President, Margarete von Galen, spoke at the International symposium organised by the Japan Federation of Bar Associations (JFBA), the Union Internationale des Avocats (UIA) and the National Group of Japan, International Association of Penal Law (AIDP) on the 30<sup>th</sup> Anniversary of the adoption of the UN Basic Principles on the Role of Lawyers.

In her [speech](#), she underlined the importance of these UN Basic Principles for the legal profession and more broadly for the rule of law. She then presented the CCBE’s experience with the UN Basic Principles in the implementation of its missions. Finally, she elaborated on the current challenges and how to improve the situation. In particular, she reiterated the CCBE’s strong support for the work carried out by the Council of Europe on a future European Convention on the profession of lawyer and that such a specific binding instrument is needed in order to preserve the independence, integrity of the administration of justice, and the rule of law.



# Migration



On 14 April 2021, the CCBE adopted its positions on two proposals of the New Pact on Migration and Asylum, one on the [amended proposal for a Regulation establishing a common procedure for international protection in the Union](#), and another one on the [Proposal for a Regulation introducing a screening of third country nationals at the external borders](#).

As regards the procedure regulation (APR), the CCBE welcomes its aims to introduce a common asylum procedure based on streamlined and harmonised rules. However, the CCBE expresses concerns regarding the accelerated procedure, the 20% rule and 'safe countries' and the border procedure for which the CCBE underlines the need for effective remedies and judicial protection, notably through effective access to legal assistance throughout the whole procedure.

As regards the screening regulation, although the CCBE welcomes its aim to create a fairer and smoother asylum procedure, the CCBE expresses concerns related to the full respect of fundamental rights and freedoms in the area of international protection, the access to the territory, the time limits, the safeguards for vulnerable persons such as children, and underlines the need to provide the necessary procedural safeguards for this purpose. More specifically, the CCBE expresses concerns related to the lack of access to information, access to independent legal assistance and judicial review.

## Criminal law

### European Public Prosecutor

On 31 March, the CCBE had a very helpful meeting with representatives from the European Public Prosecutor's Office (EPPO). During the meeting, the CCBE indicated that it looks forward to providing feedback from lawyers regarding issues which they encounter with regard to the operations of the EPPO. The exchange was very helpful and the CCBE looks forward to future exchanges with the EPPO. For many years the CCBE has been following developments regarding the establishment of the EPPO.

In this regard, the CCBE has been in contact with the Commission in which the CCBE has raised issues regarding the role of the defence, and related issues.





## Presumption of Innocence

In March 2021 the Fundamental Rights Agency (FRA) published a [Presumption of Innocence Report](#). The CCBE was delighted to have a number of exchanges with the FRA during the preparation of the Report. On 31 March 2021, the European Commission adopted a Report on the implementation of the Presumption of Innocence Directive and the right to be present at the trial in criminal proceedings. The Commission believes that, overall, the Directive has provided EU added value by raising the level of protection of citizens involved in criminal proceedings, especially in some Member States where certain aspects of

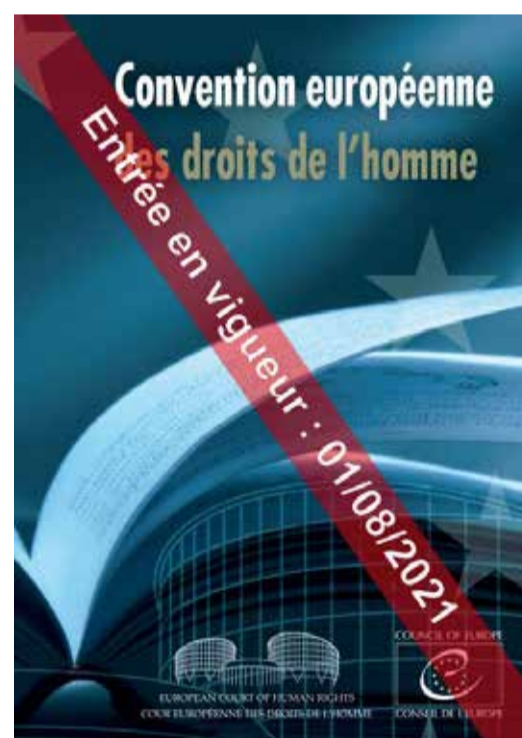
the presumption of innocence were not enshrined in national legislation. However, this report highlights that there are still difficulties relating to key provisions of the Directive in some Member States. This is particularly true as regards the scope of the national measures implementing the Directive, and the transposition of the Directive's provisions on the prohibition of public references to guilt and on the right not to incriminate oneself. The Commission will, as a matter of priority, continue pursuing the infringement cases opened for lack of full transposition of the Directive. The CCBE will be having an exchange with the Commission in April in order to discuss the Commission findings.

# Permanent delegation to the European Court of Human Rights

## Entry into force of Protocol No. 15 to the European Convention on Human Rights

On 21 April 2021, Italy deposited its instrument of ratification of Protocol No. 15 amending the European Convention on Human Rights. This ratification will trigger the entry into force of this Protocol in respect of all the Council of Europe member States on 1 August 2021. One of the consequences of the entry into force of Protocol 15 will be the reduction of the time limit for lodging an application with the European Court on Human Rights from 6 to 4 months. Victims of human rights violations will therefore have to contact their lawyer as soon as possible.

More information available [here](#).



