

Ensuring Quality in the Legal Profession

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Executive summary

This paper is meant to show the experience and knowledge of the legal profession with regards to measures which ensure quality and shall serve as inspiration. In this sense, the paper presents some examples and underlines, at the same time, the broad range of measures which can be taken.

First, several dimensions of the quality of legal services are presented non-exhaustively. Legal value of the service offered to clients, process management, clients' satisfaction, core values at the services of the client and the rule of law – all belong to a mosaic of different quality components. Second, the paper sets out examples of systems in place that ensure quality by many different means. These include customer perspective, measuring quality by lawyers and law firms, and measuring quality externally, for instance, through Bars.

The paper aims to point to the fact that there is not one sole way how to ensure quality in legal services. A high level of initial training, continuing education and robust deontological rules form the basis to guarantee high-quality legal services. Additional measures are imposed in all member states to further underpin these efforts, such as specific certificates for specialists or strict liability regimes with preventive effects. The competence of lawyers is ensured by a number of measures and an individual mix of measures is important in order to ensure that the chosen means reinforce each other. Bars play a crucial role in this process, for example, by warranting the ethics of the profession and serving clients' interests through the supervision of lawyers' independence.

This document also seeks to highlight the lack of understanding of the main features of the legal profession and mechanisms to protect clients on the side of the European Commission, as it has, for example, become apparent in one recent study commissioned by the European Commission. Continuing pressure by the European Commission which puts into question deontological rules and the role of Bars and Law Societies can turn out hazardous for the interests of clients and the rule of law. Therefore, the CCBE urges the Commission to reassess its approach.

1. Introduction

This paper is meant to show the experience and knowledge of the legal profession with regards to measures which ensure quality and shall serve as inspiration. In this sense, the paper presents some examples and underlines, at the same time, the broad range of measures which can be taken.

The 2020 CEPEJ Evaluation Report on European judicial systems underlines both the necessity for litigants and defendants to be represented by a lawyer and the profession's outstanding quality standards: "Quality of justice depends on the possibility for a litigant to be represented and for a defendant to mount his or her defence, both functions performed by a professional who is trained, competent, available, offering ethical guarantees and working at a reasonable cost."¹

Legal services usually require both the supply of specialist knowledge *and* a specialist skill in the application of that knowledge. This is why lawyers and (most) of their clients find themselves in a relationship characterised *inter alia* by so-called information asymmetry. This describes a situation where it is difficult, if not impossible, for clients to assess the quality of services.

Some also refer to legal services as "credence goods". The particularity of credence goods is that their quality is not revealed to common consumers, neither before, nor after the consumption of the good or service.²

Both concepts illustrate the importance of the measures described in this paper.

Entry to the legal professions of the European Union (EU) is preceded by an assessment of suitability, knowledge and competence of those seeking entry. There are many national and regional variations in the legal training regimes, but they all seek to achieve a high level of abilities and the training outcomes set out in the [CCBE Recommendation on Training outcomes for European Lawyers](#). There is a considerable store of mutual trust in the initial training as reflected in the EU's Lawyers' Directives which allow for cross-border practice by lawyers.

The quality of legal services has many dimensions which will be presented non-exhaustively below (see part two below). Also, we give examples of systems in place currently that ensure quality by many different means (see part three below).

2. Quality – a mosaic of different components

2.1. Legal value of the legal service rendered to the client

First of all, everyone would agree that a legal service provided by a lawyer should be accurate and reflect the applicable laws, including case law. Lawyers must take into account both current and anticipated legislative changes as well as likely developments in case-law. Each legal service must be provided diligently and within the relevant deadlines.

Lawyers must be able to have a deep understanding of a client's individual situation and needs in order to be able to give sound advice and to represent the best interests of the client.

¹ Council of Europe, European judicial systems CEPEJ Evaluation Report, September 2020, available [here](#).

