



# REFOTRA project (JUST/JTRA/EJTR/AG/2017, n° 800827)

Recommendations for solutions to facilitate  
the recognition of cross-border training



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# REFOTRA Phase 2 – A system for recognition of cross-border CLE

## I. Introduction

In Phase 1 of the REFOTRA project, a report was drawn up bringing together all the data on continuing legal education (CLE) systems for lawyers in the Member States of the EU and the EEA. The next phase of the project, Phase 2, is dedicated to developing solutions by which a system of recognition, constructed to operate without obstacles or with as few obstacles as possible, can be established to facilitate that CLE undertaken in another Member State is recognised in the home State. This is becoming more important all the time - some bars report that every year more cross-border training is being undertaken, and in an increasing variety of ways.

Once the Phase 2 proposals have been considered by the Standing Committee of the Council and Bars and Law Societies of Europe (CCBE) as project partner, they will be tested by volunteer bars under Phase 3 of the project. This paper, therefore, aims to provide the details on which Phase 3 should be carried out.

Although Phase 3, according to initial planning, is due formally to begin on 1 November 2019, it is proposed to start the testing phase earlier than that, to take advantage of the months of July and August 2019. That is because it was reported that these are the most popular months for lawyers to undertake cross-border training, and those responsible for the project's implementation did not wish to lose the opportunity of such a relatively significant number of lawyers being missed by the test. At present, the bars participating in the test phase are the following: the Law Society of Ireland, the Consiglio Nazionale Forense (Italy) and the Krajowa Izba Radców Prawnych - The National Bar Council of Attorneys-at-Law (Poland). Other Bars are strongly encouraged to join them at any time, but not later than before the end of 2019.

### Underlying principles of the project

It has been recommended by the Training Committee of the CCBE, which is the body responsible for developing CCBE recommendations on policy relating to training lawyers at EU level, that the principles describing the range and extent of the project should be the following:

- (a) The proposals in this paper, due to be tested on a voluntary basis by bars within Phase 3, fall within the context of an EU-funded project which has no competence to legislate or enforce. As a result, nothing will be imposed on anyone as a result of the project's outcome. The proposals are purely for the purpose of testing under the project, and all participation in the project is voluntary.
- (b) The proposals will not and cannot bind the CCBE or any of its members regarding any decisions taken in the future regarding facilitation of cross-border recognition of CLE. The REFOTRA proposals will merely be possibilities to be tested under Phase 3 of the project. Once Phase 3 is over, the whole project will have to be evaluated and its conclusions considered by the CCBE

Training Committee and the Standing Committee, where they may be accepted or rejected. In other words, this is the beginning of a process of testing what might or might not work, and what might or might not be acceptable, in the future.

- (c) The CCBE has no competence to bind its members regarding their CLE systems, which remain fully within the competence of the national bars. Participation within the testing under Phase 3 is entirely voluntary, as stated, and the CCBE and its member bars and law societies remain free to accept or reject the conclusions reached.

There are various words and initials used for the description of the training covered by the REFOTRA project – for instance, continuing professional development (CPD) and continuing legal education (CLE). Within the project, continuing legal education (CLE) has been used. For the avoidance of doubt about what this means, it aligns exactly with the following definition used previously by the CCBE in its Recommendation on Training Outcomes for European Lawyers<sup>1</sup>:

*'This refers to training which is undergone after the completion of professional training for the purpose of maintaining, perfecting and assuring the quality of the service provided to end users, whether it is obligatory or not. Training for a recognised specialised status and its maintenance is also included here.'*

*In those countries in which additional training or exams are compulsory in order to have a right of audience before superior courts, the training undertaken for that aim shall be considered continuing education.'*

The principles employed throughout the project also correspond to those laid out in the Memorandum on Mutual Recognition of Lawyers' Cross Border Continuing Professional Development dated 16/09/2016, and signed by 43 European bars and law societies<sup>2</sup>. It is hoped that the REFOTRA project might encourage the implementation of this Memorandum.

Although the varied nature of national CLE systems means that they cover a wide variety of activities, the coverage of the project itself extends only to participation in training courses (seminars, conferences, workshops and similar events requiring the participation of several people in one place at one time) undertaken in another Member State. This excludes the application of the project's proposals under Phases 2 and 3 to, for instance, writing articles, e-learning and webinars, or lecturing in another Member State, which would continue to be covered only by the domestic rules applicable to CLE. Of course, a qualifying training course may cover a wide range of subject areas – see the list of more than 30 suggested topics in the Certificate Template attached as Annex A.