## Reform of the ECHR Machinery

As a follow-up to the work of the CCBE's Permanent Delegation to the ECtHR (PD STRAS) on the Reform of the ECHR Machinery, the Chair of PD STRAS, Piers Gardner, participated in the second Council of Europe's meeting of the Drafting Group on enhancing the national implementation of the system of the European Convention on Human Rights (DH-SYSC-V) (from 29 to 31 March 2021) and in the meeting of the Drafting Group on effective processing and resolution of cases relating to inter-state disputes (DH-SYSC-IV) (from 14 to 16 April 2021).

All future and past work of PD STRAS in this regard is available [here](#).

# Human Rights

## International Memorial Event for Ebru Timtik

On 5 April 2021, on the occasion of the Lawyers' Day in Turkey, the President of CCBE, Margarete von Galen, intervened as one of the keynote speakers at the International Memorial Event for Ebru Timtik: A life dedicated to the struggle, organised by the Progressive Lawyers Association (Çağdaş Hukukçular Derneği). This event gathered the international legal community together to commemorate Ebru Timtik who passed away after a 238-days hunger strike with the demand of a fair trial for all people who are suffering under the ongoing injustice in Turkey. In November 2020, the CCBE had granted a posthumous Human Rights Award to Ebru Timtik.

The CCBE's President full speech is available [here](#).



Ebru Timtik

## Human Rights and Environment

On 27 April 2021, the Chair of CCBE's Human Rights Committee, Stefan von Raumer, participated in a workshop on the topic "Environment, Human Rights and Business: a framework for addressing environmental protection challenges" organised by the German Chairmanship of the Committee of Ministers, in cooperation with the Council of Europe Steering Committee for Human Rights. This event took place just before the 1st meeting of the Drafting Group on Human Rights and Environment on 28-30 April 2021, in which the Chair of CCBE's Human Rights Committee, Stefan von Raumer participated as an observer for the CCBE.

More information [here](#).

## Defence of the defenders

In March and April 2021, the CCBE sent 18 letters and joined several initiatives in support of endangered lawyers in Bahrain, Belarus, China, Colombia, Egypt, Myanmar, Philippines, Tajikistan, Thailand, Turkey and Venezuela.

All the CCBE letters of support to endangered lawyers and other joint initiatives can be consulted on the [CCBE Human Rights portal "Defence of the defenders"](#).

**The CCBE is particularly concerned over the following situations:**

**Belarus:**

Disbarment of lawyers Mikhail Kiryluk, Konstantsin Mikhel, Maksim Konan, Siarhej Zikratski and Lyudmila Kazak. The latter, after having her licence terminated, was arrested and sentenced.

**China:**

Harassment of lawyer Jiang Tianyong, continued detention of lawyers Li Yuhan and Chang Weiping and disbarment of lawyer Ren Quanniu and disbandment of his law firm.

**Venezuela:**

Harassment of lawyer Raquel Sánchez.

**Tajikistan:**

Detention of lawyer Abdulmajid Rizoiev.

**Myanmar:**

The current persecution of lawyers in Myanmar following the military coup. Many lawyers have been arrested, forcing others to hide to avoid being under arrest.

**Colombia:**

Death threat against lawyer Sebastián Escobar Uribe

**Turkey:**

Harassment of lawyer Öztürk Türkdöğän.

**Thailand:**

Disbarment proceedings against lawyer Anon Nampha who is a member of the Thai Lawyers for Human Rights.

**Philippines:**

Attempted murder of lawyer Angelo Karlo Guillen.

**Egypt:**

Continued detention of lawyers Ezzat Ghoneim and Haytham Mohammadein and continued detention and deterioration of health condition of lawyer Hoda Abdelmoniem. Both Haytham Mohammadein and Hoda Abdelmoniem have been granted the CCBE Human Rights Award 2020.

**Bahrain:**

Suspension of lawyer Abdullah Al-Shamlawi



# Permanent Delegation to the Court of Justice and the General Court and the EFTA Court

In January, the Court of Justice of the European Free Trade Association States (EFTA Court) commenced a Consultation on the "possible publication of Written Observations in Advisory Opinion Cases". The CCBE submitted a [response to the Consultation](#). In its response the CCBE

is pleased to note that the EFTA Court is considering the possible publication of Written Observations in Advisory Opinion Cases and the CCBE agrees that this is an important step towards greater transparency. The CCBE also raised a number of other points in relation to the Consultation.



**COUR DE JUSTICE  
DES COMMUNAUTÉS  
EUROPÉENNES**

## Company Law

The book "[Modernisation of European Company Law](#)" including the main presentations made during the CCBE conference "Modernisation of European Company Law" on 27 November 2019, has been published. This publication was directed by the CCBE Company Law Committee Chair, Antigoni Alexandropoulou, and includes contributions from various other CCBE experts. The book presents and thoroughly analyses recent legislative developments and topical legal issues in European Company Law, such as the important aspects and challenges in implementing the new Mobility Directive and the Directive on the Digitalisation of Company Law. This publication further explores the future of EU Company Law, in particular regarding sustainable corporate governance, director's duties, letterbox companies, and the possible harmonisation of the rules regulating groups of companies in the EU.

## Agenda

**17 MAY 2021**

G7 Meeting

**21 MAY 2021**

CCBE Online Plenary Session

**14 JUNE 2021**

1<sup>st</sup> edition International Fair Trial Day and the Ebru Timtik Award

**25 JUNE 2021**

CCBE Online Standing Committee

**Council of Bars and Law Societies of Europe**

*The voice of European Lawyers*

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