Représentant les avocats d'Europe
Representing Europe's lawyers

The history of the CCBE



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FOREWORD

It may interest readers to have a little background to this history of the CCBE.

We were aware that our early history was slipping away from us as time passed, and as some of the founding fathers of the CCBE (unfortunately, it had no mothers in those days) passed away. The galvanising factor in our doing something about this was our President for 2004, Hans-Jürgen Hellwig from Germany. When asked what he would like as the traditional leaving present for departing Presidents at the end of his year, he said to our surprise: 'A history of the CCBE!' So, we set about fulfilling his wishes, and at the same time fulfilling our own.

We advertised for a 'stagiaire' who would be willing to take on this task for very little pay. We had a number of outstanding applications from recent graduates of the College of Europe in Bruges, and chose Marsela Maçi, a Dutch law graduate of Albanian origin. She was persistent and enthusiastic in her researches and interviews, and found gems which would otherwise have been lost forever. We are very grateful to her for her hard work: the light could often be seen shining from the street as she sat at her desk at unlikely hours to finish the task within the short deadline given to her. We wish her all the best in her future career as a lawyer.

We hope that the result will be interesting to members of delegations, past, present and future, as well as to researchers and others interested in the organisation and regulation of the European legal profession. The CCBE has changed a great deal from the organisation which began over an informal discussion as described in the opening pages of this book, and which was linked in its opening years to the Union Internationale des Avocats. It would be fascinating to know its fate forty years from now.

In the meanwhile, this book is dedicated to all who contributed to its being written, through their memories and their hard work over many years, and also to the person who commissioned it, Hans-Jürgen Hellwig (President, 2004).

Jonathan Goldsmith
Secretary General

May 2005

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1

The CCBE

1.1. The foundation of the CCBE

After the establishment of the European Community by the Treaty of Rome in 1957, the need was felt within the legal profession to deal with the problems that would arise as a result of the Treaty. At UIA (Union Internationale des Avocats), an organisation created in 1927 in order to establish international contacts between lawyers all over the world, the idea was born to have a Committee within the organisation that would gather for the same purpose only the countries which had founded the European Community.

The legend of the CCBE tells that it all started in a Swiss boat in September 1960, which was heading to the port of Basle on the occasion of a congress of the UIA. Here is the story of the creation of the CCBE as written by its very first Secretary-General, André de Bluts (B), on behalf of Hans Peter Schmidt, a Swiss lawyer from Basle, who was the president of UIA at the time the CCBE was created.[1]

During the Basle congress, André de Bluts, then Secretary General of the UIA (an international association of lawyers), informed me that he had received, at our Brussels' head office, an important questionnaire on aspects of the legal profession in the six EEC Member States. This questionnaire was to be filled in and returned quickly to the Community.

We were worried, both by the concern of lawyers to keep their independence towards the EC's authorities, as by the need not to neglect a representation of the profession and also by the problem of the representative character of the profession through the UIA, which included 36 countries, among which were the six Community Member States.

Acting as President of the U.I.A. at that time, i.e. in 1960 during the Basle congress, I discussed this in his hotel room with our past President, Robert Martin from Paris, who had a cold.

I discussed with him the possibility of creating a common body for bars of EEC Members to act as a representative and a negotiator before the Community institutions. He immediately agreed and we asked the Secretary General, André de Bluts from Brussels, to "*sound the views*" of the concerned bar presidents and presidents of lawyers' associations during that congress…

On the same day, in the afternoon, during a boat trip on the Rhine, André de Bluts from Brussels and myself managed to get the agreement in principle of all those present on the boat.

The implementation of this project however met with serious difficulties.

The presidents of the Paris and Brussels bars wanted to take their own initiative.

In the end, the Belgian secretary general invited, on behalf of the UIA, representatives of the profession in the six Member States to Brussels, to a meeting which took place in early December 1960.

During a personal meeting at the Palais de Justice in Brussels, André de Bluts and I managed to convince these representatives that it would be better if it was an international organisation, which took the initiative, thus not offending national sensibilities.

That is the way the CCBE was created as a Commission of the UIA with a view towards some autonomy in the future, which then became independence … from the UIA.

Hans Peter Schmid (Andre de Bluts)
Former UIA President

For the very first time, the Commission gathered on Saturday, 3 December 1960 at 11 o'clock at Palais de Justice in Brussels in "*la Salle du Conseil de l'Ordre des Avocats*".[3]

This meeting was marked by "*the setting up of a round table on the work proposed on a equal footing, without presidency and in a clear European-driven spirit*"[4]. In the afternoon session, Mr. J. P. de Crayencour of the European Commission Directorate-General of the Internal Market was present to answer questions of the members of the delegations. It can be seen from the minutes of this meeting that the topic of discussion at this meeting was the interpretation of Art. 55 EC Treaty, (now Art. 45 EC Treaty) on the question of whether the profession of "*avocats*" was excluded from the freedom of establishment in the European Community by application of this article, which excluded activities that are connected with the exercise of official authority. During the meeting, no position could be taken. It was only at the next meeting in Rome, 4 March 1961 that the CCBE expressed the following wishes:

a. non exclusion of the legal profession from the programme of free establishment and services;

b. wish for a thourough and specific study of the legal profession by the EEC;

c. wish to be heard on this occasion.[5]

At the end of the first meeting, the delegations agreed unanimously to adopt the name "*The consultative committee of bars and national associations of the six States of the EEC (gathered by the UIA)*" The name was maintained until November 1987, when it was changed into Council of the Bars of the European Community, preserving however the abbreviation CCBE.

It was also decided that the next meeting would be held in Rome, on 4 March 1961. Apart from Rome, in the following year the Commission met two more times, on 30 June – 1 July in Cologne and in 26, 27 and 28 October 1961 in Paris. During the first years, the Commission would gather occasionally two or three times, until it settled a work pattern of meeting twice a year in Plenary Session.

During the first five years of its existence, the CCBE was actually nursed at the heart of UIA. It had no president and it was operated by

André de Bluts,[6] in his capacity as Secretary General of the U.I.A. The correspondence with the 18 participants and 6 assistants for the above meeting in Paris sent by Secretary General André de Bluts have the logo of the U.I.A. In fact, the reference to the U.I.A. in the documents of the CCBE was preserved for a long time after the CCBE had become an independent organisation in the 60's. "*This was done because of the moral obligation that the CCBE felt toward the U.I.A.*" explains Jean-Regnier Thys, the first Secretary General of the CCBE (1964-1985).

The first step towards independence from the mother organisation was the appointment of a president, as well as the adoption of a "*règlement organique*", in Stuttgart on 22 January 1966.[7] This "*règlement*" defined the object of the CCBE, namely that of "*The study of all the questions affecting the legal profession in the member states of the European Community and the formulation of the solutions designed to coordinate and harmonise the practice of the profession in those states*".[8]

The first appointed President was an Italian avocat, Ercole Graziadei, (Presidency years 1966-1969). He was considered a visionary man, a "*great father figure*" for the CCBE presidents and members to come. Already in the early 60's he foresaw – long before others – the need for the legal profession to adapt to the changing needs of a modern commercial environment.[9] As president of the CCBE, he took the opportunity to promote the modernization of the legal profession in the European Community. In a speech delivered, as President of the CCBE, at the annual ceremony of "*Rentrée de la Conférence du Stage*" on 2nd December 1966, he stressed that the lawyer of the 20th century should be more than "*a lawyer and a typewriter*".

He referred to the need for the legal profession to organize itself into big law firms in order to respond quickly to the diverse and voluminous information that their clients – the big enterprises - would need in the course of their work.

At the same time, he was aware of the role that the CCBE should play in the arena of the EC. In his words:

"*the consultative Committee is the body which was asked to think about lawyers, not at city or national level, but at European level.*"[10]

The presidents who followed walked in the same path. The early participants in the CCBE, David Edward, Stanley Crossick, Jean-Régnier

Thys would remember with a lot of respect the great personality of President Brunois (1976-1977) as well as the eloquence of President de Gryse (1970-1973) and their ability to bring the national bars together at a time when the CCBE was still a fragile structure that risked to fall apart.

1.2. The CCBE as the representative organisation of the Bars and Law Societies in the European Union

In achieving its main function of "*enabling the several national bars and law societies represented therein to move towards the blending of their respective differences, with a view to making the European legal profession more unified and the practice of the law more uniform throughout Europe*"[11] the CCBE had to be recognised in public as the representative organisation of the interests of the legal profession in European Union. Achieving the representativity of the CCBE was a battle with two front lines: that of representativity towards the national bars, and that towards the European institutions.

Giving the Commission the status and authority of the representative organisation of the legal profession for the national delegations was not obvious in the early days of the CCBE when many uncertainties and suspicions existed about the status of the CCBE. Firstly, the question of Art. 55 EC Treaty (now Art. 45 EC Treaty) on the so-called "*European lawyer*" created doubts in the national bars about the role and the existence of the CCBE. Secondly, there was one of the biggest debates of the first days of the CCBE, namely whether the British solicitors were "*avocats*". Some French "*avocats*" did not consider the solicitors of Britain and Ireland as "*avocats*". And finally, quoting the Information Officer of the CCBE in those days, Stanley Crossick, "*the CCBE was not an organisation of six national delegations, but of decennia of local Italian bars and hundreds of French ones.*" For example, the Conference des Batonniers of France doubted about whether and how they were represented in this body, because initially the French bar had largely been represented by the Paris Bar & Union des Avocats (the French branch of UIA).

This challenge went along with that of the recognition of the CCBE by the European Institutions and other international organisations such as the UIA (Union Internationale des Avocats), IBA (International Bar Association), AIJA (International Association of Young Lawyers), and

the ABA (American Bar Association). Establishing the authority of the CCBE as a representative organisation of the European Bars before the institutions of the European Community was a long road which has been defined by the work of the CCBE itself. The first President Ercole Graziadei recalls: "*The first minutes and resolution of the first period of life of the Commission clearly show the ongoing effort to transfer this simple internal body of the UIA, which aimed to study the effects of the Treaty of Rome on the legal profession, into one independent representative body of European bars able to discuss with central authorities in Brussels notably regarding views of the decision in the pipeline within the services of the Community on "services provision", "free establishment" ...*"[12]

He retraced the following principal stages towards the representativity of the CCBE:

"- *Further to the wish expressed by the consultative Committee (Brussels, 9 November 1968) formal contact between CCBE and representatives of central EC bodies.*

- *At the same time, the opinion of the CCBE given to the Court of Justice at its request on the deontology of fees; as well as on the position and the ad loquendum of trainees.*

- *the European Parliament consulted the CCBE when drafting what was to become the future Directive of 22 March 1977 on services provision by lawyers. The opinion of the CCBE is dated 15 June 1970 and large extracts of it can be found in the opinon of the European parliament.*

Further to numerous interventions, the CCBE was considered by all as the representative of European bars, fulfilling therefore the wish expressed by the Community to discuss with European bars. Since then, this dialogue has been continuing, growing day after day and becoming more and more successful."[13]

The efforts for representativity continued. President Brunois appointed Stanley Crossick as the Information Officer of the CCBE who would begin the press releases of the CCBE and become responsible for the external publications of the CCBE. David Edward recalls how he spent one week in Brussels negotiating with the European Commission.

And then in 1977 came the Identity Card which gave increased momentum to the situation.

The CCBE Identity Card

The idea of the necessity of producing such a card arose from the concern within the CCBE to give a solution to two different matters. Firstly, the Services Directive gave lawyers the right to appear in court throughout the Community. The CCBE wanted to facilitate their practice by a certification process. Secondly, there was the concern about how to publicize the CCBE as much as possible. These two different tracks were to be brought together by the idea of the CCBE Identity Card.[14]

The CCBE Identity Card is a kind of passport to facilitate solicitors and barristers of the member nations of the European Union to provide legal services in each other's countries. The first cards issued by the CCBE bore a picture of the holder, and showed in six languages his or her authority to practise in any of the nine countries. The cards were issued by the competent authority in each member State of those entitled to practise in other EEC countries according to the provisions of the Treaty of Rome.

The significance of this initiative was shown in the fact that the Internal Market Commissioner Davignon came to the ceremony of the presentation of the first card. His presence was a sign of the recognition of the representitivity of the CCBE. On this occasion, by request of the CCBE, Jean Monnet issued a statement which was printed on the back of the document.

The idea had caught on, according to David Edward in his article "*The Legal Profession's Representative in the EEC*" published in Law Guardian on 26 September 1979. "*We have received more than 7000 applications for this card."he announced*".

The idea also fulfilled the purpose for which it was created; it received a lot of attention from the press. "*In Brussels is born the European lawyer*", was published in Il giornale of 28 November 1978.

"*While the promised universal passport for the ordinary citizen is still only a dream, the legal profession has stolen a march by abolishing state frontiers and opening up for itself a unified European jurisdiction." (Glasgow Herald, 16 october 1978.)*

The efforts to affirm the representativity of the organisation were rewarded finally in a landmark event in 1979, when the European Court of Justice accepted the CCBE as an intervener in the AM&S

case[15] representing the interest of the legal profession in Europe. The pleader on behalf of the CCBE, David Edward says that *"The issue of obtaining the leave to intervene from the ECJ was so important that it was considered in itself as a major victory, even if we had lost totally on the issue of the case, that of the secret professionel."*[16] As a result of this intervention, the CCBE established the Permanent Delegation to the Court of Justice, which serves as a committee of liaison between the CCBE and the European Courts in Luxembourg.