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[https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/TRAINING/TR\\_Guides\\_Recommendations/EN\\_TR\\_20071123\\_CCBE\\_Recommendations\\_on\\_Training\\_Outcomes\\_for\\_European\\_Lawyers.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/TRAINING/TR_Guides_Recommendations/EN_TR_20071123_CCBE_Recommendations_on_Training_Outcomes_for_European_Lawyers.pdf)

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[https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/TRAINING/TR\\_Position\\_papers/EN\\_TR\\_20170224\\_Memorandum\\_on\\_Mutual\\_Recognition\\_of\\_Lawyers\\_Cross\\_Border\\_Continuing\\_Professional\\_Development.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/TRAINING/TR_Position_papers/EN_TR_20170224_Memorandum_on_Mutual_Recognition_of_Lawyers_Cross_Border_Continuing_Professional_Development.pdf)

## II. The basic principles of the proposed system

Following discussion in meetings of the REFOTRA core group and the CCBE Training Committee, the following principles have been agreed for the development of the system:

### 1 Mutual trust and recognition

It was agreed that the current proposals would be formulated on the basis of mutual trust between the varying EU CLE systems. In other words, the recognition of cross-border training results from mutual **trust between the systems**. As for who is accepting the principle of mutual trust and recognition within the framework of this project, it is the bars which are accepting it in respect of each other's systems, and for the sole purpose of testing out a possible way forward for the purpose of this project.

There was also a discussion at the Training Committee about the extent of recognition to be granted by a participating bar. Three possibilities were canvassed:

- (a) full, meaning that there is voluntary recognition regardless of the criteria for CLE in the other system, if the criteria of the home bar are fulfilled
- (b) limited, meaning that recognition would apply only to those systems where the bar provides the training or certifies - or validates or authorises - the training provider
- (c) hybrid, meaning that elements of both options should be incorporated, effectively allowing a bar to opt into a limited system by agreeing to its terms, and so presumably becoming a full system of recognition if all bars eventually opt into it

The most popular option at the Training Committee was full recognition, with a fall-back possibility to a hybrid system if the first choice proved impossible. Accordingly, this paper proceeds on the basis of a full system of recognition.

An important context for acceptance of this principle was that trust in the other jurisdiction's system did not mean that the home bar of the lawyer who had undertaken the training would abandon the application of its national rules in assessing the training. This is important because the report of all systems undertaken in Phase 1 showed a wide variety of rules. In other words, the home bar could still say that the training did not fulfil requirements if it was in the wrong subject, was not long enough, was not in accordance with permitted methodology etc. Trust does not mean abandonment of national rules on appropriateness of the training undertaken, only that the training has been undertaken and is now to be assessed under the national rules.

### 2 Certificate template for training undertaken

The next principle agreed at the CCBE Training Committee was that the proposals should be based on the issue of a certificate template by the training provider, to facilitate the recognition of the training undertaken. There was no dissension from this view, even from jurisdictions whose systems do not require the issue of a certificate for CLE taken domestically by their lawyers.

Given that a full system of trust and recognition was recommended, it will have to be the relevant training provider (which has provided the training undertaken by the lawyer) which will issue the certificate. This is because any procedure for the issuing of certificates needs to take account of the different systems in existence, and in particular of the following possibilities:

- a) the training may not be carried out by the bar;
- b) the bar may not even be aware that the training is offered by the training provider;
- c) the bar may not be aware that the lawyer has participated in such training.

In other words, it is for the bar only to choose whether its jurisdiction should participate in Phase 3 of the project or not. The training providers of those Member States which want to participate will then be invited to issue a certificate using the proposed certificate template.

#### Information in the certificate

Following the discussion at the Training Committee, where it was agreed that the information on the certificate template should be sufficiently comprehensive for all bars to obtain the data they need from it without having to go back to the lawyer or the training provider for more, it is clear that the certificate should contain data which will satisfy the bar with the most information needs. In that way, all bars will have the information they want.

Presumably, in the case of lawyers from bars which have no requirement of a certificate to be produced, the certificate would not have to be issued for those lawyers at all.

Accordingly, it is proposed that the following information should appear on the certificates:

- a) name of the participating lawyer
- b) name of the course
- c) date of the course
- d) the subject matter covered by the course
- e) the length of the course
- f) number of points/credits or hours awarded
- g) venue of course
- h) the language in which the course was held
- i) the methodology of the training e.g. if it was face-to-face, a webinar or by e-learning\*
- j) by whom the course is recognised (if it is recognised – for instance, by a bar or other competent regulatory authority)

- k) contact details of the recognising body
- l) the name and contact details of the training provider
- m) by whom the training provider is recognised (if it is recognised – for instance, by a bar or other competent regulatory authority)
- n) contact details of the recognising body
- o) whether the training course is recognised under the host bar’s CLE system

(\*Webinars and e-learning are excluded from the Phase 3 test)

Some bars would like to know whether there is a Memorandum of Understanding (MoU) with any other Bar in relation to recognition of the course, with maybe a copy of the MoU being attached to the certificate. However, it may not be a problem for a bar to answer such a question since the information is within its possession, but it is likely to be impossible for a private training provider to know the relevant information without further research. It is therefore not included in the above list because it is assumed that the recipient bar which needs the information for its own lawyer will know anyway whether it has an MoU with the jurisdiction where the training took place.

