



Istruzioni per I Consigli dell'Ordine i cui Iscritti svolgono formazione in altri Paesi dell'UE



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



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Author

Jonathan Goldsmith



Introduzione

REFOTRA è un progetto congiunto finanziato dall'UE tra la European Lawyers Foundation (ELF - <http://elf-fae.eu/>) e il Council of Bars and Law Societies of Europe (CCBE - <https://www.ccbe.eu/>), che ha come obiettivo lo sviluppo di proposte per un sistema di riconoscimento della formazione giuridica continua degli avvocati (CLE continuing legal education) oltre i confini dell'UE.

In questo modo, il progetto mira a raggiungere un obiettivo a lungo termine del CCBE e della Commissione Europea nel trovare uno strumento che permetta agli avvocati di uno Stato membro (o altra autorità di regolamentazione appropriata) di facilitare il riconoscimento della formazione nell'ambito del proprio programma CLE quando uno dei suoi avvocati intraprende un corso appropriato di formazione giuridica continua in un altro Stato membro dell'UE.

I principi utilizzati nel corso del progetto corrispondono anche a quelli stabiliti nel Memorandum sul reciproco riconoscimento dello sviluppo professionale continuo transfrontaliero degli avvocati del 16/09/2016, firmato da 43 ordini forensi europei. L'auspicio è che il progetto REFOTRA possa incoraggiare l'attuazione di questo Memorandum.

Il progetto REFOTRA è suddiviso in tre fasi. Le tre fasi sono:

Fase 1

La Fase 1 di REFOTRA ha prodotto una relazione ricognitiva della situazione negli Stati membri dell'UE e del SEE spazio Economico Europeo per quanto riguarda il riconoscimento della formazione straniera nei vari sistemi CLE in tutta l'UE. Si tratta di un documento necessario nella fase di prova (Fase 3) del progetto, per aiutare gli ordini degli avvocati a capire in che tipo di sistema uno dei loro avvocati ha intrapreso un corso di formazione transfrontaliera. Aiuterà inoltre gli organismi di formazione a capire di quali informazioni ha bisogno l'avvocato che usufruisce della formazione transfrontaliera, informazioni che devono essere inserite nel modello di certificato da inviare al proprio Consiglio Forense di origine ai fini del riconoscimento.

Fase 2

La Fase 2 di REFOTRA si è incentrata sull'individuazione di una proposta di sistema per il riconoscimento della formazione transfrontaliera, basata sulle complessità emerse dalla guida prodotta nella Fase 1, e per la sperimentazione nella Fase 3.

Nella fase 2 è stato sviluppato un modello di certificato di formazione CLE da utilizzare nel test di fase 3, da compilare all'esito della formazione transfrontaliera conseguita da dal singolo avvocato. Le informazioni sul modello di certificato saranno completate dall'avvocato partecipante o dall'ente che ha partecipato alla formazione, a seconda dei casi. L'ente di formazione dovrà assicurarsi che le informazioni siano corrette e poi firmare il certificato, e consegnarlo all'avvocato, che lo scannerizzerà e lo invierà alla Commissione Centrale presso il Consiglio Nazionale Forense, competente per il riconoscimento ai sensi del Regolamento 6/2014 sulla formazione continua.



L'attribuzione dei crediti avverrà sulla base di quanto prevede il Regolamento 6/2014.

Fase 3

La fase 3 è la fase che metterà alla prova il sistema sviluppato nella fase 2. Comprenderà tre categorie di partecipanti:

1. i Consigli dell'Ordine che gestiscono i sistemi CLE, a cui sarà chiesto di riconoscere la formazione transfrontaliera attraverso il modello di certificato loro fornito ai fini della prova della fase 3; **nel caso italiano provvederà il Consiglio Nazionale Forense tramite la Commissione Centrale per l'accreditamento della Formazione, competente ai sensi dell'art. 17 comma 2 del reg. 6/2014**
2. gli avvocati che partecipano a corsi di formazione transfrontaliera, **che dovranno inviare il modello di certificato firmato e compilato alla Commissione Centrale presso il Consiglio Nazionale a mezzo della piattaforma dedicata**
3. i fornitori di corsi di formazione CLE, che dovranno firmare il modello del certificato.