Since the intervention of the CCBE in the AM & S case, the CCBE has been consulted regularly by the European Commission and the Parliament about every directive that concerns the interests of the profession of lawyers in Europe. After the exchange of views between the Commission and the CCBE about the draft of a Diplomas Directive, resulting in a special derogation for lawyers due to the intervention of the CCBE, the organisation had a definite say in the preparatory works on the Establishment Directive and its outcome in 1998.

In 1995, Heinz Weil (President, 1995) in his speech at the Plenary Session in Dresden, Germany stated that: "*Today, the Commission, Parliament, Court of Justice and Court of First Instance know us and respect us as representative of a profession, which besides lobbying for its own interest, supports the Community of law (i.e. The European Union)."*[17]

1.3. The organisation

As the representative organisation for the legal profession in the European Union (EU) and the European Economic Area (EEA), the CCBE represents over 700.000 European lawyers.

28 delegations make up the CCBE in 2005, and the members of such delegations are nominated by the regulatory bodies of the Bars in the 25 Member States and 3 EEA states. In addition to these so called "*full*" members, there are "*observer*" members – 7 at the present moment - who are represented by observer delegations. On their joining the CCBE in this capacity, the observer members have to adhere to the statutes of the CCBE and to adopt the CCBE Code of Conduct.[18]

Each member delegation consists of a maximum of six individuals; the observer states are entitled to one representative at the Plenary

Sessions and may attend Committee meetings at the invitation of the CCBE President.[19]

According to the CCBE's statutes, the funding of the organisation is provided by the members, full and observers, through their annual subscription, the amount of which is fixed in the second Plenary Session of the year on the recommendation of the Finance Committee. The percentage of the total subscription to be paid by any member reflects the number of votes allocated to that member in relation to the total number of votes, with some exceptions to this rule.[20]

The history of the participation of the members of the CCBE reflects that of the growing of the European Community itself. Thus, the first full members of the CCBE were the European Member States that established the European Community. They were assisted by those countries with the status of observer countries that would very soon join the Community. In the late 70's, when Spain and Portugal were under dictatorship regimes, it was important for the CCBE to support these countries that were considered by the delegations to be part of Western European culture by accepting them as observer delegations.

Within the observer countries, Switzerland occupies a special place. It is the only member that is represented in the CCBE since the day of its birth. It was indeed on the initiative of a Swiss lawyer, Hans-Peter Schmid, that the CCBE was created. After this, on the occasion of the 30th anniversary of the CCBE in 1990 organized symbolically in Basle, the Swiss Federation of Lawyers signed a convention with the CCBE by which the Code of Conduct was declared applicable for Swiss lawyers.

The relationship between the CCBE and the Eastern European countries goes also along the lines of that of the European Union. During the 70's, when the country was ruled under a somewhat liberal regime, Yugoslavia attended several meetings of the CCBE as an observer. At the CCBE, there was the belief that it would be the first eastern country to become a CCBE Member. But the Yugoslavian delegation ceased to come without giving any statement why. Instead the first European countries with which the CCBE developed considerable links were the central European countries, Hungary, Poland and Czechoslovakia. They would very soon after 1989 become observer members. Today the observers are: Bulgaria, Croatia, Former Yugoslav Republic of Macedonia (FYROM), Romania, Switzerland, Turkey and Ukraine.

2

The activities of the CCBE

2.1. The Declaration of Perugia

At the Plenary Session held in Perugia on 28, 29 and 30 October 1976, some important steps were taken that made possible the adoption of the Declaration of Perugia in the Plenary Session at Liège on 16 September 1977. In a symbolic gesture, the CCBE decided to call the document "*La Déclaration de Perugia*" to give pleasure to the first President Graziadei, who was participating for the last time in a CCBE meeting after ten years of activity.[21]

It is noteworthy that at the meeting of Perugia, David Edward (UK), in his capacity as rapporteur-général for the presentation of the report concerning the Declaration, referred to the possibility of adopting either a Code of Conduct, which would in fact be adopted eleven years later, or a Declaration on the Principles of Deontology.[22] The idea came from DG XII (Director General Mr. Schuster) who requested a definition of the terms "*fundamental deontological principles*", originally suggested during a meeting in Dublin intended to amend the draft Directive "*Lawyers*" as well as through the answers of the national Delegations on that issue at the meeting in Stratford in 1976.

At this stage, it was decided that it was better for the purpose of the CCBE to have a harmonisation of the fundamental principles of the legal profession through a declaration, rather than a harmonisation of

legal rules in the form of a code. That is because it was thought that a code would cause numerous difficulties of harmonisation from one country to the other.

The Declaration of Perugia brought together into one document previous works of the CCBE relating to the different topics that were dealt with in it, such as, on the general problem of deontology, the report Brangsch – Biever that was presented in the Plenary Session in Napoli in February 1967, and the questionnaire of Batonnier Gilson de Rouvreux (Dean of the Ordre National des Avocats de Belgique) and his report with David Edward presented at the Plenary Session at Rotterdam in October 1974, on the basis of which the Commission published "*four observations*". This Report was entitled: "*Deontology – a preliminary analysis*". The problem of confidentiality or "*professional secrecy*" was based upon the report that was published in the form of a brochure in 1976.[23] This is the Edward Report on the "*professional secrecy*", which was submitted and approved in Dublin in November 1975. At the meeting in Stratford in May 1976, it was decided to print 400 copies of it and to publish it in October 1976 in the form of a brochure. Based on this, David Edward presented also the initial report on "*Fundamental Principles of Deontology*", which was the forerunner of the Declaration of Perugia. The draft was sent to the President and Secretary General in August 1976, and was entitled "*Declaration of Perugia on principles of professional conduct of bars and law societies of the European Community*". So it seems to have been David Edward who thought of giving it that name.

In Perugia on 30 October 1976, David Edward presented the first draft of the "*Declaration*". Even though the declaration was approved in principle, it was decided that the document as it appeared in its present state was not supported by sufficiently precise information from each country. Therefore the national delegations engaged to hand in observations on the report of David Edward before the end of January 1977.[24] Based on the observations delivered, David Edward drafted a new text of the Declaration before the following Plenary Session in Luxembourg.[25] This text was confronted with another proposition of the French Delegation, which had in its turn, furnished the national delegations with another text just after the Edward Report. It appears that the problem of the French Delegation was largely overcome by the Avis of the Conseil d'Avis et d'Arbitrage dated 29 January 1977, which appears as paragraph VI.4 of the Declaration.

At that point, the delegations were invited to look for an agreement on the fundamental principles, without entering into details of certain

topics that would render problematic the elaboration of a final text.[26] After a long exchange of views in the afternoon session of 29 April 1977 on each of the nine chapters of the text, the David Edward draft was approved subject only to final "*tidying up*" at the meeting of the "*Working Committee*" (what today is called the Standing Committee) in Brussels on 11 June 1977. The Delegations agreed upon a common position with a declaration by the French Delegation that expressed the regret: "*that the Committee could not, despite differences noted among current uses, work out practical means enabling European lawyers to correspond between themselves in conditions of trust which are required by the interest of consumers of legal services (in this respect see the dissenting opinion attached to the minutes of the meeting in Luxembourg)*"[27]

The Declaration was then formally approved in the Plenary Session of Liège of 16 September 1977. The final declaration involved the text that was presented at the meeting of Perugia in October 1976 by David Edward, revised with some observations by Me Errera (F) and developed by the Working Committee on 11 June 1977 in Brussels.[28] In this Session, Prince Albert of Belgium was present.

The Declaration of Perugia is a short statement of ethics. It consists of eight brief ethical recommendations that were clearly standards rather than rules. They set out some general principles on the nature of the rules of professional conduct, on the function of the lawyer in society, confidentiality, independence, the corporate spirit of the profession, professional publicity and respect for the rules of other Bars and Law Societies. The Declaration of Perugia did not purport to be a comprehensive code of conduct to govern cross-border activities of lawyers in the EC,[29] but at the time it was considered as a great achievement.

"*The unanimous adoption by delegates of the Consultative Committee of bars and law societies of the European Community of the declaration of Perugia on principles of professional conduct of bars and law societies of the European Community is not only a symbol of the fellowship which is in all countries, present for professionals facing similar problems.*" (Echos et nouvelles, Gazette du Palais, 2-4 October 1977.)

The CCBE ultimately concluded that the general statements contained in the Declaration of Perugia were insufficient to guide European lawyers tackling the challenges of cross-border practice. This desire for more detailed rules ultimately led to the formation of the CCBE

Code of Conduct. Most of the Declaration of Perugia's eight principles were later incorporated into the CCBE Code of Conduct.[30]

2.2. The CCBE Code of Conduct

The need for specific guidance for a lawyer subject to two different legal ethics code - the ethics code of the lawyer's own country and the ethics code of the country where a lawyer is working was recognised for a number of reasons. Firstly, the Declaration of Perugia itself was considered to be insufficient to tackle the challenges of cross-border practice. Then, at the same time that the Declaration of Perugia was adopted - in 1977 - the Services Directive[31] had been adopted and implemented in the European Community. This Directive contained a provision on the principle of double deontology that "*was considered extremely impracticable, in particular when the rule of conduct of the home State said black and of the host State said white.*" [32] And finally, after the liberalization of the services of lawyers, the next question - that of free movement of establishment of lawyers in another member state than the one where they obtained their qualification - brought another area of high controversy, namely to what extent the host rules should apply to this category of foreign lawyers. As a result, it was thought that "*progress with an Establishment Directive would be facilitated by common deontology.*"[33]

Therefore, in the early 1980's, the CCBE decided to draft a Code of Conduct, which was adopted in 1988. The Code of Conduct for Lawyers in the European Community is a framework of principles of professional conduct like the independence of the lawyer in his or her profession,[34] the duty of confidentiality which the lawyer owes to the client,[35] personal publicity of a lawyer[36], and principles on the behaviour of lawyers with clients, courts and between themselves. It is intended to be applied to all cross-border activities between lawyers in the European Community[37], including all professional contacts with lawyers of Member States other than their own, and also to the professional activities of lawyers in Member States other than their own. In addition, where national or local bars have adopted the CCBE Code as national law, it has become not only a cross-border code but also domestically binding, such as in Norway. Thus, when such a lawyer would normally have two options, application of the code of conduct of the home state or the code of code of conduct of the host state, for the lawyer in the European Union there exists a third option, the CCBE

Code of Conduct. Although the Code of Conduct is not binding in itself, but only when its rules are adopted as enforceable rules by a particular bar,[38] as the situation stands now most of the full members and observers of the CCBE have undertaken this step, making the CCBE Code of Conduct the applicable code for cross border activities for lawyers in the European Union.[39]

The origin of the Code is found in Athens in May 1982, when the CCBE resolved to "*consider the feasibility of the establishment of a code of conduct that would act as a set of principles to be translated into a disciplinary code in each Member State.*"[40] In this Plenary Session, Lake Falconer, a Scottish solicitor from the UK Delegation, was designated as rapporteur-general to draw up the questionnaire to be sent to the Delegations in an effort to start the European harmonisation of deontological rules. He prepared the very first tentative draft in March 1983.[41] In the Plenary Session of Dublin in April 1983, Lake Falconer suggested that he be helped by a deontology working group in order to follow the drawing up of the draft which was proposed by him. The Assembly thus adopted by unanimity a text which defined the subject-matter of the work that should be done by the working group and the object of the Code. Even though the Working group was open to all the delegations, including observers, it was decided to restrict the membership to representations of Delegations from Belgium, Denmark, France, Ireland, Italy, the Netherlands and United Kingdom. In several Plenary Sessions, the Working Group prepared reports which were modified and represented to the delegations each time there was a reflection from their side.

Very soon, during the discussions, the opinions about the working method of the Deontology Group were divided in two alternatives: either elaborating further the general principles stated in the Declaration of Perugia, or adopting new deontology rules that would apply to the cross-border activities of lawyers. Marcel Veroone, representing the position of the French Delegation, insisted that the Deontology Group should study problems of the cumulative application of different deontology rules, and issues raised by contradictory rules. When Lake Falconer resigned at the May 1984 Plenary Session of the CCBE in Amsterdam, the group, wishing to have continuity in its work, chose Marcel Veroone as the new rapporteur-general and chairman of the Working Group. It was decided to proceed progressively toward harmonisation of the relevant topics. During the same meeting, Marcel Veroone asked each member of the group to choose a specific issue to study and to gather information in consultation with other colleagues regarding the existing law on that issue in all member states.[42]

The group was aware that its work consisted not only in noting the differences, but also and above all in changing the national rules. The work in the group was organised by appointing to each member a certain topic for which he or she would have to come up with a report.[43] The report would then be submitted to and approved at the Plenary Sessions.[44] As the lawyers began their own work, they were pleasantly surprised at the extent to which serious differences could be resolved through thorough discussions. In these discussions, they relied on the work previously done by the International Bar Association (IBA), the Union Internationale des Avocats (UIA), and by the American Bar Association (ABA) on their respective Codes of Conduct.[45]

Marcel Veroone prepared a report on the progress of the work on 9 January 1985. Before the Plenary Session in May 86, for the first time, Marcel Veroone addressed to all the Delegations a version of the Code of Conduct under cover of a letter of the secretary of the Working Group, Hamish Adamson, Information Officer of the UK Delegation. The text contained all the provisions that were already approved during the previous Plenary Sessions. The draft resembled the current version in so far as it was composed of two parts, the first being the fundamental principles and the second the rules which had been the subject of a compromise in the working group and which could be further developed. It did not include at that stage the preamble. Because of the fact that the work could not yet be considered as completed, the chairman of the group asked the assembly to take a decision to pursue the work on the Code. After this, Marcel Veroone wanted to put an end to his mission as chairman of the working group, because he was appointed Head of the French Delegation at the CCBE. He was replaced by Gianni Manca of the Italian Delegation in Barcelona, in November 1986, but continued to contribute to the Working Group as a member. Even though progress was made, the working party had difficulties and it took quite a long time to produce a Code. "*There were times during these discussions when the task of reconciling the firmly held views in different countries seemed daunting.*" recalls Heinz Weil (G), member and chairman of the Deontology Working Group. In the course of work, opposition rose between continental lawyers and Anglo-Saxon lawyers. "*There were two major difficulties:*