Accordingly, a model template for the purpose of Phase 3 of the project is attached at Annex A, based on the principles above, and called the CLE Training Certificate Template.

### 3 Hours and points

Some Member States recognise CLE through hours taken, and others through points/credits, and there will need to be a system to work out how each will translate into the other. There are added complications: some bars work to a 45-minute hour, and some put a ceiling of maximum hours allowed in certain training formats.

There are at least two options for how to deal with these difficulties. One is to leave it to each bar to decide how a point converts to an hour, or a 45-minute hour to a 60-minute hour (or vice versa). Another is to establish an agreed conversion table which bars can use.

The preferred option is that each bar decides on its own conversion system according to its own national rules, and it is therefore proposed that Phase 3 operates in this way.

## III. The procedures necessary for a Phase 3 trial

For the time being, and for the purpose of Phase 3, only a manual system is proposed. In the future, at the time when the outcome of Phase 3 is considered by the Standing Committee, a means could be discussed for the possible future electronic generation of certificates.

## Manual system

The proposed system for Phase 3 is as follows. The information on the CLE Training Certificate Template will be completed by either the lawyer or the training provider, as appropriate. The training provider will have to ensure that the information is correct and then sign the certificate, and give it to the lawyer, who will scan it and send it by e-mail to his or her home bar for recognition.

In more detail, it will work as follows.

## Participants in Phase 3

There will be three parties within Phase 3:

- (1) the bars which run CLE systems, which will be approached on a voluntary basis by the participating lawyer for recognition of the cross-border training through the certificate template provided to them;
- (2) the lawyers who participate in cross-border training courses, who will need to send the certificate template to their home bars; and
- (3) the CLE training course providers, which will be invited to use the certificate template when issuing the certificate.

Each will need to be thoroughly but clearly briefed on how the test pilot will work, in order to be ready for it (communication). Each will then need to run the system for a period of months (testing). Finally, each will then need to evaluate how the testing went (evaluation). Each of these three steps is described in more detail below.

It will be easy to identify the participating bars, since they will be members of the REFOTRA core project team (Ireland, Italy, Poland) plus other member bars of the CCBE which volunteer to participate. Regarding the lawyers, the participating bars will have to notify either all of their lawyers or a group of relevant lawyers who might participate in the Phase 3 testing of recognition of cross-border training. The participating bars will also have to identify the training providers which will participate – it need not be all which offer courses in their jurisdiction but can be some selected for the purpose of Phase 3 alone.

## Communication

A brief will need to be prepared for the three parties mentioned above – bars, lawyers and training providers, all of whom will be participating in Phase 3 – to ensure that they understand the content of the project, and what their role will be in Phase 3.

Regarding language, the certificate template being available in all official EU languages would obviously ease the process considerably. However, as mentioned before, Phase 3 is merely a pilot phase under an EU-funded project. The project budget has no resources for translation, and English is the language of the project. Therefore, for the purposes of the project's Phase 3, all the documentation will be in English. This will be made clear to all participants in the testing phase. Of course, the CLE training course in question may be in any language, and is not affected by this requirement.



As for timing, the communication should begin as soon as the briefing documentation has been agreed and the participants in Phase 3 identified. It is recognised that each participating bar will need some time to communicate the information to the three groups, and so it should begin soon. Phase 3 formally begins once this document has been approved by the CCBE, and lasts until the end of May 2020.

## Testing

As explained above, the testing itself will be rather simple. There will be a certificate template (see Annex A), which will be issued to the three categories of participants (bars, lawyers and the training providers) to be sure that it is widely available and widely known. At the end of the cross-border training course, either the training provider will spontaneously issue the cross-border lawyer with the template duly filled in and signed, or the lawyer will submit the template to the training provider for completion and signature. There is also the possibility that the lawyer pre-completes the information him- or herself, and submits that version to the training provider for signature. Once signed, the lawyer will send a scan of the certificate to the home bar for the purpose of recognition.