Gli Ordini che partecipano al test sono i seguenti:

Belgio

- Barreau de Bruxelles (Ordre Français) - Ordine francofono di Bruxelles

Germania

- Rechtsanwaltskammer Francoforte sul Meno - Frankfurt Bar Francoforte sul Meno
- Rechtsanwaltskammer München - Munich Bar
- Rechtsanwaltskammer Köln - Colonia Bar

Irlanda

- Lawyer Society of Ireland

Italia

- Consiglio Nazionale Forense

Polonia

- Krajowa Izba Radców Prawnych - Consiglio nazionale degli avvocati (Polonia)

Gli altri Ordini sono fortemente incoraggiati ad iscriversi in qualsiasi momento, purché entro la fine del 2019. Tutti gli Ordini partecipanti e gli enti di formazione saranno informati se altri Ordini aderiranno al test.

Si prega di contattare Jonathan Goldsmith del progetto REFOTRA (Goldsmith@europeanlawyersfoundation.eu) se siete interessati a partecipare al test, o se avete domande sulla lista dei partecipanti.

Ci sono istruzioni separate per ciascuno dei partecipanti delle tre categorie. Alcuni elementi sono stati ripetuti in ciascuna delle tre categorie, con l'obiettivo di rendere ogni istruzione autonoma.

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Briefing for the home bars of those lawyers who undertake CLE in another Member State

Which bars does this category cover?

This category denotes the home bar of the lawyer who undertakes the cross-border training course. This bar is the one which will receive the CLE Training Certificate Template for the purpose of recognition of the course. Therefore, all such bars should acquaint themselves with the content of the certificate template, and make preparations for using it.

What does the CLE Training Certificate Template mean for such a bar?

The template certificate denotes that a lawyer has validly undertaken a training course in another Member State. Under Phase 3, this means that it is proposed that the training course should be recognised for the purpose of the lawyer's training record under the Phase 3 test.

This course must be treated like any other validly taken under national rules. So, the home bar can still say that the training does not fulfil national requirements, for instance if it was in the wrong subject, was not long enough, was not in accordance with permitted methodology etc.

In addition, the template certificate is valid only if it is issued by a training provider which has agreed to participate in Phase 3. The list of participants is given in the Introduction, but, as stated, it may be added to, including by international organisations which hold conferences within the EU.

How does a bar convert points/credits to hours or vice versa?

Some Member States recognise CLE through hours taken, and others through points/credits. In addition, some bars work to a 45 minute hour, and some put a ceiling of maximum hours allowed in certain training formats.

Phase 3 will operate on the basis that each home bar will decide on its own conversion system according to its own national rules when recognising the training.

Where does a participating bar find the CLE Training Certificate Template?

A model of the certificate template will be circulated at the outset of Phase 3 to all participating bars for them to circulate in accordance with their agreed communication methods. In addition, a copy of the certificate template can be downloaded at any time from the following link: <http://elf-fae.eu/wp-content/uploads/2019/07/190724-Certificate-REFOTRA-live.docx>.

How do you fill in the CLE Certificate Template?



As a bar which recognises training undertaken in another Member State, you will obviously not need to complete the Certificate Template. But if you also provide training to lawyers coming from other Member States, then you may need to complete and sign it, as follows.

The Certificate Template is in the form of a Word document. To complete it, you are first requested to file it in a folder as a Word Template. Go to 'File – Save as' and find the right location where to file templates. Under 'Save as type', please choose the option 'Word Template'. To fill out a new CLE Certificate Template, open a new Word document and choose from the personal templates. You are now able to complete the grey boxes by selecting them and typing in the relevant answers. You can file the completed CLE Certificate Template as a normal Word document, and then please print the first two pages (preferably double-sided) before the certificate is signed by the training provider's relevant official and issued to the participating lawyer for onward transmission to the home bar for recognition.

What kind of CLE does Phase 3 cover?

The coverage of the project 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 Phase 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.

In addition, the training course must be recognised under the CLE system which exists in the Member State where it is undertaken (the host state). So, if the host state has a system of authorised training providers and the training was undertaken with a training provider which was not authorised, the home bar is entitled to refuse to recognise the training. On the other hand, if the host state has a system where training can be undertaken with any training provider, and none of them is required to be pre-authorised by the bar or other regulatory body, then it is proposed for the purpose of the Phase 3 test that the training should be recognised, even if the home bar has a different system domestically e.g. if there is only one authorised provider in the home bar.

How does the bar know that the course was validly taken (or recognised) under the CLE system of the Member State where it was undertaken?

