



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

Report on the evaluation of solutions
Phase 3 evaluation report



This project is financed with the support of the Justice Programme of the European Union. The contents of this publication are the sole responsibility of the project's partners and can in no way be taken to reflect the views of the European Commission.

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REFOTRA Phase 3 evaluation report

I. Introduction

1. The REFOTRA project, co-funded by the Justice Programme of the EU and implemented by the European Lawyers Foundation (ELF) and the Council of Bars and Law Societies of Europe (CCBE), has been running since July 2018. Its aim is to understand how continuing legal education (CLE) works in the Member States, and to develop a possible solution for the easier recognition of CLE undertaken cross-border. It is divided into 3 phases:

- In Phase 1 of the REFOTRA project, a report was drawn up bringing together all the data on CLE systems for lawyers in the Member States of the EU and the EEA¹. This was approved by the CCBE in March 2019 and submitted to the European Commission (EC) later that month.
- The next phase of the project, Phase 2, was dedicated to developing solutions to facilitate the recognition of CLE undertaken in another Member State by the lawyer's home State. The Phase 2 proposals were approved by the CCBE, and submitted to the EC, in July 2019, which meant that they could then be tested by volunteer bars under Phase 3 of the project.²
- Phase 3, which is just ending, is the test phase of the proposals agreed under Phase 2. In accordance with the Grant agreement signed with the EC, this report provides an evaluation of Phase 3 with a proposal based on the experience of Phase 3 in its conclusion.

II. Structure of Phase 3

2. The structure is divided into the following elements, each of which will be separately explained:

- (A) participants
- (B) time-line
- (C) format

(A) Participants in the test

3. According to the Grant agreement signed with the EC, at least the three bars participating throughout the project in the core project team would participate in the test phase. These bars are:

- Ireland - Law Society of Ireland

¹ <https://elf-fae.eu/wp-content/uploads/2019/07/Assessment-report-on-the-situation-in-EU-and-EEA-Member-States-regarding-recognition-of-foreign-training.pdf>

² <https://elf-fae.eu/wp-content/uploads/2019/07/REFOTRA-Recommendations-for-solutions-to-facilitate-the-recognition-of-cross-border-training.pdf>

- Italy - Consiglio Nazionale Forense (CNF)
- Poland - Krajowa Izba Radców Prawnych - The National Bar Council of Attorneys-at-Law (KIRP)

4. An invitation went out to other bars to join the test as well, and there was a positive response from the following:

- Belgium - Barreau de Bruxelles (Ordre Français) – French-speaking Bar of Brussels
- Finland - Finnish Bar Association
- Germany
 - Rechtsanwaltskammer Frankfurt am Main – Frankfurt Bar
 - Rechtsanwaltskammer München – Munich Bar
 - Rechtsanwaltskammer Köln – Cologne Bar
- United Kingdom
 - Faculty of Advocates, Scotland
 - Law Society of England and Wales
- International Bar Association

5. The International Bar Association was not a participant like the others. It is neither a bar, nor European. However, it organises a number of European conferences, and agreed to issue the template certificate to any lawyer delegate who asked for it during the period of the test.

6. Similarly, the International Association of Young Lawyers (AIJA) agreed to issue the template certificate to European lawyer delegates at its annual congress in Rome at the beginning of September 2019.

(B) Time-line of the test

7. Under the original timeline of the project, Phase 3 was due formally to begin on 1 November 2019. However, the testing phase started earlier than that for two reasons:

- Phase 2 was concluded earlier than expected; and
- 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 run.)

8. As a result, briefing materials were sent to the participating bars at the end of July 2019, divided into separate briefings for participating bars,³ training providers⁴ and lawyers themselves.⁵

9. The test needed to end by the end of April 2020 to enable this evaluation to take place.

(C) Format of the test

10. Under Phase 2, it was agreed that the system to be tested would be based on the use of the CLE Training Certificate Template which had been developed under Phase 2⁶. Participants in the test were asked to ensure that a certificate template was completed for each training course undertaken in another Member State, and signed by the training provider. The lawyer would then scan it and send it to his or her home bar for the purpose of recognition for the lawyer's CLE record.

11. The participating bars reported that they had publicised the test through various methods.

12. As the test progressed, it was realised, however, that because of the structure of national CLE systems, certificates would mostly not appear in bar records until after the end of the current CLE cycle, when they would be required to be submitted. These cycles are different in each bar. As a result, there was a danger that it would not be known how many certificate templates had been used by the end of the test period and by the end of the project, which would undermine the test phase almost completely.