- *the difference between the traditional continental avocat-type lawyer and the "Anglo-Saxon" solicitor (this difference is much weaker now),*

- *the difference in drafting techniques between common law (many details) and civil law (broad principles).*"[46]

It was thus decided that a continental lawyer and an Anglo-Saxon lawyer should withdraw together to find a compromise solution. So two delegates, Heinz Weil of the German Delegation and Walter Semple of the UK Delegation went away together to Heinz Weil's house in France and produced a Code which was eventually adopted. After three days of meeting, these two members, together with the other committee members, "*managed to breach both gaps, even though for those who drafted the Code it is still visible what rules have been first drafted by a solicitor and by a continental lawyer.*"[47]

At the end of 1987, most of the work on the Code of Conduct was finished. The draft Code drafted by Heinz Weil and Walter Semple, which included also the adopted re-wording of the Declaration of Perugia by Paul van Malleghem (B) and Herbert Verhaegen (NL), was distributed to the delegations for further approval.[48] In the Plenary Session in Copenhagen, on 27/28 May 1988, Heinz Weil was designated as the chairman of the Deontology Working Group[49] replacing from September 1988 Gianni Manca, who, in his turn, was elected vice-president of the CCBE.[50]

The completed CCBE Code was presented to the CCBE Plenary Session in October 1988 in Strasbourg. On 28 October,[51] Heinz Weil as chairman of the working group of the Code of Conduct, after 6 years of work, announced the consent of the mandated representatives of the 12 Delegations[52] on the text of the Code that was decided in the meeting of Thessalonika[53]. CCBE President Denis de Ricci had allotted four hours of discussion for consideration of the new Code. However, the Code was adopted in less than thirty minutes on a unanimous vote by the national delegates from the then twelve EC Member States.[54]

Ten years later, when commemorating the anniversary of the Code, Marcel Veroone, who worked long on the Code, mentioned several reasons for which the Code of Conduct could be adopted at that time:

- The determination of the working group.

- The perseverance of members was really important and the work was divided up: each member of the group was declared responsible for a subject which he had to follow, from the collection of information to the writing of the final text.

- The service of clients: the group considered whether each rule served the interest of the client. As soon as a rule was approved by the group members, it was inserted in the Code.

- The total confidence of members: the members were always free to express themselves freely. Links with members were favoured and relations with the members of each country's delegation were numerous.[55]

Heinz Weil confirms this by saying that "*The deontology committee … consisted fortunately enough of delegates having the same open and European minded spirit and l'ambiance was extraordinarily pleasant. This helped us to compromise*". [56]

The prestige of the CCBE Code

The CCBE Common Code, as it is called,[57] together with the principles behind the Establishment Directive, is one of the major achievements of the CCBE. The CCBE Code has been called "*the jewel in the crown*" of the CCBE.[58] The CCBE Code enjoys a great reputation, which exceeds its concrete limits "*ratione materiae*" and "*ratione personae*".

Indeed, on the one hand, the CCBE Code is invoked not only in cross-border activities but also in domestic activities. The CCBE Code has been recognised by the European Commission and courts. An interesting development within the Community is that the CCBE Code itself is beginning to be treated as authoritative in its own right by national Courts. In two decisions in 1990/91 the Court of Appeal of Bordeaux struck down certain local bar rules on the ground (among others) that they were incompatible with art. 2.2 and 2.7 of the CCBE Code. It is not clear whether this was on the basis of specific incorporation of the Code in the relevant national rules, or on the more general principle that the Code should be taken as representing the consensus of opinion on professional rules in the Community, and as such to be treated as, in a sense, part of Community law.[59] In addition, the Code has been adopted by the previous Observer Members and today full Member States and many developing countries in Central and Eastern Europe and even elsewhere (Asia, Latin America) have taken the CCBE as a model for the establishment or restructuring of their bars' professional rules.

2.2.1. The revisions of the Code of Conduct

2.2.1.1. General

After the passing of the original version in 1988, the Code of Conduct has undergone two reviews, the first adopted in the Plenary Session on 27/28 November 1998 in Lyons, France and the second in the Plenary Session on 6/7 December 2002 in Dublin, Ireland. The Code is currently under a third revision. The changes in the Code are mostly in the light of Directives whose provisions require an update on the rules of deontology of lawyers. The decisions of the Court of Justice, like the Wouters case concerning multidisciplinary partnerships, also inspire thoughts about changes in the Code.

2.2.1.2. The ongoing revision of the Code

Already in the Plenary Session of Dublin 2002, it was noted that the main topic on the future agenda of the Deontology Committee would be the next revision of the CCBE Code of Conduct. From the number of the topics that were mentioned in this session, there still remains today in the agenda of the CCBE the impact of the Establishment and Services Directives and the Second Money Laundering Directive on the Code of Conduct. Most of the issues are being dealt with in cooperation with other committees.

Another looming issue is the possible application of Article 39 of the proposed Directive on Services in the Internal Market. This article has caused a lot of work in the CCBE, because it provides that the Member States shall take measures to encourage the drawing up of Codes of Conduct at Community level which the Member States are then to take steps to encourage being adopted at national level. Following the publication of this Framework Directive, the CCBE Presidency asked Ramon Mullerat (President, 1996), to prepare a report analysing the question whether the CCBE Code of Conduct could be transformed into a prototype of a European-wide Code which the national and local bars could adopt for their own use. At this moment, the national bars are still sending in their comments on the proposed changes to the CCBE code likely to be necessary when the Article is enacted into law. But, regardless of whether Article 39 survives in its present form, the CCBE has decided to continue with the exercise.

3

The contribution of the CCBE to the Directives on the Free Movement of Lawyers in the European Union

3.1. General

When the CCBE wanted to influence the outcome of the proposals of the European Commission on Directives concerning the lawyer's interest in the European Union, the situation at the CCBE changed radically. Peter J.W. de Brauw (President, 1974-1975) on the occasion of the 15th anniversary[60] of the CCBE stated that : "*... the delegations [of the CCBE] reflected strongly the representatives of the Union [U.I.A.] in the six countries of the Community. In many delegations one found advocates who were experienced in international matters – the resolutions were marked by a very general approach in matters concerning advocacy and, also, by a thorough, though theoretical study of the Treaty of Rome.*"

He continued : "*This situation changed in my opinion when the Bars were confronted with a first draft for a Directive and they became aware of the practical consequences of coordination and harmonisation. Meanwhile the Consultative Commission functioned as an organ of the combined Bars; its resolutions got quasi-political significance. Meanwhile also, the composition of most of the delegations had obtained a more official character. The members were appointed by the professional organisations, they felt themselves representatives of*

their organisation rather than pioneers of a European Bar."

The CCBE influenced the work on the Directives on the free movement of lawyers directly and indirectly. By the time work began on the first Directive concerning the position of lawyers - the Services Directive in 1977 - there were direct contacts established between the CCBE and the European Commission. At the same time, the national delegations, members of the CCBE, were closely involved in the discussions with their respective governments as representative of the legal profession in their own country. They influenced the work indirectly when their governments had their say in the voting process in the Council.

3.2. The Lawyers' Services Directive

The Council issued the first (and till 1998 the only) Directive specifically dealing with lawyers in 1977. This Directive had the aim "*to facilitate the effective exercise by lawyers of freedom to provide services*".[61] The scope of application of the Directive is confined to the "*provision of services*". Although not expressly spelt out in the Directive, "*provision of services*" means the provision of services in the host state from an establishment in the home state. This seems clear both from the recital to the Directive, which indicates that it does not deal with rights of establishment, and from the distinction drawn in the Treaty itself between establishment and services.[62]

The problems faced by the CCBE during the work on this directive were those which marked the activity of the first years of the CCBE. The main debate, whether the profession of lawyer was affected by the provisions of the EC Treaty, was solved by the Court of Justice in the Reyners case (case 2/74) which made it clear that lawyers were not excluded from freedom of movement provisions of the Treaty.

Another problem was the application of the double deontology principle. It was thought that this would not create a problem for the avocats in different Member States, but that it would create a problem for the Rechstanwalt in Germany and the position of solicitors in the United Kingdom.

All this had as a result that the liberalisation of services made tortuously slow progress. "*The free movement of professional services still causes a pronounced reticence on the part of certain bars.*" - said CCBE President Brunois in an interview of that time.[63] "*Some Bars*

consider that the foreign lawyer cannot have a professional capacity more extensive than that of the local lawyers. Some activities of the travelling lawyer are considered by all as essential, but under the principle of double deontology control by the home and the local bars."

Gradually some problems were surpassed by initiatives like the Declaration of Perugia, by adoption of the Directive in question even though it had a rather limited scope of application on the provision of services, excluding the question of the establishment of lawyers.

3.3. The Diplomas Directive

In 1984, in the middle of the work for the Establishment Directive (which started with the two draft directives, Zurich 10/80 and Athens 5/82), the CCBE had to suspend it and work hard on another project of the European Commission which aimed at the completion of the single market by 31 December 1992: the Diplomas Directive,[64] based on mutual recognition of higher education diplomas. The CCBE intended to reach agreement so that it could present its own draft Diplomas Directive to the Commission. At the Plenary Session of 11/85 in Brussels, the heads of delegation expressed their preference for having a special directive for lawyers, eventually based on the same structures as the proposition of the Commission. The CCBE Draft Directive was a sectoral directive intended to regulate the mutual recognition of diplomas for the profession of lawyers in Europe. From contacts between the CCBE and the Commission it was made known, already before the submission, that the CCBE Draft Directive was more progressive and liberal than that of the Commission. Completed and approved at the Standing Committee in Paris,[65] the CCBE forwarded its own text to the Commission on 31 July 1986. The Commission did not reply until December 1986 when it told the CCBE that it would not propose a separate Directive for the legal profession.

After the CCBE had been refused its own sectoral Directive at the end of 1986, it tried to obtain a less compromising solution, that of securing in the Diplomas Directive a special provision for the legal profession. As CCBE John Toulmin (President, 1993) puts it: "*We tried to get an opt out from the Diplomas Directive, special provisions for the legal profession, negotiated painfully but successfully.*" [66] As a result, Art. 4 of the Directive secures the following derogation: "*by way of derogation, … for professions whose practice requires precise knowledge of national law and in respect of which the provision of advice and/or*

assistance concerning national law is an essential and constant aspect of the professional activity, the host Member State may stipulate either an adaptation period or an aptitude test."

3.4. The Establishment Directive[67]

After the Diplomas Directive, further attempts were made by the CCBE to agree on a sectoral draft Directive for lawyers. The efforts were rewarded in 1998, a year which is marked as "*une pierre blanche*"[68] for the legal profession, because, after 18 years, the Directive 98/5,[69] which aims "*to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained*", was approved.

The genesis of the initiative on an Establishment Directive

Soon after the 1977 Lawyers' Services Directive was agreed, Etienne Davignon, the relevant E.E.C. Commissioner, wrote to David Edward, as he then was the current President of the CCBE, and asked the CCBE to work on a draft Establishment Directive. After the initial work, there were 2 early drafts known as Zurich 10/80 and Athens 5/82 from the dates and places where they were completed. These drafts were both based on the assumption that there should be a right of establishment for a lawyer of a home state in a host state, distinct from the right to become a member of the host state legal profession. The main areas of controversy related to the activities which such an "*established*" lawyer should be able to carry on and the extent to which he should be subjected to the rules and regulations governing host state lawyers.

Between 1982-1988, the proposal of the EC Commission for a general Directive on the Recognition of Diplomas for all professions, including lawyers, distracted the focus of the CCBE from the Establishment Directive. At the same time, as already mentioned, the work on the Code of Conduct started, as it was thought that such an achievement would facilitate later the compromise on the Establishment Directive.

At the beginning of 1988, work was resumed on the draft Lawyers' Establishment Directive. Broadly speaking, it can be said that the UK Delegation, with some support from the Netherlands and Ireland,

wished to maintain a clear distinction between the status of establishment under home title and integration into the host profession, in particular to avoid subjecting the established lawyer to the full range of rules and disciplines applicable to host state lawyers. The other delegations generally wished to subject the established lawyer to full regulation and discipline by the host professional body, but without giving him all the rights of host state lawyers.[70]

Heinz Weil, who later became one of the drafters of the Directive, recalls: "*The work on the Establishment Directive was blocked in the first place by strongly diverging opinions on whether the migrant lawyer should remain under the home rules and home bar discipline (UK point of view) or be subject to host rules and host bar discipline (the continental point of view). Secondly, there was strong opposition on the scope of the competence of the migrant lawyer: only home State law and European Law (vigorously defended by Germany) or also host State. Under the presidency of Denis de Ricci, the debate on the Establishment Directive reached a deadlock. It was characterized by serious controversy between the UK and the French Delegations. The President, who wanted progress, felt isolated. Therefore he decided to personally appoint four experts with the mission to be independent of their delegations and to draft a compromise. The four experts succeeded in this drafting exercise (it is noteworthy that they all become CCBE Presidents later).*" Thus, according to the alternative they represented, Michel Gout (French Delegation) prepared a draft which required the incoming lawyer to become a full member of the host legal profession. This was in line with the law which had been drafted in France whose purpose was to integrate the positions of avocat and conseil juridique, and for the first time, to give the new unified French legal profession a monopoly on the giving of legal advice. John Toulmin (UK Delegation) was asked to produce a draft reflecting the view of a number of City of London solicitors that lawyers should be entitled to establish offices in the host Member State using their home State title and subject only to such rules of their home Bar as their home Bar chose to impose upon them. Heinz Weil, a German Rechsanswalt living in Paris, and Niels Fisch-Thomsen, President of the Danish Bar, produced a draft permitting establishment under home State title but subject to all the rules of conduct of the host Bar.