There is a part of the certificate template which deals with this question ('whether the training course is recognised under the host bar's CLE system'). If doubt persists, recourse can be made to the assessment report on EU CLE systems developed under Phase 1 of the project, which will be distributed with this briefing note. Alternatively, the contact person for the testing phase can be contacted for advice: Jonathan Goldsmith (Goldsmith@europeanlawyersfoundation.eu).

How will a bar's lawyers know that the bar is participating in Phase 3 of the project?

Each participating bar is encouraged to inform its lawyers about the project if its own CLE system requires evidence from lawyers about the courses that they have undertaken in order for those courses



to be recognised. Not all bars have such systems. For instance, those bars which do not require documentary evidence of each course undertaken will not have to inform their lawyers, because there would be no purpose served.

For those which need to communicate with their lawyers, this can be done in a range of ways, for instance through the bar's journal, the bar's social media platforms or at relevant meetings. The particular way of communicating this information will be chosen by each bar. It is obviously important, though, that their lawyers know about the project and the use of the CLE Training Certificate Template, because otherwise Phase 3 will not succeed. It is intended that this briefing, which includes a section aimed at participating lawyers, will be useful for this purpose.

How will the jurisdiction's training providers know that the bar is participating in Phase 3 of the project?

Each participating bar will be encouraged to inform one or more training providers within its jurisdiction that it is participating in Phase 3 of the project. If there are just a small number of training providers, then it is assumed that all of them should be informed. If the numbers are larger, then the participating bar is asked to select a few. Obviously it is better if training providers are chosen on the basis of which one is likely to receive lawyers from another Member State for its training courses.

There is a briefing below for participating training providers, which bars may find useful in publicising Phase 3 of the project to them. In particular, bars should note that training providers are permitted to add their own logos to the Certificate Template in accordance with the instructions provided in the training providers' briefing.

In what language will Phase 3 be conducted?

Phase 3 is 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. Of course, the CLE training course in question may be in any language, and is not affected by this requirement. And, if the results of the project are followed up in the future, the language of the certificate template will have to be further discussed.

What if problems arise during the testing phase?

If the participating bar has a question to which it does not know the answer, it is encouraged to contact the REFOTRA project for an answer at: Jonathan Goldsmith (Goldsmith@europeanlawyersfoundation.eu). This contact address can also be found at the bottom of the certificate template for ease of use.

Evaluation of Phase 3



The whole purpose of Phase 3 is to see whether the proposals developed in Phase 2 work in practice. Therefore, there will be an evaluation, which will operate as follows.

Below are the questions which will form the basis of the evaluation. Each of the three stakeholders in the test phase – bars, lawyers and training providers – will be asked for an evaluation, with different questions for each, depending on their role. Therefore, participating bars are asked to be aware of the questions from the start of their participation, and be ready to answer questions on them in due course, for instance by keeping records of the certificate templates issued under the testing phase.

Participating bars will be contacted by the REFOTRA project towards the end of October 2019 for their preliminary assessment of how the test phase is going, with a view to fine-tuning the evaluation if necessary. They will then be contacted towards the end of the project, around the end of the first quarter of 2020, for their final evaluation responses.

Accordingly, to assist the evaluation, participating bars will be asked questions on the following areas, on the first occasion towards the end of October 2019:

- How many CLE Training Certificate Templates were returned to you as the home bar for the purpose of recognition?
- In which Member States were they issued?
- Using the list of subject areas on the certificate template itself, which were the top three CLE subjects for which the certificate template was issued?
- Did you refuse recognition in any of the cases submitted for recognition, and, if so, how many and for what reason?
- What was your experience as a participant in the REFOTRA Phase 3 test pilot in relation to the following:
 - understanding how the Phase 3 test pilot worked
 - experience of communicating with the REFOTRA contract point
 - communicating with participating lawyers
 - communicating with training providers
 - questions from participating lawyers (please list the most frequently asked)
 - questions from participating training providers (please list the most frequently asked)



- challenges in completing the certificate template (please list the most frequent challenges)
- granting recognition to the training course in question
- contacts with the training provider
- any other problem (please provide any comments or suggestions to assist the REFOTRA project team in evaluating the test pilot)

Although bars and training providers will be contacted directly by the REFOTRA project for the purpose of evaluation, that will not be possible in the case of individual lawyers participating in the test phase, since their identities and contact details will be unknown to the project organisers. Accordingly, the briefing for individual lawyers asks them to send their evaluations directly to Jonathan Goldsmith of the REFOTRA project (Goldsmith@europeanlawyersfoundation.eu). Participating bars are encouraged to explain this to participating lawyers if and when they have contact with them regarding the project.