13. As a result, the core project team agreed to run a simulated test alongside the real testing system, based on simulated certificates which would be circulated with fake names among the participants. The great majority of participating bars agreed to this simulated test, and circulated simulated test certificates accordingly. The difference between a real certificate template and a simulated one was that the simulated version had 'Test' as a watermark across it and wording at the end making it clear that this test was not based upon any real training having taken place.

14. Accordingly, in the early part of 2020 simulated template certificates were swapped among the participating bars, and were assessed by recognising authorities as if they were real certificates. This enabled lessons to be drawn about how the system might work in practice. A sample copy of a simulated template certificate is attached as Annex 1.

³ <https://elf-fae.eu/wp-content/uploads/2019/07/I-Briefing-for-the-home-bars-of-those-lawyers-who-undertake-CLE-in-another-Member-State.pdf>

⁴ <https://elf-fae.eu/wp-content/uploads/2019/07/III-Briefing-for-CLE-training-course-providers.pdf>

⁵ <https://elf-fae.eu/wp-content/uploads/2019/07/II-Briefing-for-lawyers-who-participate-in-cross-border-training-courses.pdf>

⁶ <https://elf-fae.eu/refotra/>

III. Outcome of Phase 3

15. As mentioned above, there were two kinds of test undertaken during Phase 3 – real testing and simulated testing (because of concerns that not sufficient real template certificates would be returned within the short period during which the test ran).

16. The numbers of certificates used under either test format, by whom sent and received, are recorded below, as well as the feedback received.

17. Germany has special circumstances in relation to its own CLE requirements, which are worth noting regarding the participation of the three German bars and their responses. One of the participating German bars (Munich) explained the German systems as follows:

There are two different variants of current legal education for lawyers in Germany:

On the one hand every lawyer has a general obligation for legal training and development, but this obligation has not to be proved towards the bar association. It is the own responsibility of every lawyer.

On the other hand there exists an obligation of legal education, which has to be proved towards the bar every year. This regards each lawyer who is certified in a specific field of law. Currently there are 24 specific fields of law, in which a lawyer in Germany can receive a special qualification:

- Administrative law
- Tax law
- Labour law
- Social law
- Family law
- Criminal law
- Insolvency law
- Insurance law
- Medical law
- Rental law
- Traffic law
- Construction and architectural law
- Inheritance law
- Transportation law
- Intellectual Property
- Commercial and corporate law
- Copyright and media law
- Information technology law
- Banking law
- Agricultural law
- International Business law
- Public procurement law
- Migration law
- Sports law

After receiving such a special qualification, a lawyer can, for example, call himself not only a lawyer but lawyer and certified specialist in administrative law, tax law etc. This is very often an important competitive advantage.

We need in Germany different indications in order to recognise a course for a specific field of law. The reason why we need these specifications is the legal regulation in Germany that especially lawyers, who are certified for a certain field of law, have to prove 15 hours (one hour means 60 minutes) of specific legal education every year.

Real template certificates

Italy

1 processed (European Employment Lawyers Association and ERA conference) – no problem experienced in recognition

Simulated template certificates

Ireland -

Received for recognition

1 received from Finnish Bar Association

18. There was feedback on the recognition of this certificate, as follows:

- It appears the attachment to the Certificate sets out that the subject matter is to be only chosen from a selection of 35 specified options. Accordingly, the Certificate references the training as 'EU Law'. Our Scheme states that the topic/subject matter of training is listed on the Certificate (rather than just listing a general category of law). By way of example, under the Irish Scheme, a Certificate would state the topic/subject matter as being 'Requisitions on Title' or 'Easements and Rights of Way', rather than referencing the general category of 'Property Law';
- I also note that the duration is stated to be '30 hours'. Firstly, I should point out that under the Irish Scheme, we only permit a maximum of 7 hours CPD per day, and therefore a maximum of 21 hours CPD could only be claimed for the three days training. I note however the Briefing Paper references that national rules apply to any course undertaken and are to be treated like any other taken under national rules;
- I would also mention that, whilst it is not of relevance in this instance given that the topic is 'EU Law' (to which a 'General CPD' category would most likely apply), if it was a case that a solicitor was claiming the three day course to be a mix of different CPD categories (i.e. part General, part Management, part Regulatory), we would request an agenda for the three days training to determine the breakdown of hours/category(ies). Without an agenda, we would only permit a credit of General hours, unless it was obvious from the topic/subject matter, to fall within a different CPD category.