At the Plenary Session of the CCBE in Copenhagen on 28 May 1988, a vote was taken. The French proposal and the compromise each received four votes, John Toulmin's draft received two votes. (UK and Holland) There were two abstentions. The four authors of the draft met in a corner of the room and after a short discussion proposed that they

should have a short time to see if they could find a way out of the impasse, not acting as members of their respective delegations, but as "*experts of the Presidency*". They agreed to meet on the weekend of 2/3 July 1988, at the house of Michel Gout in Rochefort-en-Yvelines just south of Paris.

The experts spent Saturday, 2 July 1988 in Rochefort working through the questions and talking around the issues. As one participant remembered "*It became clear that we would be able to reach agreement on a draft. We spent the Sunday in Paris producing the first draft. This required considerable courage on the part of Michel Gout since any acceptance of the right of a lawyer to establish in France without becoming full member of the local Bar ran contrary to the draft French law which prohibited establishment under home state title and which was in due course enacted and came into force on January 1992.*"

Their joint proposal had a better prospect of success than previous drafts not only because, coming from different point of views, they were all able to subscribe to it as individuals, but also because in 1988 one area of unease was to be lifted: the adoption of the Code of Conduct.

In 1989 and 1990 important progress was made on the experts' draft Establishment Directive. The Commission had made it known that it was reluctant to take up sectoral Directives since the Diplomas Directive had just been adopted. In informal talks with the CCBE, the Commission took the position that they would undertake work on proposals for a Directive only if:

- the legal profession in Europe was broadly unanimous in supporting them;
- there was no likelihood of substantial objection from Member State governments; and
- the proposals represented progress in the direction of mobility by comparison with the current situation, referring to the Services Directive.

The Commission had already given an informal indication that they regarded the draft Directive as satisfying the third of these conditions, but the first condition in particular remained unsatisfied.[71] During 1989, work on the draft Directive continued. This included meetings with the Commission. On 25 January 1990, the Commission gave the CCBE draft Directive a warm welcome although they recognised that it

had not yet been voted upon by the delegations or been considered by the Member States. At the same meeting, they expressed informal objections to the French law which withdrew the right to lawyers from other Member States to establish an office in France using their own professional title, a right which had been exercised by English lawyers since before the First World War.

Years 1991-1993

Until 1992 the draft Directive had not yet been adopted as official policy. For this purpose, it required a positive vote of 10 out of 12 national Delegations. At the CCBE Plenary Session in Dublin in May 1991, a vote was taken. Three Delegations (France, Luxembourg and Spain) voted against. One Delegation (Greece) abstained. In this way, the four-two-four vote split with two abstentions of Copenhagen in 1988 was transformed into eight votes in favour of the experts' draft, three against and one abstention. This was a substantial step forward but was not enough for the draft Directive to be adopted by the CCBE or to satisfy the condition of the Commission that the draft had been generally accepted by the EU legal professions.

Discussions continued. After January 1992 they took place against the background that from January 1992 multinational partnerships were permitted in England and Wales for solicitors.

The breakthrough came after a constructive intervention from the Bâtonnier of Paris, Georges Flecheux, then in his last year of office, at the Plenary Session of the CCBE in Barcelona in May 1992. As a result of minor changes in the draft, the French Delegation was able to vote for the draft Directive at the Plenary Session in Lisbon on 23 October 1992. The Draft Directive was adopted by the CCBE by ten votes in favour and two against. Spain voted against for the rather strange reason that the draft was not liberal enough. Luxembourg voted against on principle and because it feared that the Luxembourg Bar would be swamped by foreign lawyers.

The Commission at the end of 1992 warmly welcomed the draft which had been adopted and told the CCBE that it would be put into the work programme for the Commission for 1993. It was clear that the Commission accepted that the first and second conditions had been met, i.e. the draft Directive gave new rights over and above the Diplomas Directive and had achieved general acceptance from the legal profession in the Member States.

Afterwards, there was a period when nothing appeared to be happening. The CCBE draft appeared to have got stuck. Eventually the CCBE asked for a meeting with the Commissioner. On 15 December 1993, the CCBE met with the Commissioner's chef de cabinet. He promised that the Commission's draft Directive would be published in the new year 1994. It did not happen. The Commission draft was not finally published until December 1994, two years after the CCBE draft Directive had been presented to the Commission. In the meantime, the French Delegation at the CCBE had done a volte-face and was no longer in favour of the Directive.

Final phase

John Toulmin ended his Presidency with a promise from the Commission of a draft Establishment Directive in early 1994. In fact it took the intervention of the Legal Affairs Committee of the European Parliament to achieve progress. The temporary chairman of the Legal Affairs Committee, Herr Willi Rothley, summoned the Commissioner to explain the lack of a Commission draft. The Commissioner responded by promising a draft by the end of 1994. Eventually, on 21 December 1994, the draft appeared. In an attempt to accommodate the French opposition to the CCBE draft, the Commission produced a proposal which contained the unlawful provision that there should be only a temporary right to establish in another Member State under home state title for five years. At the end of that time, the migrant lawyer would be required either to qualify as a full member of the host legal profession or to go home.

For a long time, there was no progress, but in the Gebhard case (Case C- 55/94), the European Court of Justice came to the rescue. It concluded on a reference from Italy that a right of establishment under home title without full integration into the host profession did exist. At the CCBE meeting in Dresden in November 1995, under the Presidency of Heinz Weil, another compromise was reached, since, in order to have the precondition of the full support of the profession, the vote of the CCBE on the text as it stood now, was crucial. Heinz Weil recalls: "*In view of statements made by some delegations prior to this final and decisive vote, it became clear that Austria would have the casting vote. Until the very last minute, the outcome remained uncertain and it was only a last minute telephone conversation between the head of the Austrian Delegation, Georg Frieders, and the president of the Austrian Bar which authorized the delegation to vote in favour of*

the text and to allow the yes vote to reach the qualified majority. The many conversations which Georg and I had with the Austrian President had been successful. Immediately after this Plenary Session, I could inform the Parliament and the Commission that the profession backed the final text."

On 25 April 1997 the final text of the Establishment Directive went to the Council of Ministers. Political accord on the text was unanimous except for Luxembourg which remained resolutely opposed. Luxembourg referred the case to the European Court of Justice but failed to have the Directive annulled. On 16 February 1998 the final text was adopted.

Put briefly, the Establishment Directive gives a right to lawyers to establish a practice in another Member State and pursue the activities of giving legal advice and representing a client in legal proceedings using their home title. In other words, the Directive accepts a right of establishment under home title without the requirement of integration into the host legal profession. This is balanced by two conditions: a) by the requirement of registration with the competent authority of the host state and b) by the observance of the rules and discipline governing host state lawyers to the extent that they are objectively justified and not inconsistent with the CCBE Common Code of Conduct for Lawyers.[72]

4

The contribution of the CCBE to the case law of the Court of Justice

4.1. Case AM&S Europe Limited v Commission of the European Communities

The first case in which the CCBE intervened before the European Court of Justice was the AM&S case in 1979.[73] This case was of particular relevance to the legal profession because it emphasised the lawyer's role in advising his client, and reinforced the position of European lawyers in general. As David Edward of the UK Delegation - who was also the lawyer who pleaded before the Court on behalf of the CCBE - said, the case for the CCBE was important for two reasons:

1. "*establishing CCBE representativity through its intervention in the AM&S case;*

2. *asserting the principle of professional secrecy in European law.*"[74]

Both these goals were achieved

The AM&S case, which had become a "*cause célèbre*" even before it had properly begun,[75] because of the intervention of the CCBE as well

as the intervention of two Member States, France and United Kingdom, concerned the principle of legal privilege. According to this principle, evidence the disclosure of which would be required by the ordinary rules of law, is protected from disclosure either because it is in itself a confidential communication between lawyer and client or because its disclosure would reveal the contents of such a communication. The issue arose when, during the investigation of an alleged cartel of zinc-producers in Bristol, UK, the Commission asked the firm AM&S Europe Ltd. in Bristol, a member of the Rio Tinto-Zinc Group, to produce certain documents for inspection. When the firm refused to issue these documents by claiming that they were privileged from disclosure, the Commission took a decision pursuant to Art. 14 (3) Reg. 17[76] which required, among others, that AM&S produce for examination the business records required by those officials which are in whole or in part connected with the subject of the inquiry, in particular "*all documents for which legal privilege is claimed*". As a result, AM&S brought an application under Art. 173 EC Treaty (now Art. 230 EC Treaty) before the European Court of Justice for review of the legality of the Commission decision.

Since regulation 17/62 contains no specific provision dealing with the lawyer client relationship, the question arose for the purpose of determining what limits, if any, are imposed upon the Commission's exercise of its powers of investigation under that provision by virtue of the protection afforded by law to the confidentiality of written communications between lawyer and client. In order to give an answer to that issue, the Court had first to contemplate the existence of legal privilege in Community Law and whether this privilege is extended not only to lawyers in private practice, but also to employed ones as in the present case.

At the CCBE the subject was also top priority. There was agreement, and therefore a common position of all the national delegations, that legal privilege existed in all the Member States of the Community, but there was disagreement on the position of employed lawyers. In many Member States, a lawyer cannot be both employed and independent, and so cannot become or remain a member of the bar. In other Member States like England and Denmark, and to some extent in Germany, being an employed lawyer who is a member of the bar is a normal situation. The interest of the bars of England, Ireland and Denmark was to protect the idea that the relationship between the employer and the lawyer was protected by the "*secret professionel*".

In its observations before the Court, in a long pleading, the CCBE took

the position that the issue of the case could not satisfactorily be resolved without first determining whether there was a doctrine or principle of legal privilege in Community law, and if so, what was its source and character. The CCBE submitted that there was a principle of legal privilege common to the Member States. For that it based itself on the report that the same person who was defending the position of the CCBE had drafted on the matter of confidentiality between the lawyer and client, namely the Edward Report (see more on the Edward Report in the next section).

The Edward Report's conclusions, which were supported also by the opinion of Advocate General Slynn in the AM&S case, were that, although its scope and the criteria for applying it are different, the principle of protection of written communications between lawyer and client is generally recognized in the Member States.

The Court found in the national laws of the Member States common criteria, and derived from them the principle of legal privilege in Community competition proceedings. The Court declared Art. 1 (b) of the contested investigation decision void insofar as it required the production of a certain number of the documents in question. It also found that: "*In consideration of principles which are common to the national laws of the Member States, Reg. No. 17 must be interpreted as protecting the confidentiality of written documents between client and lawyer under the conditions that,*

- *on the one hand, such communications are made for the purpose and in the interests of the client's rights of defence, and*

- *on the other hand, they emanate from independent lawyers, that is to say lawyers who are not bound to the client by a relationship of employment.*

The protection must apply without distinction to any lawyer entitled to practise his profession in one of the Member States in which the client lives."

Thus, the CCBE had won on the point of the existence of the legal privilege, upon which there was agreement, but it had lost on the employed lawyer point, upon which the CCBE was divided. The solution of the Court was essentially a compromise for European Law as well as for the CCBE.

Edward Report on "*The Professional secret, confidentiality and legal professional privilege in the nine member states of the EC*"

The question of legal professional privilege was a major problem within the CCBE. There were doubts whether "*le secret professionel*" – legal professional privilege - existed in the EEC. At that point the CCBE asked David Edward to work specifically on this issue. This led to the so called Edward Report on "*The professional secret, confidentiality and legal professional privilege in the nine member states of the EC*"[77] which was published three years before the AM&S case came before the Court of Justice. This made it possible for both parties in the case, the applicant AM&S as well as the Commission as a defender, to refer to it in their submissions. Their perspective on the CCBE work was different though. On the one hand the Commission had referred to it "*as a study, which shows clearly how diverse the legal systems of the nine Member States are on the question of protection of legal confidence"*[78] Therefore the Commission concludes that the question whether protection should be given for legal confidence, "*… are questions of policy to be decided pragmatically according to circumstances, and not questions of absolute or overriding principle*".[79] On the other hand the CCBE stated in its application for intervention: "*The CCBE/Edward Report is open to criticism as foreshadowed in the Commission's Defence. Nevertheless, it is the only comprehensive comparative study available" and it was described by Professor Max Sørensen (in a personal letter to the author) as "a model of a comparative study and analysis on an important question, leading to the encouraging conclusion that the differences between our legal systems are smaller than the differences of forms and judicial concepts*".[80]

As is stated in its introduction "*The main purpose of the Report is to describe the methods by which the general principles mentioned above are applied in the Member States of the Community, and to consider some of the problems raised by the differences in application. … This Report does not attempt to study every aspect of this vast subject, but it may help to show that any threat to the confidential relationship between lawyer and client is, truly, a threat to the liberty of the individual in a free society governed by the rule of law.*"[81] It concludes that by analysing the systems of all the Member States there exists a common principle of legal privilege.