² Darby, Michael R. and Edi Karni, "Free Competition and the Optimal Amount of Fraud", *The Journal of Law & Economics*, vol. 16, no. 1, 1973, pp. 67–88, JSTOR, available [here](#).

2.2. Process management

Providing legal services to clients also requires setting up certain processes. These processes differ in their aim and complexity. Some processes are connected to legal duties and responsibilities of a lawyer, such as the management of procedural and other deadlines, “know your customer”- due diligence or the avoidance of conflict of interests. In these areas, lawyers usually need to train their staff as well, but stay personally responsible for controlling and applying their quality assurance systems.

Other processes can range from secretarial work, e.g. appointment scheduling, to more complex tasks, e.g. document management, maintaining a secure IT infrastructure and ascertaining up to date legal knowledge. As soon as these processes concern core values³, such as the duty to guarantee professional secrecy, lawyers are generally held personally responsible for their implementation and supervision.

There are process certification systems in industry, such as ISO certification. However, these systems cannot be applied to the legal profession without specific adaption, especially concerning professional secrecy obligations. Work of this kind has been carried out, for instance, by the *Conseil national des barreaux* (France), to create ISO certification of law firms that respect the lawyer's professional ethics.

The Estonian Bar Association issues an own voluntary quality management certificate which certifies certain important processes in a law firm based on specific guidelines.⁴

A lot of individual law firms implement own knowledge management systems which they use strategically to improve their work, including creating template systems.

2.3. Clients' satisfaction

The clients' perspective on the quality of a legal service usually includes additional features to the ones already mentioned above. Of course, clients expect professional competence and smooth-running processes. In addition, other aspects can be important to them to a variable degree. Examples would be emotional competence, including empathy, guidance and appropriate support in moments of difficult decisions, but also clear and comprehensive communication concerning the clients' legal situation.

Clients usually expect a specific result and yet, this can prove difficult. For example, a divorce or criminal procedure might not produce a happy result, as it could be based on laws with which the client might not agree. In this regard, lawyers are limited to assist clients to achieve the best possible outcome under the circumstances, but not always any desired outcome.⁵

³ See CCBE Charter of Core Principles of the European Legal Profession, available [here](#).

⁴ The guidelines include among others the following issues: accepting a client task and concluding a client contract, conflict of interest, communication with the client when providing legal services, customer case materials, customer assets, fee for the provision of legal services, professional secrecy, administration of a law office.

The Law Societies of England and Wales offer a comparable certificate, which is called Lexcel. Lexcel is a quality mark for client care, compliance and practice management and constitutes one of two avenues to qualify for contracts with the Legal Aid Agency.

Both systems are underpinned by on site checks.

⁵ In addition, clients might be particularly vulnerable to so-called optimism bias as they do not have the knowledge and skills to assess their legal situation correctly.

Generally, a lot of quality features related to customer satisfaction are based on subjective perception of clients. It is, for instance, impossible for a client to know if a lawyer feels empathy for a client. The client can only judge this on the basis of the emotions which the lawyer shows – or rather which the client thinks that the lawyer shows. Also, clients can be biased if their expectations are not met regarding the result of a judicial procedure, even though this result is legally correct.

Some of the objective elements of client satisfaction are usually connected with elements of process management such as quick response times, effective management of a case, but also transparent information on the price of a lawyer's services and court fees.

The Estonian Bar Association's quality management certificate recognises law firms for implementation of higher service standards.

2.4. Core values at the service of the client and the rule of law

Lawyers are at the core of the rule of law. Only an independent profession can effectively defend citizens from injustice and arbitrariness of states. In this sense Article 47 of the Charter of Fundamental Rights of the European Union stipulates: "Everyone shall have the possibility of being advised, defended and represented."

Strict professional regulations underpin this special responsibility of lawyers for the rule of law and ensure the protection of clients. They guarantee access to a competent professional who is subject to strict ethical rules and liable to sanctions in the event of professional malpractice.