3 received from CNF

19. There was feedback on the recognition of these certificates, as follows:

- I note the Certificate refers to 3 credits/4 hours which is very helpful given that some jurisdictions award credits, as opposed to hours. However, given that some jurisdictions do equate 45 minutes training to 1 hour CPD, and for the avoidance of any discrepancy or doubt, it may perhaps be helpful if the actual times of training were stated on the Certificate, for example 2pm - 6pm.

In all cases I note that the methods of undertaking the training are detailed as 'practical training', 'round table' or 'front lesson'. Obviously, our Scheme specifically states that Certificates must state the manner in which training is undertaken, for example, group study (three people or more). I note however from the Briefing paper that the coverage of the project only extends to participation in training courses where there are several people, such as seminars, workshops etc. On that basis, I would therefore have no difficulty in accepting the Certificates as are.

3 received from the Law Society of England and Wales

20. There was feedback on the recognition of these certificates as follows:

From the CPD Scheme Units perspective, if the Certificates were provided for the purpose of evidencing compliance, I would have no difficulty in accepting them as they are (once signed by the relevant training provider).

On reviewing the Certificates however, I have just made one or two observations: -

- I note that each of the Certificates detail the overall subject matter but also includes details of the topics covered which is very helpful. It is clear from the Certificates what the appropriate CPD category would be to assign to them if they were provided to us during an audit. However I feel it is worth mentioning that if there is a mix of various topics (which consequently may fall under different CPD categories from our perspective), it would be preferable if each topic had details of the duration listed (for example in the case of the third Certificate which has an overall duration of five hours, if each of the three topics had its duration detailed such as 'Compliance Ethics (1 hour), Financial Sustainability (2 hours) and Anti-Corruption (2 hours)'). This would be of assistance, as the CPD Scheme Unit do request an agenda for training courses where there is a mix of CPD topics/categories, to determine the appropriate breakdown of hours/category(ies);
- Also, I notice that these Certificates refer to 'online training'. My understanding from the Briefing paper was that the coverage of the project was extending to participation in training courses where there are several people, such as seminars, workshops etc. Has this changed over the past number of weeks?

Sent for recognition

6 sent to Cologne Bar

21. There was feedback on the recognition of these and similar Italian certificates, as follows:

- We received certificates from the Law Society of Ireland and the Rome Lawyers Bar, which were quite similar.

I have discussed them with a colleague of mine and we would also need a factsheet about the main contents of the course and the name and profession of the speaker/teacher in order to approve the training. The course titles alone wouldn't be sufficient. But in our view, the factsheet must not necessarily be part of the certificate, but can be. It could be sent either by the provider or by the participant himself (our member who seeks approval).

The Law Society of Ireland mentioned in their certificates that the workshop had been "interactive" which is great "key word" for us. In Germany, lawyers can also fulfil their required legal training in home studies (e.g. reading some legal articles...). But this is only possible for one third of the required training.

6 sent to Frankfurt Bar

22. There was feedback on the recognition of these and the 3 Italian certificates sent, as follows:

- [Member of staff] has received and checked a total of 9 simulated certificates. The certificates contain all necessary information, name, subject, duration and time. We need this information to decide whether we recognize the event as a further training course for a specialist lawyer, for example.

It has been noticed that the certificate for 'X' (email from Law Society of Ireland) the number of hours given is contradictory. In addition, no time was specified for April 25, 2019. Here we would have questions and would ask for a corrected certificate.

6 sent to Munich Bar

We have received three test certificates from Poland, three test certificates from Italy and six test certificates from Ireland. All of them contain the necessary indications for recognition in Germany:

- Name of the training provider
- Name of the participant
- Name of the course
- Subject matter of the course
- The length of the course without break-times

Concerning some courses like “Insolvency law in EU” or “Public authority and Business competition” we see no problems to recognise them for one of the 24 German specific fields of law. It is also important that there is a relation to European and/or German law.

Only if the description on a certificate is too general, there might be problems concerning the assignment for a specific field of law in Germany. However, a general course might be also useful for a German lawyer even though a recognition on one of the 24 German specific fields of law is not possible.

