

"Difficulties to contribute to the establishment of sound legal systems in the countries of the Western Balkan and the European Neighbourhood"

Ladies and gentlemen,

I am here today on behalf of the CCBE, the Council of Bars and Law Societies of Europe. We represent over 700,000 European lawyers through their member bars from the European Union and European Economic Area. We have full members from 31 European countries, and associate or observer members from a further 10 European countries on the eastern borders of the European Union.

One of our aims is to monitor actively the defence of the rule of law, the protection of fundamental human rights and freedoms, including the right of access to justice and protection of the client, and the protection of the democratic values inextricably associated with such rights.

We also of course focus largely on issues which affect the regulation of lawyers. For instance, there is a CCBE Code of Conduct, which governs professional contacts between lawyers across borders within the European Community . The CCBE also has a Charter of Core Principles, which are a set of Europe-wide principles to be adopted by national bars in their own domestic setting.

In short, the CCBE is an officially recognised European organisation that represents and sets the standards for the Bars and Law Societies of Europe – and through them the lawyers of Europe.

In accordance with our philosophy, we are very eager to help the European Commission in strengthening the rule of law in the emerging democracies on the borders of Europe, by contributing with the expertise and experience from the 31 European jurisdictions that we represent. To this end, we have even launched our 'European Rule of Law Projects'. Through this initiative it is our aim to assist the Bars, to strengthen the legal profession - and where there is an interconnection - the judiciary in South Eastern and Eastern Europe.

But, so far, facts have given us the impression that our assistance is not so much wanted by the European Commission as we would want the European Commission to profit from it.

It is not only the Bars from the EU member states that see the need of assisting the Bars in South East and Eastern Europe, but also our Observer Member Bars from the target area have been encouraging us and persuading us that our contribution to strengthening the rule of law in the acceding states is needed. In that light, we have tried to apply for funding from the European Commission - without much success, however. With the current rules in tendering procedures – where expertise seems to be subordinated to other criteria - our organisation can hardly compete with big consulting firms.

The terms of reference make it close to impossible for non profit organisations or a professional organisation such as ours to contribute expertise and knowledge, since the criteria (e.g.

minimum of 3 projects conducted with a value of 2 Million Euro) and process ensure that it is carved up between large consultancies which do match the high criteria and who are specialised in doing projects, but are not necessarily specialised in the substance, and do not necessarily have the rule of law as their core concern.

We have difficulties understanding that an officially recognised European professional organisation with expertise from 31 jurisdictions, including best practice from the New Member States, is not involved in such programmes.

Officials from the European Commission have advised us to partner with big consulting firms in order to get on board such tenders – but as a European professional organisation we are not in all cases that eager to connect our name to big, commercial consulting firms who one day do agriculture projects, the other day water management, and then, when rule of law comes along, do rule of law projects.

Of course, the rules have been made for a reason, principally to avoid abuse of Commission funds. But one should also be careful that good intentions are not undermined by the rules, leaving the true experts out in the cold.

On the rare occasion where our work did match the criteria of one call for proposal, we have applied for a grant. Our aim was to reach out to lawyers in the 7 regions in Turkey, and to create continuing training curricula in the 7 regional Bars in Turkey. The aim was to host 15 lawyers in 6 different EU Member States, and then, based on their experiences gained abroad, to assist them in developing such curricula for the seven regional Bars in Turkey. Based on rules that are not known to us, the Central Financing and Contracting Unit in Ankara has decided that only 6 lawyers can go abroad, to just 2 different jurisdictions – while the explicit aim of the call for proposals was to build civil society dialogue between the European Union and Turkey. We do not understand on the basis of which reasons such a decision was taken, that will as a result diminish the effect of the project. We are in fact concerned that it might not have been substantive reasons that led in this decision.

What is happening in the meantime is that the American Bar Association's Central and Eastern European Law Initiative (ABA CEELI, also known as the American Bar Association Rule of Law Initiative), has been actively involved in promoting the rule of law in various non EU member states in Europe by, among others, working on legal professional development. The annual income of CEELI is around 20 million US dollars from the US government, which allows the organisation to have offices in practically all relevant countries in the region of South Eastern and Eastern Europe. In addition, the fact that all the organisation's rule of law work is concentrated in one body makes the organisation very efficient and effective. We have been told that the European Commission invests a similar amount of money, or maybe even more, on the topic in the region, but we regret to say that the influence of the American Bar Association in the region is bigger than the influence of the European institutions because their contribution is better and more efficiently organised.

We are in fact worried about the balance of influence between Europe and America in the legal systems of the emerging democracies in the region. Our observer members, the beneficiaries,

have on different occasions stated that they do not want the American system do be promoted to such an extent and that they would want more European influence in their legal system.

A good example of this trend is that ABA CEELI in Kosovo recently approached the CCBE with the request to appoint one European expert who could help ABA CEELI in helping the Kosovo Bar Association. We were of course very happy that our American colleagues have approached us, and the work that they do is generally of a very high standard which is helpful to the region in which they work, but we would have preferred a situation where the European Commission had approached us. It seems awkward that an American organization has to approach a European organisation to help lawyers in Europe.

Ladies and gentlemen, I would have loved to share with you today our positive experiences and to tell you a story of success about the European professional organisation of lawyers that is helping its colleagues on the European continent, but reality is different.

The question is now: how can our European organisation become that what the American ABA CEELI has been in Europe?

I think a start would be to begin involving the CCBE in the programming and implementation, or at least the monitoring and evaluation, of the European Commission's programmes that are aimed at the legal profession, the Bars and the rule of law in general in the target area.

We are a European organisation, undertaking policy work on the administration of justice and the rule of law. We have drafted important documents for the legal profession of Europe. As a result, we would be very happy to be of advice in the formulation of Terms of Reference for relevant programmes in the target area. We do not see why, following that, we should not also be involved in the implementation of such programmes, as we are the ones who have contributed to the creation of European standards. Therefore, we know how best to transfer that expertise.

With a view to efficient and effective use of European resources, we would, in short, like to urge the European Commission to use the expertise of our organisation to a maximum. Bearing in mind our role of setting standards for European bars and law societies - and therefore for European lawyers - combined with our practical know-how, we believe that it would be most efficient to involve our expertise in the programming and implementation of activities straight away – not through commercial consultants or non-European organisations first - as the work will in the end have to be done by us anyway, once the beneficiary Bars will have become full members of our organisation upon accession to the European Union.

For this to happen, we believe that there needs to be a thorough review of the way that European funds are administered, at least in our area. The rules now favour large commercial consultancies with no interest or expertise themselves in any particular area, thus excluding the specialist bodies, which may be smaller but which are the ones which have both the interest and the expertise. At best, we are lucky to be hired by the large commercial consultancies on terms which are not always favourable to us (because they have to make enough money to keep themselves); at worst, we are excluded in the ferocious jockeying for position which takes place

among themselves during the bidding process. We hope that this hearing today will launch a process which leads to the system being thoroughly reviewed.