The Edward Report was not the first initiative of the CCBE in this regard. The report itself refers to another one presented in 1965 to the Commission Consultative des Barreaux by Peter J.W. de Brauw, (President, 1974-1975), entitled "*Le Secret Professionnel de l'Avocat à l'Etranger*". This report dealt with the law of the six original Member States. Following upon that report, the Commission Consultative adopted the following Resolution dated 5 February 1965:

"*THE CONSULTATIVE COMMITTEE*

...

2° On professional secrecy of lawyers who belong to a E.E.C. Bar, wishes he be treated in any other E.E.C. States, as far as professional secrecy is concerned, the same way as a national lawyer, under reservation that in the country where he claims professional secrecy, the means of practice of the profession are not inconsistent with those admitted in this country"

The report was presented, in draft form, to the Commission Consultative des Barreaux at a meeting in Dublin in November 1975, (interestingly under the presidency of de Brauw 10 years later) and was revised in the light of discussion at that meeting and of comments made subsequently by delegates and others. Following the Edward Report, the CCBE adopted a resolution on professional secrecy, confidentiality and legal profession of privilege in the nine Member States of the European Community[82] stressing the importance of the recognition of the principle of legal privilege "*any restriction of which, … prejudices the liberty of the individual, the independent administration of justice and the proper defence of accused persons;*"[83] and asking for protection of professional secrecy of lawyers in those host countries where the foreign lawyer is not a beneficiary of the rules which protect professional secrecy.[84]

After the position of David Edward in 1976, the CCBE has prepared and issued an update to the Edward Report, which explains the developments in the Member States which it covered originally and also sets out the system in the countries which have joined the European Union since the Edward report was drafted

4.2. Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd v Commission of the European Communities

The Court in AM&S clearly excluded in-house lawyers from the scope of legal privilege in Community competition law. This issue is at the centre of two other cases before the Court of First Instance, both brought by Akzo Nobel - (T-25/03) and (T-253/03) - and which are still pending at the moment of writing this history.

The case arises in connection with an inspection by the Commission at the premises of the applicants (Akzo) pursuant to Art. 14 of Regulation 17. During that investigation, Akzo claimed legal privilege in respect of two groups of documents, in respect of which the Commission responded differently. The second group comprises a manuscript document containing notes drawn up by an Akzo executive for the purpose of drawing up the memorandum contained in the first group, and an email exchange between an Akzo executive and an internal lawyer in which, according to the applicants, legal advice is given. The internal lawyer in question is employed by Akzo Nobel NV and is a full member of the Dutch Bar.

Akzo has brought two sets of proceedings. Case T-125/03 seeks the annulment of the decision by which the Commission ordered the inspection at Akzo's premises insofar as that decision is treated by the Commission as being the legal basis on which it claimed the right to take copies of the documents.

The other application, case T-253/03, seeks the annulment of a subsequent decision ("*the Rejection Decision*") by which the Commission rejected the claims for legal professional privilege made by Akzo in respect of the two groups of the documents.

For the purpose of the present case, the CCBE asked a past President, John Fish, (President, 2002) to prepare a report ("*the Fish Report*")[85], setting out the position as regards professional privilege and salaried legal professionals in the Member States. EEA and Switzerland and certain current and future accession states. The report is of a comparable nature with the Edward Report and refers to it.

Before the Court the CCBE submitted that the Commission's approach defeats a principal aim of the procedure determined by the Court in the AM&S case. In short, that procedure is designed to ensure that, in the

event that the Commission and the undertaking under investigation are unable to resolve a dispute as to the privileged status of a communication, the Court should rule and, crucially, that before it does so, the Commission should not read the document.

Relating to the persons covered by confidentiality protection, the CCBE urged on the Court an approach which can be called one of subsidiarity and one which is entirely in line with developments both in national law and in Community law since AM&S. Given that there is no Community harmonisation of the rules for organising the legal profession, the CCBE claims that it is open to each Member State to determine who may act and be held out as a member of the relevant Bar or Law Society. In those Member States where such members may be employed "*in-house*" and where national law recognises that communications with such legal advisors is covered by the national law concept of professional privilege, the Community privilege should apply as well. In short, while the material scope of the Community concept of professional privilege is essentially a matter of Community law, its personal scope is, as a matter of Community law, determined by national law. It urged a re-drawing of the dividing line in AM&S to distinguish between those legal professionals who are and those who are not recognised as members of one of the official bars and law societies, as opposed to those who are and those who are not employed by the entity to which they are providing advice (i.e. the line drawn by the court in AM&S), and whose contacts with their clients are covered in the relevant jurisdiction by the privilege rules. This solution would give full effect to what, it is submitted, is the principal touchstone in the AM&S judgment, namely the criterion of independence and subjection to official professional discipline.

At the end, the CCBE submits to the Court that the Rejection Decision was incorrect in denying that communications with Akzo's internal lawyer were covered by professional privilege. Notwithstanding his employed status, the advocaat met all the criteria of independence required by AM&S as he was a member of the Dutch Bar and as such subject to professional obligations.

4.3. Wouters case, C-309/99

The Wouters case is important as it deals with the issues of multidisciplinary partnerships, competition law and the legal profession, and the extent of regulatory power of the bars and law societies. The CCBE had in its resolution of 1993 clearly expressed its opposition to multidisciplinary partnerships.

The partnership at issue was envisaged between Mr. Wouters and Mr. Savelbergh, lawyers, on one side and accountancy firms Arthur Andersen and Price Waterhouse on the other side. The Dutch Bar prohibited its members from entering into integrated partnerships with accountants. Before the Rechtbank (District Court), the applicants invoked the Treaty rules on competition, the right of establishment and the freedom to provide services. When the case was brought before the Dutch judicial authorities in 1996, the Delegation of the Netherlands informed the CCBE about the events. According to them, the CCBE was concerned by this case on two levels: on the one hand, the authorization of multidisciplinary partnerships which could result from this (while, in 1993, the CCBE had clearly shown its opposition to such partnerships in a resolution), and on the other hand, the calling into question of the regulation and disciplinary powers of the bars (on the basis of the freedom of association and the competition regulation).[86] The intervention of the CCBE before the national courts brought another dimension to the procedure. A common position of the bars made the national courts understand that the question they had to resolve would have much more far-reaching repercussions than the lawsuit between two national parties.

After deciding unanimously to intervene within the scope of the procedures in progress in the Netherlands, in the Plenary Session of November 1996, the CCBE appointed two lawyers, Paul Glazener, together with Robert Collin, to defend the interests of the CCBE in this case. The delegations also unanimously reaffirmed their attachment to the principles adopted in 1993, namely the rejection of "*multidisciplinary partnerships*".[87]

The CCBE took the position that collaboration between lawyers and accountants in the sense of the regulation on collaboration would have an impact on lawyers' independence, impartiality, and obligation to professional secrecy. With regard to such collaboration, the CCBE declared in the resolutions mentioned above that it was against any integrated collaboration between lawyers and accountants. In this context, it asked to intervene in support of the Dutch Bar in the procedure before the Raad van Staat. The latter accepted the CCBE as an interested party.

The European Court of Justice considered that the Netherlands Bar must be regarded as an "*undertaking*" for the purposes of EU law. Forbidding such partnerships restricts competition in legal services and prevents clients from availing of "*one-stop-shop*" services. Moreover, the rule affects lawyers from other Member States who want

to provide their services in the Netherlands. In this respect, the CCBE states in the guidance sent to the EU bars and law societies after the case that: "*… the NOVA judgment makes clear that EU bars and law societies, and the professional rules which they have adopted, can be subject to competition rules. Accordingly, all bars and law societies may want to review their professional rules in the light of the judgment.*"

Further on, the Court ruled that the regulation of the Dutch Bar may, however, be justified in order to avoid conflicts of interest and to ensure strict professional secrecy. So the Court rules that even though there may be a degree of incompatibility between the 'advisory' activities carried out by a lawyer and the 'supervisory' activities carried out by an accountant. "*... it was reasonable for the Netherlands rules to impose binding measures, despite the effects entailed which are restrictive of competition, because those measures are necessary for the proper practice of the legal profession.*"

On this point, the CCBE communicated to the EU bars and law societies subsequently that: "*… the NOVA judgment leaves a clear margin of discretion to the bar associations as to whether a particular rule is indeed necessary to ensure the proper practice of the legal profession as it is organized in their country. The test is whether a particular rule "may reasonably be considered" (by the bar association) to be necessary for the attainment of the objectives pursued. It should be noted, however, that the exercise of discretion can eventually be scrutinized.*"

Conclusion

With over 40 years having passed since the founding of the CCBE, this history is overdue. Indeed, it has come too late for the memories of some of the key founding players to be included. Nevertheless, it is hoped that it has not come too late to capture some of the spirit and events that inspired the founding of what is now considered to be a vital element of the representation of lawyers at the European level. All European lawyers can be grateful for the European co-operative spirit shown by the people mentioned and quoted in this short history, and it is to be hoped that their dreams will be passed on to succeeding generations of European lawyers.

FOOTNOTES

1 This text was sent as a letter to CCBE Secretary- General, Jean-Régnier Thys, for the Plenary Session of Basle, 2/3 November 1990, on the occasion of celebrating the 30th anniversary of the CCBE.

2 At the same event, former CCBE President, Albert Brunois, (President, 1976- 1977), in an interview by Stanley Crossick in UIA Informations Bulletin, No. 2, 1976 remembers: "*The treaty of Rome had just been signed (25 March 1957). President Robert Martin, of whose persevering wisdom enough can neverbe said, met in Basle, during the UIA Congress some internationalists, notably President Schmid, President Wirz, Batonnier Biever, Batonnier Nyssens, Batonnier Arrighi, George Herrise and (myself) Albert Brunois. This is how the 'Commission Consultative' was born, in a hotel room.*"

3 List of the participants of the six Member States of the E.C. at the first meeting of 3 December 1960, in Brussels,:

Belgium :	Me Biltris
	Me R. Janne
	Me A. Nyssens
France :	Me Herisse
	Me Martin
	Me R.W. Thorp
Germany :	Me Deringer
	Me Oppenhoff
	Me Wirz
Italy:	Me Lanza
	Me Moschella
	Me Uras
Luxemburg :	Me Baden
	Me A. Bonn
	Me F. Zurn
The Netherlands :	Jhr. De Brauw
	Me Salomonson
	Baron van der Feltz

Plus, Me de Bluts, Secretary-General of the UIA

4 Speech of Me. Nyssens (B), Minutes of the First CCBE Meeting n 3 December 1960, in Brussels.

5 Issued by the Consultative Committee, 4 March 1961, Rome

6 He was appointed by the CCBE as a "*Secrétaire général honoraire*", one of the founding fathers of the CCBE

7 In this session there were present :
The president, Me. Graziadei
1. for Belgium: MM. Nyssens et Janne
2. for France: MM. Brunois et Bernard
3. for Germany : MM. Wirz, Brangsch, Müller-Beckedorff
4. for Italy : MM. Galeone, Moschella et Lanza
5. for Luxembourg : MM. Biever et Zurn
6. for the Netherlands : MM. Van der Feltz, de Brauw et Salomson

Also participated:
7. As observers:
a. for Denmark : Mr. Lüders
b. for Great Britain: Mr. Barnes

8. (A titre personnel):
For Switzerland : Mr. Schmid

9. As secretary and deputy secretary of the Commission:
MM. de Bluts and Thys.

8 The Resolution of Stuttgart, 22 January 1966; Paragraph III of the CCBE Statutes 2004.

9 David Edward in an email of Monday 18/10 2004 sent to the CCBE during the research into this history.

10 Speech delivered in Paris, in December 2nd 1966, on occasion of the annual ceremony of the "*Rentrée de la Conférence du Stage*", Avvocatura: perennità e rinnovamento, Il Foro Italiano 1967, Vol. LXXXX – Fasc. 4.

11 Gianni Manca, (President 1990) in correspondence with the CCBE on the occasion of this research into the CCBE's history.

12/13 Ercole Graziadei, Avocat au Barreau de Rome, CCBE : La Commission Consultative des Barreaux de la Communauté européenne, Journal de Droit International 1981, p. 551.

14 Stanley Crossick, Member and Deputy Secretary General of the CCBE, 1970 – 1985, in an interview on the occasion of this research into the history of CCBE.

15 Case C-155/79, AM & S Europe Limited v Commission, (1982), ECR 1575.

16 Interview with David Edward for the purpose of recording the history of the CCBE.

17 Speech of President Heinz Weil, Assessment of eleven years at the CCBE, Plenary Session in Dresden, 17 November 1995

18 A list with the current full and observer members of the CCBE is to be found in Annex 2

19 Paragraph IV and V of the CCBE Statutes 2004.

20 Paragraph XI of the CCBE Statutes 2004.

21 From the interview with David Edward, for the purpose of recording this history of the CCBE.

22/23 Minutes, Meeting in Perugia on 28-30 October 1976.

24 On the last day of the meeting in Perugia, the general rapporteur, David Edward, thought that at this stage his report was not supplied with enough accurate information of each country on the position of lawyers towards clients, courts, other public, national or Community authorities: it was therefore impossible to finalise the report during the meeting with elements enabling the CCBE to draft the "*Declaration of Perugia*".

"*Each delegation will send its written comments to David Edward on each chapter of the report attached to the invitation before end January 1977 at the latest*".

25 Plenary Session in Luxembourg, April 29, 1977.

26 Minutes of the meeting in Luxembourg
"*During the session on 29 April, it was decided that the text called "Delcaration of Perugia" was approved in its form but it was however decided to continue the discussion on the content. The rapporteur received comments from delegations. On this*

(incomplete) basis he drew up a new text which was circulated to delegations before that drafted on the initiative of the French delegation. David Edward called for an agreement on fundamental principles, without entering into details on double deontology which could make the drafting of the final text problematical."