As a whole, we are of the opinion that many of the certificates sent are suitable for a recognition in a specific field of law in Germany. It might be useful to complement a short table of contents of the training course on the certificate. That would make the recognition easier in some cases. An example for a certificate with a short table of contents is attached to this mail.

Finally it is also the responsibility of each lawyer to choose a suitable training course for his specific field of law.

1 sent to Brussels Bar

23. There was feedback from the Brussels Bar to this and the certificates sent from Italy, as follows:

- The programs followed according to the certificates would be recognized automatically here in the Brussels Bar, with or without certificate. Indeed the Brussels Bar does recognize continuous education courses followed abroad (outside of Belgium).

The advantage of the certificate is that it shall be used in case of control of the continuous education to attest that some courses were followed outside of Belgium (for the time being this can prove difficult to evidence).

However, [member of staff] mentioned that there is no mention of a number of points of continuous education granted. Some points or credits should be mentioned on the certificate according to her (here in Belgium 1 hour of education equals to 1 point).

She also has a more general question. Indeed she is wondering who shall be in charge of verifying that the program followed is a serious program or given by a serious organization.

Italy –

Received for recognition

1 received from Finnish Bar Association – no problem in recognition

1 received from Law Society of Ireland

24. There was feedback on the recognition of these certificates, as follows:

- First of all they observe that the system is based on mutual trust: they interpreted it as trust regarding the accreditability of the training event. Every other aspect, as the number of point or credits to assign or as the specific juridical field in which classify the training undertaken, remain a national competence, on the basis of the parameters contained in each national Regulations (please, remember that Italian Law excludes equalisation between credit and time , we have a lot of criteria !).

If the system is based on trust, and aims to be an automatic recognition, it is not appropriate to attach further documentation to the certificate, such as the training programme; it could create confusion.

Consequently they think it's more and more important that the certificate contains all relevant information to permit to national Bars not only recognize the training but also evaluate it (weigh it) according to their own rules.

In this direction, they would like the certificate contains information about: methodology, attendance system, number of people present (short or medium or big group), presence of tutors and so one.

3 received from the Law Society of England and Wales

Sent for recognition

3 sent to Cologne Bar

See previous comment from the Cologne Bar

3 sent to Frankfurt Bar

See previous comment from the Frankfurt Bar

3 sent to Munich Bar

See previous comment from the Munich Bar

3 sent to Brussels Bar

See previous comment from the Brussels Bar

Poland –

Received for recognition

1 received from a training provider (Finnish Bar Association)

1 received from Law Society of Ireland

3 received from CNF

3 received from the Law Society of England and Wales

Sent for recognition

3 sent to numerous local Polish Bars⁷

3 sent to Cologne Bar

1 sent to Frankfurt Bar

3 sent to Munich Bar

See previous comment from the Munich Bar

1 sent to Brussels Bar

25. There was a reply from the Opole Bar as follows:

We would like to kindly inform you that on the basis of the attached test certificates training points for legal advisers of our Chamber would be credited.

IV. Evaluation of Phase 3

26. It was fortunate that the simulated testing system was put in place just in time for the above results to be achieved before the widespread coronavirus outbreak and subsequent shutdown in various European countries, which started in March 2020. This might also have affected the fact that some test participants did not find the opportunity to reply with comments on time. The project team had hoped to have responses in relation to the real test as well, since lawyer returns from the real test were expected in the first quarter of 2020.

27. Nevertheless, there has been sufficient of a response for the core team of the project to deduce that the certificates in general worked in accordance with the way that they were intended.

28. The comments made above (in the blue boxes) from the various recipients raise minor points which can be easily resolved – and some of the comments are based on a misunderstanding of the conditions of the test, which could be resolved by adding further explanations to the communications which accompany the distribution of the certificate. Therefore, no changes have been made to the certificate itself following Phase 3.

⁷ Łódź, Białystok, Gdańsk, Szczecin, Kraków, Wrocław, Olsztyn, Koszalin, Wałbrzych, Toruń, Poznań, Opole, National Bar of Attorneys in Law

V. Manual or automated system?

29. The above testing was carried out through a manual system. That was after a consideration of possible automated alternatives, but none of these was considered satisfactory within the time-frame and resources of the project.