## Evaluation

Built into the brief which will be sent to all three parties at the outset will be a process of evaluation. This is because it is pointless to conduct a test without evaluating it afterwards, and it will be a better evaluation if the parties are aware of what will be evaluated in advance. Therefore, a number of simple questions will be included in the brief, which the participating parties will be asked to answer by the end of the process. The results of this evaluation will be used to prepare the final outcome and report of the REFOTRA project.

## IV. Competition considerations

Ever since the OTOC case (Case C-1/12, *Ordem dos Técnicos Oficiais de Contas v Autoridade da Concorrência*)<sup>3</sup>, it has been clear that competition law can apply to the rules drawn up by professional bodies in relation to compulsory training. The Court found in that case:

‘A regulation which puts into place a system of compulsory training for chartered accountants in order to guarantee the quality of the services offered by them, such as the Training Credits Regulation, adopted by a professional association such as the Ordem dos Técnicos Oficiais de Contas, constitutes a restriction on competition prohibited by Article 101 TFEU to the extent, which it is for the referring court to ascertain, that it eliminates competition on a substantial part of the relevant market, to the benefit of that professional association, and that it imposes, on the other part of that market, discriminatory conditions to the detriment of competitors of that professional association.’

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<http://curia.europa.eu/juris/document/document.jsf?jsessionid=EDE35265B9AFAA9201B007AEEB8A7F97?text=&docid=134368&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2473194>

As a result, it is important that the final outcome of this project is not to endorse a system which will breach competition law. When these proposals are further developed, expert competition law advice will be sought.

## IV. Conclusion

It is recommended that the Phase 3 testing under the REFOTRA project takes place in accordance with the principles and procedures contained in this paper and its annexes.

<b>CLE TRAINING CERTIFICATE TEMPLATE</b>
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This template has been developed as a trial under the EU-funded REFOTRA project (JUST/JTRA/EJTR/AG/2017, no 800827) in order to test a system of recognition to facilitate that continuing legal education (CLE) undertaken by a lawyer in another Member State is recognised in the lawyer's home State.

The information on this template therefore needs to be completed in order that the lawyer who has participated in the training can submit the template to his or her home bar for the purpose of recognition of the training under the conditions of the home bar's CLE system. A guide to which specific questions the lawyer's home bar needs for the purpose of recognition can be found below.

1. Name of the participating lawyer .....
2. Name of the course .....
3. Date of the course .....
4. The subject matter covered by the course<sup>4</sup> .....
5. The length of the course (where multiple topics of subject matter are covered, please indicate length of each segment) .....
6. Number of points/credits or hours awarded .....
7. Venue of course .....
8. The language in which the course was held .....
9. The methodology of the training e.g. face-to-face, a webinar or by e-learning<sup>5</sup> .....
10. By whom the course is recognised (if it is recognised – for instance, by a bar or other competent regulatory authority) .....
11. Contact details of the recognising body .....
12. The name and contact details of the training provider .....
13. By whom the training provider is recognised (if it is recognised – for instance, by a bar or other competent regulatory authority) .....
14. Contact details of the recognising body .....

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<sup>4</sup> See next page for categories to be used

<sup>5</sup> Webinars and e-learning are excluded from the Phase 3 test

15. Whether the training course is recognised under the host bar's CLE system .....

Name of person (authorised on behalf of training provider) .....

Position .....

Signature .....

Date .....

**INFORMATION REQUIRED FOR COMPLETION OF THE TEMPLATE**

**Subject matter covered by the course**

Please use the categories below to answer Question 4 above.

- |                                      |   |
|--------------------------------------|---|
| (1) EU law                           | (19) Restorative justice                |
| (2) Procedural law                   | (20) Fundamental rights                 |
| (3) Civil law                        | (21) Rule of law                        |
| (4) Bankruptcy and insolvency law    | (22) Rights of the child                |
| (5) Commercial law                   | (23) Gender equality                    |
| (6) Consumer law                     | (24) Public law                         |
| (7) Family and child law             | (25) Immigration and asylum law         |
| (8) Personal injury, damage to goods | (26) Employment law                     |
| (9) Property law                     | (27) Environmental law                  |
| (10) Social security law             | (28) Traffic and transport law          |
| (11) Succession law                  | (29) Intellectual property              |
| (12) Tax law                         | (30) Information technology (IT) law    |
| (13) Criminal law                    | (31) Legal language                     |
| (14) Mutual recognition              | (32) Deontology                         |
| (15) Organised crime                 | (33) Legal skills                       |
| (16) Cybercrime                      | (34) Litigation, mediation, arbitration |
| (17) Anti-radicalisation             | (35) Other                              |
| (18) Victims' rights                 |   |

**FOR ANY QUESTIONS ABOUT THIS FORM OR FURTHER INFORMATION ABOUT THE REFOTRA PROJECT,  
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