27 In the afternoon session:
"*A wide exchange of views took place on the nine chapters of the text which will enable after a long and thorough discussion to work out a common view of which the general rapporteur as well as Mr. Errara (French delegation) took note. Nevertheless, the French delegation submitted with the minutes a declaration regretting that the Committee could not, despite differences noted among current uses, work out practical means enabling European lawyers to correspond between themselves in conditions of trust which were required by the interests of consumer of legal services (in this respect see the dissenting opinion attached to the minutes of the meeting in Luxembourg)*"

28 Friday 16 September 1977
"*The President gave the floor to David Edward, general rapporteur, who recalled that the text submitted at the Perugia meeting in October 1976, then reviewed by Mr. Errera (F) and finalised by the working committee on 11 June 1977 in Brussels, was circulated on 29 June 1977 to all delegations by the Secretary General.*

The Consultative Committee decided to recommend to the different professional bodies in the Member States to ensure in their respective bars the application of the Declaration of Perugia in order to facilitate a harmonious development of the profession in the public interest. This resolution, which was attached to the minutes, will be called "Declaration of Perugia" as adopted in Liège on 16 September 1977"

29 Hamish Adamson, Current EC Legal Developments, Free movement of Lawyers, Butterworths, Brussels, 1992, p. 67.

30 Laurel Terry, The CCBE Code of Conduct 26/09/03.

31 Directive on OJ 77/249/EEC of 22 March 1977.

32/33 Heinz Weil in his contribution to the history of the CCBE.

34 Art. 2.1 of the Code

35 Art. 2.3 of the Code

36 Art. 2.6 of the Code

37 Art. 1.5 of the Code; The CCBE Code is only binding on the cross-border activities of the lawyer, and not on the national domestic activities of the lawyer.

38 Art. 1.3.2 of the Code; The CCBE Code is not automatically binding but only when its rules are "*adopted as enforceable rules … in accordance with national or EEA procedures*"

39 The rules of professional conduct have been incorporated into the rules of professional conduct of all the Member States before the accession of May 2004; of the accession countries, Cyprus, the Czech and the Slovak Republics, Poland, plus the countries of the EEA and Turkey.

40 Hamish Adamson, Free movement of Lawyers

41 Explanatory Memorandum of the Code of Conduct, 1.1.

42 The Members of the Working Group at the Plenary Session of May 1984 in Amsterdam were:

Paul Van Malleghem, (B) - Publicity
Gianni Manca (I) – Pactum de quota litis
Henrich Hüchting (A) (member of the working group, Rüdiger Zuck) – unity of the cabiné
Jørgen Grønborg (Dk) – Professional secrecy
Hamish Adamson (UK) – secretary of the working group
John Cooke (Ir) – Theory of unfair competition
Herbert Verhaegen (Nl) – the relation with the courts
Marcel Veroone (F) – confidentiality of the correspondence between lawyers

43 They were :
Lead reporter : Gianni Manca: rules prohibiting the pactum de quota litis
Verhaegen : Unilateral communication between lawyers of parties with different interests with judges or arbitrators.
Heinrich Huchting : Unicity of the lawyer

Grønborg: Deontology aspect of professional secrecy
Veroone : Confidentiality of correspondence between lawyers
Semple : Financial protection of the client
Van Malleghem : Individual publicity
Cooke : Problem of unfair competition between lawyers of different countries, also application of the common code

44 6/7 November 1986, Barcelona

45 Ibid, p.9.

46 Heinz Weil, answer to questions on the history of the CCBE.

47 Heinz Weil, answers to questions on the history of the Code.

48 Gianni Manca reported on the work of the working group which was open the day before to all participants in the Plenary Session. It seemed that unanimous agreement on the draft common code, which was circulated to all bars at the end of 1987, was possible for a final text to be finalised in Thessalonica on 3 September in order to be submitted for approval at the Plenary Session in Strasbourg in October.

During the Session in London on 8-9 May 1987, Gianni Manca reported on the meeting in München in February 1987 when important work was achieved. The Declaration of Perugia was adopted and re-written based on the report of Paul Van Malleghem (B) and Herbert Verhaegen (NL). The new text was to be incorporated in the draft code based on the report of Heinz Weil and Walter Semple.

49 In this Plenary Session the composition of the Working Group was recorded for the last time and appears as follows:
Chairman: Gianni Manca,
Immediate past president Jorgen Grønborg,
Secretary Hamish Adamson,
For each country:
Belgium: Paul van Malleghem
Denmark: Ole Stig Andersen
France: Marcel Veroone
Germany: Heinz Weil
Greece: Panayotis Iadas
Charalambos Naslas
Luxembourg: Louis Schiltz

Ireland: Ray Monahan
Italy: Giuseppe Cusumano
Netherlands: Peter Baauw
Herbert Verhagen
Portugal: Jose Manuel Coelho Ribeiro
UK: David Anderson
Austria: Karl Hempel
Norway: Per Hagelien
Switzerland: Arnaldo Bolla

50 Plenary Session of Copenhagen, 27-28 May, 1988.

51 Minutes of the Plenary Session of Strasbourg.

52 The list of the delegations in the Plenary Session of Strasbourg, in 28/29 October 1988:
Belgium: (Head of the Delegation) Robert Boccart
Denmark: (II) Niels Fisch-Thomsen
France: (II) Marcel Veroone
Germany : (II) Gerhard Commichau
Greece : (II) Sotiris Felios
Ireland: (II) Raymond Monahan
Italy: (II) Raoul Cagnani
Luxemburg: (II) Louis Schiltz
Netherlands: (II) Piet Wackie Eysten
Portugal: (II) José Manuel Coelho Ribeiro
Spain : (II) Ramon Ferran
United Kingdom : (II) John Toulmin

53 In the Plenary Session of Strasbourg, 28/29 October 1988 which had as president Denis de Ricci, accompanied by vice-President Nicolas Koutroubis and président sortant: Jørgen Grønborg with secretary-general Jean-Régnier Thys assisted by Secretaire administrative Mrs. Jacqueline Grosjean.
Also invited were David Edward, ancien Président, Gianni Manca, vice président élu pour 1989 and Xavier Normand-Bodard, Rédacteur en chef du Journal CCBE.

54 Laurel Terry, Georgetown journal of legal ethics, part. I., applying the CCBE code of conduct, 1993

55 Minutes of the 89th Plenary Session, 27/28, 11, 98, Lyons, France; Celebration of the 10th anniversary of the Code of Conduct, p. 39.

56 Heinz Weil, answers to questions on the occasion of recording this history of the CCBE.

57 Hamish Adamson, op. cit., p. 67.

58 Laurel Terry, op. cit.

59 Hamish Adamson

60 Plenary Session on 20 November 1975 in Dublin, Ireland.

61 Council Directive (EEC) 77/249, OJ L 78 26.3.77 p.17.

62 Hamish Adamson, op. cit., p. 33.

63 Interview of Albert Brunois, President of the Commission Consultative, by Stanley Crossick, in UIA Informations Bulletin, NO 2 –1976.

64 Council Directive 89/48EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years of duration, O.J.L. 19/16 (1989).

65 Minutes of the Plenary Session on 6 &7 November 1986 in Barcelona.

66 Interview with the CCBE for the purpose of recording the history of the CCBE.

67 The paragraph on the Establishment Directive is mainly based on the material of the CCBE President, John Toulmin (Presidency Year 1993), Avocats sans Frontières, which was a speech held at the inauguration of the European Circuit: 22 March 2001 by His Honour Judge John Toulmin, at Old Hall Lincoln's Inn. To avoid overburdening the text with footnotes, when the text includes the contribution of other authors, the texte refers to them by way of footnotes. The material is further adapted for the purpose of recording the history of the CCBE.

68 Commemorative publication from Georges-Albert Dal (former Bâtonnier and professor at U.C.L.) and Lucette Defalque (Fellow teacher) to Pierre Van Ommeslaghe, p.733.

69 Directive 98/5 of the European Parliament and of the Council of 16 February 1998.

70 Hamish Adamson, op. cit., p. 61.

71 Hamish Adamson, op. cit., p. 62.

72 Hamish Adamson, op. cit., p. 60 e.v.

73 Case C-155/79, AM & S Europe Limited v Commission, (1982), ECR 1575.

74 Minutes of the Plenary Session in Trier, Germany, on 11-13 November 1982.

75 Kreis, Helmut W, Revue Suisse du droit international de la concurrence, No 20, February 1984, pp. 3-22

76 Regulation 17/62 is the First Regulation implementing Articles 85 and 86 of the Treaty, Official Journal P 013 , 21/02/1962 P. 0204 - 021. The relevant provisions are to be found in Art. 11 and 14 of Regulation No. 17 of the Council of 6 February 1962 (OJ No. 13, 21 February 1962, p. 204); Art. 11 provides that the Commission may obtain all necessary information from the Governments and competent authorities of the MS and from businesses and associations of businesses. In its request for information the Commission must state the legal basis and the purpose of the request, as well as the penalties which may be imposed for supplying incorrect information; Art. 14 provides that the Commission may undertake all necessary investigations into undertakings and associations of undertakings. To this end the officials authorized by the Commission are empowered:
1. to examine the books and other business-records ;
2. to take copies of or extracts from the books and business records ;
3. to ask for oral explanations on the spot ;
4. to enter any premises, land and means of transport of businesses.

77 David Edward, October 1976.

78 Defence of the Commission in the AM&S case, p. 8.

79 Ibid, p. 14.

80 Application for intervention.

81 Page 4 of the Edward Report

82 Plenary Session, Dublin on 21st Novemeber 1975.

83 Paragraph 1 of the Resolution

84 Paragraph 4 of the Resolution.

85 Report on the "*Regulated legal professions and professional privilege with in the European Union, the European Economic Area and Switzerland, and certain other European jurisdictions*", - John Fish, February 2004.

86 Plenary Session 14/15 June 1996, Madrid, Spain.

87 29/30 November 1996, Brussels.

ANNEXES

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CCBE Presidents

1966 – 1969	Italy	Ercole GRAZIADEI †
1970 – 1973	Belgium	Achille de GRYSE †
1974 – 1975	Netherlands	Peter J.W. de BRAUW †
1976 – 1977	France	Albert BRUNOIS †
1978 – 1980	United Kingdom	David A.O. EDWARD
1981 – 1982	Germany	Heinrich HÜCHTING
1983 – 1984	Luxembourg	Louis SCHILTZ
1985 – 1986	Ireland	John COOKE
1987	Denmark	Jørgen GRØNBORG
1988	France	Denis de RICCI †
1989	Greece	Nicholas KOUTROUBIS
1990	Italy	Gianni MANCA
1991	Netherlands	Piet A. WACKIE EYSTEN
1992	Portugal	José Manuel COELHO RIBEIRO†
1993	United Kingdom	Judge John TOULMIN CMG QC
1994	Denmark	Niels FISCH-THOMSEN
1995	Germany	Heinz WEIL
1996	Spain	Ramón MULLERAT
1997	Belgium	Michel van DOOSSELAERE
1998	France	Michel GOUT
1999	Greece	Sotiris FELIOS
2000	Sweden	Dag WERSÉN
2001	Austria	Dr. Rupert WOLFF
2002	Ireland	John FISH
2003	Norway	Helge Jakob KOLRUD
2004	Germany	Hans-Jürgen HELLWIG

DATES OF ACCESSION

Countries	Observers	Full Member
Austria	1978	1995
Belgium	-	1960
Bulgaria	2001	-
Croatia	2001	-
Cyprus	1988	2004
Czech Republic	1992	2004
Denmark		1973
Estonia	1999	2004
Finland	1988	1995
France	-	1960
FYROM	2001	-
Germany	-	1960
Greece	1978	1981
Hungary	1993	2004
Iceland	1993	1994
Ireland	1972	1973
Italia	-	1960
Latvia	-	2004
Liechtenstein		1994
Lithuania	-	2004
Luxembourg	-	1960
Malta	2004	2004
Netherlands (The)	-	1960
Norway		1994
Poland	1996	2004
Portugal	1979	1986
Romania	2001	-
Slovak Republic	1992	2004
Slovénia	1995	2004
Spain	1978	1986
Sweden	1974	1994
Switzerland	1960[1]	-
Turkey	1995	-
Ukraine	2003	-
United Kingdom	1968	1973

1 Convention signed in 1990

Plenary Session List

Number	Place	Date
1	Bruxelles/Brussels	03.12.60
2	Rome	04.03.61
3	Cologne	30.06.61
4	Paris	26.10.61
5	Luxembourg	26.01.62
6	Amsterdam	13.04.62
7	Spa	23.06.62
8	Paris	21.09.62
9	Cologne	11.01.63
10	Milan	17.05.63
11	Luxembourg	04.10.63
12	Wageningen	01.05.64
13	Bruxelles/Brussels	02.10.64
14	Luxembourg	05.02.65
15	Rome	17.05.65
16	Paris	15.10.65
17	Stuttgart	22.01.66
18	La Haye/The Hague	22.04.66
19	Copenhagen	17.06.66
20	Luxembourg	14.10.66
21	Naples	24.02.67
22	Londres/London	02.06.67
23	Vienne/Vienna	22.10.67
24	Bruxelles/Brussels	09.02.68
25	Paris	17.05.68
26	Hamburg	11.09.68
27	Rome	06.02.69
28	Luxembourg	04.06.69
29	Londres/London	25.07.69
30	Paris	28.11.69
31	Amsterdam	24.04.70
32	Bruxelles/Brussels	16.10.70
33	Hannovre	25.03.71
34	Milan	07.10.71
35	Edinburgh	27.04.72
36	Luxembourg	05.10.72
37	Lausanne	03.05.73
38	Bruges	18.10.73
39	Paris	14.03.74