30. For the purposes of full disclosure of all avenues considered by the project core team, here is a brief summary of the possible automated routes, and why they were rejected for the purposes of the project. As a result of their unsuitability for use, none of the routes was considered at length.

(1) European Training Platform

31. The European Training Platform (ETP), currently being put on-line by the European Commission after its proposal by the CCBE in a previous EU-funded project, might be a future vehicle. For this to happen, discussions would need to take place with the European Commission regarding the feasibility of including and using the template certificates described in this paper within the system being constructed by the Commission.

32. However, a necessary consequence of this option would be that only training providers registered on the ETP would be able to use the template certificate. Since there may be other training providers who quite lawfully provide training under a jurisdiction's CLE system, this is not going to be a satisfactory system at this stage. In any case, delays to the launch of ETP for lawyers' training meant that further discussion of this option was not fruitful within the lifetime of this project.

(2) Digital badges

33. Another possibility would be the use of a system where training providers will upload the information to the lawyer's digital training account, which would then be visible to agreed parties – obviously to the lawyer, and also to the home bar which requires the information. The home bar would be notified of the training certificate directly, thus avoiding the necessity for the home bar to seek it out. This goes by the name of digital badges, and is already in use throughout Italy via a harmonised system within the Italian bar network.

34. The advantage of this system is that it requires no paperwork. The recognition process would not be automatic: the home bar would still have to assess whether and how the training were to comply with national rules. But the fact of the training course had been undertaken across border would be automatically recorded both in the lawyer's digital account and by communication to the home bar, and the information that the home bar would need for recognition would be automatically recorded in the digital certificate stored in the lawyer's account.

35. The question of languages should not be a problem under this system, since there are computer programs which can deal with automatic translation in such processes, particularly when the information to be translated is relatively brief, straightforward and repetitive.

36. Before embarking on such a system, the following issues also need to be addressed:

- a) It would have to be GDPR compliant. If the company providing the service were to be based outside the EU, the lawyer and the bar would need reassurance about the location of the data, its security, and who would have access to it.
- b) The cost of building such a system would need to be assessed. It is assumed that there would not be a uniform system across Europe, to avoid over-centralisation and the question of who would bear the central costs. In that case, either the bar would have to build such a system for its own lawyers (it has use in all forms of CLE, both domestic and cross-border), or a lawyer would have to sign up to an existing scheme, depending on what is decided locally.

37. Given these significant issues, this avenue was also not pursued within the limited time and resources of the REFOTRA system.

(3) Internal Market Information System

38. The idea of using the Internal Market Information System (IMI - http://ec.europa.eu/internal_market/imi-net/index_en.htm) was also explored, to discover whether it could be used to undertake some of the work underpinning the running of the REFOTRA certificate template. The IMI system is an automated method for certain public authorities to share information within the EU.

39. However, the way that IMI works is that there are only pre-set templates, which reflect the obligations of competent authorities under EU law. If there is no EU law obligation, the system cannot be used. In the case of training of lawyers, there is no EU competence, only national competence. Therefore, the IMI system is not available for the recognition of cross-border CLE by lawyers.

VI. Conclusion

40. Accordingly, and in the light of the positive experiences reported during the project's test phase, and if individual bars decide to support it, the REFOTRA certificate template is suggested for use to facilitate the recognition of cross-border CLE within the EU.



Continuing Legal Education (CLE) CERTIFICATE

Hans Mickey Mouse Mann

HAS SUCCESSFULLY COMPLETED THE

 **Balancing Speed and quality in institutional arbitration** 

Litigation, mediation, arbitration

2 credits

2 effective hours (net of breaks) on the 18th December 2019

The course was given in English, in Round Table in Rome at the venue of C.N.F. Italian National Bar

Recognition

C.N.F. Consiglio Nazionale Forense – Italian National Bars

Via del Governo Vecchio 3, 00186 Roma, Italy

Provider

Camera Arbitrale di Milano – via Meravigli 7 – 20122 Milano Italia

In partnership with C.N.F. Consiglio Nazionale Forense

Via del Governo Vecchio 3, 00186 Rome Italy

Recognition under the host bar's CLE system

Signature

Stefano Argenti General Secretary of Camera di Commercio

Rome, 18 December 2019



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Attachment

INFORMATION REQUIRED FOR COMPLETION OF TEMPLATE

Subject matter covered by the course

Please use the categories below to fill out the subject matter of the course:

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



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