40	Copenhagen	06.06.74
41	Rotterdam	03.10.74
42	Berlin	10.04.75
43	Dublin	20.11.75
44	Stratford-upon-Avon	13.05.76
45	Perugia	28.10.76
46	Luxembourg	28.04.77
47	Liège	15.09.77
48	Bordeaux	20.04.78
49	Bruxelles/Brussels	21.10.78
50	Stockholm	26.04.79
51	Madrid	18.10.79
52	Copenhagen	01.05.80
53	Zurich	23.10.80
54	Edinburgh	23.04.81
55	Bologne	22.10.81
56	Athènes/Athens	06.05.82
57	Trèves/Trier	11.11.82
58	Dublin	22.04.83
59	Lisbonne/Lisbon	03.11.83
60	Amsterdam	18.05.84
61	Versailles	19.10.84
62	Vienne/Vienna	25.04.85
63	**25ème anniversaire:**	
	Bruxelles/Brussels	**15.11.85**
64	Oslo	09.05.86
65	Barcelone	06.11.86
66	Londres/London	08.05.87
67	Milan	06.11.87
68	Copenhagen	27.05.88
69	Strasbourg	28.10.88
70	Rhodes	12.05.89
71	Luxembourg	27.10.89
72	Munich	04.05.90
73	Basel	02.11.90
74	**30ème anniversaire**	
	Dublin	**10.05.91**
75	La Haye/The Hague	24.10.91
76	Barcelone	23.04.92
77	Lisbonne/Lisbon	22.10.92
78	Manchester	22.04.93
79	Bruxelles/Brussels	25.11.93
80	Århus (DK)	26-29.05.94
81	Naples	22-25.09.94

82	Paris	18-20.05.95
83	Dresden	16-19.11.95
84	Madrid	14-16.06.96
85	Bruxelles/Brussels	29-30.11.96
86	Bruxelles/Brussels	11-12.04.97
87	Liège	13-14.11.97
88	Bruxelles/Brussels	24-25.04.98
89	Lyon/Lyons	27-28.11.98
90	Bruxelles/Brussels	23-24.04.99
91	Athènes/Athens	11-13.11.99
92	Stockholm	18-20.05.00
93	Bruxelles/Brussels	22-24.11.00
94	Bruxelles/Brussels	18-20.05.01
95	Salzbourg/Salzburg	22-24.11.01
96	Bruxelles/Brussels	24-25.05.02
97	Dublin	5-7.12.02
98	Bergen	22-23.05.03
99	Bruges	28-29.11.03
100	Bruxelles/Brussels	14-15.05.04
101	Francfort/Frankfurt	26-27.11.04
102	Bordeaux	27-29.05.05

THE DECLARATION OF PERUGIA ON THE PRINCIPLES OF PROFESSIONAL CONDUCT OF THE BARS AND LAW SOCIETIES OF THE EUROPEAN COMMUNITY. (16. IX. 1977)

I The Nature of Rules of Professional Conduct:

Rules of professional conduct are not designed simply to define obligations, a breach of which may involve a disciplinary sanction. A disciplinary sanction is imposed only as a remedy of last resort. It can indeed be regarded as an indication that the selfdiscipline of the members of the profession has been unsuccessful.

Rules of professional conduct are designed, through their willing acceptance by the lawyers concerned, to ensure the proper performance by lawyers of a function which is recognised as essential in all civilised societies.

The particular rules of each Bar or Law Society are linked to its own traditions and are adapted to the organisation and sphere of activity of the profession in the country concerned, to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application.

In seeking a common basis for a code of professional conduct for the Community one must start from the common principles which are the source of specific rules in each member country.

II The Function of the Lawyer in Society:

A lawyer's function in society does not begin and end with the faithful performance of what he is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as of those who seek it and it is his duty, not only to plead his client's cause, but to be his adviser. A lawyer's function therefore lays on him a variety of duties and obligations (sometimes appearing to be in conflict with each other) towards:

- the client;
- the client's family and other people towards whom the client is under a legal or moral obligation;
- the courts and other authorities before whom the lawyer pleads his client's cause or acts on his behalf;

- the legal profession in general and each fellow member of it in particular; and

- the public, for whom the existence of a freeand independent but regulated profession is an essential guarantee that the rights of man will be respected.

Where there are so many duties to be reconciled, the proper performance of the lawyer's function cannot be achieved without the complete trust of everyone concerned. All professional rules are based from the outset upon the need to be worthy of that trust.

III Personal Integrity:

Relationships of trust cannot exist if a lawyer's personal honour, honesty and integrity are open to doubt. For the lawyer these traditional virtues are professional obligations.

IV Confidentiality:

1. It is of the essence of a lawyer's function that he should be told by his client things which the client would not tell to others, and that he should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. The obligation of confidentiality is therefore recognised as the primary and fundamental right and duty of the profession.

2. While there can be no doubt as to the essential principle of the duty of confidentiality, the Consultative Committee has found that there are significant differences between the member countries as to the precise extent of the lawyer's rights and duties. These differences which are sometimes very subtle in character especially concern the rights and duties of a lawyer visavis his client, the courts in criminal cases and administrative authorities in fiscal cases.

3. Where there is any doubt the Consultative Committee is of opinion that the strictest rule should be observedthat is, the rule which offers the best protection against breach of confidence.

4. The Consultative Committee most strongly urges the Bars and Law Societies of the Community to give their help and assistance to members of the profession from other countries in guaranteeing

protection of professional confidentiality.

V. Independence:

1. The multiplicity of duties to which a lawyer is subject requires his absolute independence, free from all other influence, especially such as may arise from his personal interests. The disinterestedness of the lawyer is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore show himself to be as independent of his client as of the court and be careful not to curry favour with the one or the other.

2. This independence is necessary in noncontentious matters as well as in litigation. Advice given by a lawyer to his client has no real value if it is given only to ingratiate himself, to serve his personal interests or in response to outside pressure.

3. The rule against representation of conflicting interests, and the rules which prohibit a lawyer carrying on certain other forms of activity are designed to guarantee the lawyer's independence in accordance with the traditions and customs of each country.

VI. The Corporate Spirit of the Profession:

1. The corporate spirit of the profession ensures a relationship of trust between lawyers for the benefit of their clients and in order to avoid litigation. It can never justify setting the interests of the profession against those of justice or of those who seek it.

2. In some Community countries, all communications between lawyers (written or by word of mouth) are regarded as being confidential. This principle is recognised in Belgium, France, Italy, Luxembourg and the Netherlands. The law of the other countries does not accept this as a general principle: even the express statement that a letter is confidential (or "*without prejudice*") is not always sufficient to make it so. In order to avoid any possibility of misunderstanding which might arise from the disclosure of something said in confidence, the Consultative Committee considers it prudent that a lawyer who wishes to communicate something in confidence to a colleague the rules of whose country are different from his own, should ask beforehand whether and to what extent his colleague is able to treat it as such.

3. A lawyer who seeks the assistance of a colleague in another country must be sure that he is properly qualified to deal with the problem. Nothing is more damaging to trust between colleagues than a casual undertaking to do something which the person giving it cannot do because he is not competent to do it. It is therefore the duty of a lawyer who is approached by a colleague from another country not to accept instructions in a matter which he is not competent to undertake. He should give his colleague all the information necessary to enable him to instruct a lawyer who is truly capable of providing the service asked for.

4. As regards the financial obligations of a lawyer who instructs a lawyer of another country, the Council for Advice and Arbitration of the Consultative Committee issued the following opinion on 29 January 1977:

   In professional relations between members of Bars of different countries, where a lawyer does not confine himself to recommending another lawyer or introducing him to the client but himself entrusts a correspondent with a particular matter or seeks his advice, he is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of his disclaimer of responsibility for the future.

VII. Professional Publicity:

1. In all member countries of the Community lawyers are forbidden to seek personal publicity for themselves or to tout for business. This prohibition is designed for the protection of the public and of the high standing of the profession. The extent of the prohibition is not the same in every country. In some countries, it is laid down in national legislation which provides for a criminal penalty in case of breach. It is therefore possible that a lawyer from another country who engages in a prohibited form of publicity may mislead the public and run the risk of criminal proceedings. In general, there is nothing to prevent a lawyer using cards and writing paper in the form authorised by his own professional body. Beyond that, he would be wise to ask the professional organisation of. the host

country for guidance in advance.

2. In some countries, publicity which is designed to provide information for the public or for lawyers in other countries is permitted if it is approved by or under the auspices of the professional organisations. Lawyers from other countries may use such means of publicity insofar as the rules of their own Bar or Law Society permit them to do so.

VIII Respect for the Rules of other Bars and Law Societies:

The Directive of 22 March 1977 specifies the circumstances in which a lawyer from another Community country is bound to comply with the rules of the Bar or Law Society of the host country. Lawyers have a duty to inform themselves as to the rules which will affect them in the 'performance of any particular activity. The Bar or Law Society of the host country has a duty to reply to their questions as to the content and effect of its own rules, always having regard to their purpose which is to protect those who require the professional services of a lawyer. Lawyers should always have in mind that the manner in which they behave will reflect on the professional organisation to which they belong, on their colleagues and on all their clients.

CODE OF CONDUCT FOR LAWYERS IN THE EUROPEAN COMMUNITY

This Code of Conduct for Lawyers in the European Union was originally adopted at the CCBE Plenary Session held on 28 October 1988, and subsequently amended during the CCBE Plenary Sessions on 28 November 1998 and 6 December 2002.

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1. PREAMBLE

1.1. The Function of the Lawyer in Society

In a society founded on respect for the rule of law the lawyer fulfils a special role. His duties do not begin and end with the faithful performance of what he is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those whose rights and liberties he is trusted to assert and defend and it is his duty not only to plead his client's cause but to be his adviser.

A lawyer's function therefore lays on him a variety of legal and moral obligations (sometimes appearing to be in conflict with each other) towards:

- the client;
- the courts and other authorities before whom the lawyer pleads his client's cause or acts on his behalf;
- the legal profession in general and each fellow member of it in particular; and
- the public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, is an essential means of safeguarding human rights in face of the power of the state and other interests in society.

1.2. The Nature of Rules of Professional Conduct

1.2.1. Rules of professional conduct are designed through their willing acceptance by those to whom they apply to ensure the proper performance by the lawyer of a function which is recognised as essential in all civilized societies. The failure of the lawyer to observe these rules must in the last resort result in a disciplinary sanction.

1.2.2. The particular rules of each Bar or Law Society arise from its own traditions. They are adapted to the organisation and sphere of activity of the profession in the Member State concerned and to its judicial and administrative procedures and to its national legislation. It is neither possible nor desirable that they should be taken out of their context nor that an attempt should be made to give general application to rules which are inherently incapable of such application.

The particular rules of each Bar and Law Society nevertheless

are based on the same values and in most cases demonstrate a common foundation.

1.3. The Purpose of the Code

1.3.1. The continued integration of the European Union and European Economic Area and the increasing frequency of the cross-border activities of lawyers within the European Economic Area have made necessary in the public interest the statement of common rules which apply to all lawyers from the European Economic Area whatever Bar or Law Society they belong to in relation to their cross-border practice. A particular purpose of the statement of those rules is to mitigate the difficulties which result from the application of «double deontology» as set out in Article 4 of the E.C. Directive 77/249 of 22nd March 1977.

1.3.2. The organisations representing the legal profession through the CCBE propose that the rules codified in the following articles:

- be recognised at the present time as the expression of a consensus of all the Bars and Law Societies of the European Union and European Economic Area;
- be adopted as enforceable rules as soon as possible in accordance with national or EEA procedures in relation to the cross-border activities of the lawyer in the European Union and European Economic Area;
- be taken into account in all revisions of national rules of deontology or professional practice with a view to their progressive harmonisation.

They further express the wish that the national rules of deontology or professional practice be interpreted and applied whenever possible in a way consistent with the rules in this Code.

After the rules in this Code have been adopted as enforceable rules in relation to his cross-border activities the lawyer will remain bound to observe the rules of the Bar or Law Society to which he belongs to the extent that they are consistent with the rules in this Code.

1.4. Field of Application Ratione Personae

The following rules shall apply to lawyers of the European Union and the European Economic Area as they are defined by the Directive 77/249 of 22nd March 1977.

1.5. Field of Application Ratione Materiae

Without prejudice to the pursuit of a progressive harmonisation of rules of deontology or professional practice which apply only internally within a Member State, the following rules shall apply to the cross-border activities of the lawyer within the European Union and the European Economic Area. Cross-border activities shall mean:

(a) all professional contacts with lawyers of Member States other than his own; and

(b) the professional activities of the lawyer in a Member State other than his own, whether or not the lawyer is physically present in that Member State.

1.6. Definitions

In these rules:

"Home Member State" means the Member State of the Bar or Law Society to which the lawyer belongs.

"Host Member State" means any other Member State where the lawyer carries on cross-border activities.

"Competent authority" means the professional organisation(s) or authority(ies) of the Member State concerned responsible for the laying down of rules of professional conduct and the administration of discipline of lawyers.

2. GENERAL PRINCIPLES

2.1. Independence

2.1.1. The many duties to which a lawyer is subject require his absolute independence, free from all other influence, especially such as may arise from his personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his independence and be careful not to compromise his professional standards in order to please his client, the court or third parties.

2.1.2. This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to his client has no value if it is given only to ingratiate himself, to serve his personal interests or in response to outside pressure.

2.2. Trust and Personal Integrity

Relationships of trust can only exist if a lawyer's personal honour, honesty and integrity are beyond doubt. For the lawyer these traditional virtues are professional obligations.

2.3. Confidentiality

2.3.1. It is of the essence of a lawyer's function that he should be told by his client things which the client would not tell to others, and that he should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer.

The lawyer’s obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.

2.3.2. A lawyer shall respect the confidentiality of all information that becomes known to him in the course of his professional activity.

2.3.3. The obligation of confidentiality is not limited in time.

2.3.4. A lawyer shall require his associates and staff and any-

one engaged by him in the course of providing professional services to observe the same obligation of confidentiality.

2.4. Respect for the Rules of Other Bars and Law Societies

Under the laws of the European Union and the European Economic Area a lawyer from another Member State may be bound to comply with the rules of the Bar or Law Society of the Host Member State. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity.

Member organisations of CCBE are obliged to deposit their codes of conduct at the Secretariat of CCBE so that any lawyer can get hold of the copy of the current code from the Secretariat.

2.5. Incompatible Occupations

2.5.1. In order to perform his functions with due independence and in a manner which is consistent with his duty to participate in the administration of justice a lawyer is excluded from some occupations.

2.5.2. A lawyer who acts in the representation or the defence of a client in legal proceedings or before any public authorities in a Host Member State shall there observe the rules regarding incompatible occupations as they are applied to lawyers of the Host Member State.

2.5.3. A lawyer established in a Host Member State in which he wished to participate directly in commercial or other activities not connected with the practice of the law shall respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that Member State.

2.6. Personal Publicity

2.6.1. A lawyer is entitled to inform the public about his services provided that the information is accurate and not misleading, and respectful of the obligation of confidentiality and other core values of the profession.

2.6.2. Personal publicity by a lawyer in any form of media such as by press, radio, television, by electronic commercial communica-

tions or otherwise is permitted to the extent it complies with the requirements of 2.6.1.

2.7. The Client's Interest

Subject to due observance of all rules of law and professional conduct, a lawyer must always act in the best interests of his client and must put those interests before his own interests or those of fellow members of the legal profession.

2.8. Limitation of Lawyer's Liability towards his Client

To the extent permitted by the law of the Home Member State and the Host Member State, the lawyer may limit his liabilities towards his client in accordance with rules of the Code of Conduct to which he is subject.

3. RELATIONS WITH CLIENTS

3.1. Acceptance and Termination of Instructions

3.1.1. A lawyer shall not handle a case for a party except on his instructions. He may, however, act in a case in which he has been instructed by another lawyer who himself acts for the party or where the case has been assigned to him by a competent body.

The lawyer should make reasonable efforts to ascertain the identity, competence and authority of the person or body who instructs him when the specific circumstances show that the identity, competence and authority are uncertain.

3.1.2. A lawyer shall advise and represent his client promptly, conscientiously and diligently. He shall undertake personal responsibility for the discharge of the instructions given to him. He shall keep his client informed as to the progress of the matter entrusted to him.

3.1.3. A lawyer shall not handle a matter which he knows or ought to know he is not competent to handle, without co-operating with a lawyer who is competent to handle it.

A lawyer shall not accept instructions unless he can discharge those instructions promptly having regard to the pressure of other work.

3.1.4. A lawyer shall not be entitled to exercise his right to withdraw from a case in such a way or in such circumstances that the client may be unable to find other legal assistance in time to prevent prejudice being suffered by the client.

3.2. Conflict of Interest

3.2.1. A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.

3.2.2. A lawyer must cease to act for both client when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where his independence may be impaired.

3.2.3. A lawyer must also refrain from acting for a new client if there is a risk of a breach of confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.

3.2.4. Where lawyers are practising in association, paragraphs 3.2.1 to 3.2.3 above shall apply to the association and all its members.

3.3. Pactum de Quota Litis

3.3.1. A lawyer shall not be entitled to make a pactum de quota litis.

3.3.2. By «pactum de quota litis» is meant an agreement between a lawyer and his client entered into prior to final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.

3.3.3. The pactum de quota litis does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of competent authority having jurisdiction over the lawyer.

3.4. Regulation of Fees

3.4.1. A fee charged by a lawyer shall be fully disclosed to his client and shall be fair and reasonable.

3.4.2. Subject to any proper agreement to the contrary between a lawyer and his client fees charged by a lawyer shall be subject to regulation in accordance with the rules applied to members of the Bar or Law Society to which he belongs. If he belongs to more than one Bar or Law Society the rules applied shall be those with the closest connection to the contract between the lawyer and his client.

3.5. Payment on Account

If a lawyer requires a payment on account of his fees and/or disbursements such payment should not exceed a reasonable estimate of the fees and probable disbursements involved.

Failing such payment, a lawyer may withdraw from the case or refuse to handle it, but subject always to paragraph 3.1.4 above.

3.6. Fee Sharing with Non-Lawyers

3.6.1. Subject as after-mentioned a lawyer may not share his fees with a person who is not a lawyer except where an association between the lawyer and the other person is permitted by the laws of the Member State to which the lawyer belongs.

3.6.2. The provisions of 3.6.1 above shall not preclude a lawyer from paying a fee, commission or other compensation to a deceased lawyer's heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer's practice.

3.7. Cost Effective Resolution and Availability of Legal Aid

3.7.1. The lawyer should at all times strive to achieve the most cost effective resolution of the client's dispute and should advise the client at appropriate stages as to the desirability of attempting a settlement and/or a reference to alternative dispute resolution.

3.7.2. A lawyer shall inform his client of the availability of legal aid where applicable.

3.8. Clients funds

3.8.1. When lawyers at any time in the course of their practice come into possession of funds on behalf of their clients or third parties (hereinafter called «client's funds») it shall be obligatory:

3.8.1.1. That client's funds shall always be held in an account of a bank or similar institution subject to supervision of Public Authority and that all clients' funds received by a lawyer should be paid into such an account unless the client explicitly or by implication agrees that the funds should be dealt with otherwise.

3.8.1.2. That any account in which the client's funds are held in the name of the lawyer should indicate in the title or designation that the funds are held on behalf of the client or clients of the lawyer.

3.8.1.3. That any account or accounts in which client's funds are held in the name of the lawyer should at all times contain a sum which is not less than the total of the client's funds held by the lawyer.

3.8.1.4. That all funds shall be paid to clients immediately or upon such conditions as the client may authorise.

3.8.1.5. That payments made from client's funds on behalf of a client to any other person including:

a) payments made to or for one client from funds held for another client and
b) payment of the lawyer's fees,

be prohibited except to the extent that they are permitted by law or are ordered by the court and have the express or implied authority of the client for whom the payment is being made.

3.8.1.6. That the lawyer shall maintain full and accurate records, available to each client on request, showing all his dealings with his client's funds and distinguishing client's

funds from other funds held by him.

3.8.1.7. That the competent authorities in all Member States should have powers to allow them to examine and investigate on a confidential basis the financial records of lawyer's client's funds to ascertain whether or not the rules which they make are being complied with and to impose sanctions upon lawyers who fail to comply with those rules.

3.8.2. Subject as aftermentioned, and without prejudice to the rules set out in 3.8.1 above, a lawyer who holds client's funds in the course of carrying on practice in any Member State must comply with the rules relating to holding and accounting for client's funds which are applied by the competent authorities of the Home Member State.

3.8.3. A lawyer who carries on practice or provides services in a Host Member State may with the agreement of the competent authorities of the Home and Host Member State concerned comply with the requirements of the Host Member State to the exclusion of the requirements of the Home Member State. In that event he shall take reasonable steps to inform his clients that he complies with the requirements in force in the Host Member State.

3.9. Professional Indemnity Insurance

3.9.1. Lawyers shall be insured at all times against claims based on professional negligence of an extent which is reasonable having regard to the nature and extent of the risks which each lawyer may incur in his practice.

3.9.2. When a lawyer provides services or carries out practice in a Host Member State, the following shall apply:

3.9.2.1. The lawyer must comply with any Rules relating to his obligation to insure against his professional liability as a lawyer which are in force in his Home Member State.

3.9.2.2. A lawyer who is obliged so to insure in his Home Member State and who provides services or carries out practice in any Host Member State shall use his best endeavours to obtain insurance cover on the basis required in his Home Member State extended to services which he provides or practice which he carries out in a Host Member State.

3.9.2.3. A lawyer who fails to obtain the extended insurance cover referred to in paragraph 3.9.2.2 above or who is not obliged so to insure in his Home Member State and who provides services or carries out practice in a Host Member State shall in so far as possible obtain insurance cover against his professional liability as a lawyer whilst acting for clients in that Host Member State on at least a basis equivalent to that required of lawyers in the Host Member State.

3.9.2.4. To the extent that a lawyer is unable to obtain the insurance cover required by the foregoing rules, he shall inform such of his clients as might be effected.

3.9.2.5. A lawyer who carries out practice or provides services in a Host Member State may with the agreement of the competent authorities of the Home and Host Member States concerned comply with such insurance requirements as are in force in the Host Member State to the exclusion of the insurance requirements of the Home Member State. In this event he shall take reasonable steps to inform his clients that he is insured according to the requirements in force in the Host Member State.

4. RELATIONS WITH THE COURTS

4.1. Applicable Rules of Conduct in Court

A lawyer who appears, or takes part in a case before a court or tribunal in a Member State, must comply with the rules of conduct applied before that court or tribunal.

4.2. Fair Conduct of Proceedings

A lawyer must always have due regard for the fair conduct of proceedings. He must not, for example, make contact with the judge without first informing the lawyer acting for the opposing party or submit exhibits, notes or documents to the judge without communicating them in good time to the lawyer on the other side unless such steps are permitted under the relevant rules of procedure. To the extent not prohibited by law a lawyer must not divulge or submit to the court any

proposals for settlement of the case made by the other party or its lawyer without the express consent by the other party's lawyer.

4.3. Demeanour in Court

A lawyer shall while maintaining due respect and courtesy towards the court defend the interests of his client honourably and fearlessly without regard to his own interests or to any consequences to himself or to any other person.

4.4. False or Misleading Information

A lawyer shall never knowingly give false or misleading information to the court.

4.5. Extension to Arbitrators Etc.

The rules governing a lawyer's relations with the courts apply also to his relations with arbitrators and any other persons exercising judicial or quasi-judicial functions, even on an occasional basis.

5. RELATIONS BETWEEN LAWYERS

5.1. Corporate Spirit of the Profession

5.1.1. The corporate spirit of the profession requires a relationship of trust and co-operation between lawyers for the benefit of their clients and in order to avoid unnecessary litigation and other behaviour harmful to the reputation of the profession. It can, however, never justify setting the interests of the profession against those of the client.

5.1.2. A lawyer should recognise all other lawyers of Member States as professional colleagues and act fairly and courteously towards them.

5.2. Co-operation Among Lawyers of Different Member States

5.2.1. It is the duty of a lawyer who is approached by a colleague from another Member State not to accept instructions in a mat-

ter which he is not competent to undertake. He should in such case be prepared to help his colleague to obtain the information necessary to enable him to instruct a lawyer who is capable of providing the service asked for.

5.2.2. Where a lawyer of a Member State co-operates with a lawyer from another Member State, both have a general duty to take into account the differences which may exist between their respective legal systems and the professional organisations, competences and obligations of lawyers in the Member States concerned.

5.3. Correspondence Between Lawyers

5.3.1. If a lawyer sending a communication to a lawyer in another Member State wishes it remain confidential or without prejudice he should clearly express this intention when communicating the document.

5.3.2. If the recipient of the communication is unable to ensure its status as confidential or without prejudice he should return it to the sender without revealing the contents to others.

5.4. Referral Fees

5.4.1. A lawyer may not demand or accept from another lawyer or any other person a fee, commission or any other compensation for referring or recommending the lawyer to a client.

5.4.2. A lawyer may not pay anyone a fee, commission or any other compensation as a consideration for referring a client to himself.

5.5. Communication with Opposing Parties

A lawyer shall not communicate about a particular case or matter directly with any person whom he knows to be represented or advised in the case or matter by another lawyer, without the consent of that other lawyer (and shall keep the other lawyer informed of any such communications).

5.6. (Deleted by decision of the CCBE Plenary Session in Dublin on December 6th, 2002)

5.7. Responsibility for Fees

In professional relations between members of Bars of different Member States, where a lawyer does not confine himself to recommending another lawyer or introducing him to the client but himself entrusts a correspondent with a particular matter or seeks his advice, he is personally bound, even if the client is insolvent, to pay the fees, costs and outlays which are due to the foreign correspondent. The lawyers concerned may, however, at the outset of the relationship between them make special arrangements on this matter. Further, the instructing lawyer may at any time limit his personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of his disclaimer of responsibility for the future.

5.8. Training Young Lawyers

In order to improve trust and co-operation amongst lawyers of different Member States for the clients' benefit there is a need to encourage a better knowledge of the laws and procedures in different Member States. Therefore, when considering the need for the profession to give good training to young lawyers, lawyers should take into account the need to give training to young lawyers from other Member States.

5.9. Disputes amongst Lawyers in Different Member States

5.9.1. If a lawyer considers that a colleague in another Member State has acted in breach of a rule of professional conduct he shall draw the matter to the attention of his colleague.

5.9.2. If any personal dispute of a professional nature arises amongst lawyers in different Member States they should if possible first try to settle it in a friendly way.

5.9.3. A lawyer shall not commence any form of proceedings against a colleague in another Member State on matters referred to in 5.9.1 or 5.9.2 above without first informing the Bars or Law Societies to which they both belong for the purpose of allowing both Bars or Law Societies concerned an opportunity to assist in reaching a settlement.