Clients have certain expectations regarding the behaviour of their lawyer such as that the "lawyer has to be on their side". However, they are often not aware that this is enforced by deontological rules, nor that in case of malpractice lawyers face disciplinary sanctions *additional* to civil liability and/or criminal sanctions.

For example, the duty to avoid conflicts of interest, protecting clients from undesirable external influences in the work of their lawyers, exemplifies this point. This duty means that a lawyer cannot represent opposing parties in a procedure, but it can also go much further. In particular, some lawyers cannot accept certain mandates as they would involve a competitor of one of their (actual or even former!) clients and thus could potentially lead to a conflict of interest. In these cases, the lawyer is obliged to put the interests of the client first, even if this can mean losses in their potential income. For the client, in turn, this is a safeguard that there will be no conflicts of interest which could harm the quality of advice or his/her representation. Lawyers also must act in absolute independence, free from all other influence, especially such as may arise from personal interests or external pressure. Lawyers are therefore obliged to avoid any impairment of their independence and be careful not to compromise their professional standards in order to please the client, the court or third parties. Advice given by a lawyer to the client has no value if the lawyer gives it only to ingratiate him- or herself, to serve his or her personal interests, including financial interests, or in response to outside pressure.

Lawyers must respect professional secrecy regarding all information that becomes known to them in the course of their professional activity. It is of the essence for effective legal advice, representation and defence that clients can communicate information to their lawyers which they would not tell others. The lawyer's obligation of professional secrecy serves the interest of the client, but also the

administration of justice.

Lawyers are registered with their Bar or Law Society which supervises their independence from any external pressures. Bars not only supervise the conduct of lawyers, but also protect the public by several other measures, including sanctions taken against lawyers, for example, suspension or even the deprivation of the right to practise as a lawyer.

In case of wrong-doing, lawyers face these sanctions *in addition* to possible civil liability or criminal sanctions. This combination ensures quality as lawyers are aware that they are measured against higher standards.

Lawyers have to comply with all requests of their supervising Bar, including to provide it with any information requested and to allow insights e.g. into escrow/segregated accounts, handling of registration of documents in official registers such as wills etc. Bars also perform on-site inspections.

As shown by the above, strict deontological rules and independent oversight of lawyers contribute greatly to ensuring especially high-quality standards in the profession. These strict rules benefit not only clients, but also the administration of justice and the upholding of the rule of law.

Bars provide lawyers with information and assistance with regards to deontological questions, both of a general nature and regarding specific rules. They are just one call or one e-mail away for an *ad hoc* consultation whenever lawyers encounter a problem in their daily practice.

Bars also use several ways to raise awareness for the core values of the profession, either through seminars and publications or by providing a forum for discussion with fellow colleagues. In Lithuania, for instance, lawyers receive each month a summary of the disciplinary cases decided by the Bar. The purpose of this measure is to explain and help lawyers adhere to the Code of Conduct.

3. Methods to measure quality and to support quality management

3.1. The customer perspective

For the customer, quality is a priority characteristic of the services requested. Nevertheless, due to the asymmetry of information, even clients with prior legal knowledge can find it very difficult to assess legal services objectively.

Also, the legal quality of an arrangement or of the contractual provisions can sometimes only be effectively assessed after a significant delay.

Asking clients to measure quality of legal services is complex and can be misleading. Nonetheless, it is possible to focus on a clients' satisfaction with a lawyer – keeping in mind that this is only one element of quality which has to be put in perspective (see above). Tools which can be used are, for instance, well-conceived surveys/questionnaires.

3.2. Lawyers and law firms measuring quality

Lawyers and law firms can provide quality measurement systems internally. For example, self-evaluation and self-assessment can be tools they use, but also *ex post* control mechanism through working with other colleagues in a law firm, e.g. in the form of practice groups.

3.3. Measuring quality externally

There are several categories of third parties that could be involved in quality measurement.

Judges are usually considered as appropriate persons to assess the quality of the services of lawyers appearing before them. However, members of the judiciary may consider that their time is best spent when dedicated to their main task, which is to deliver justice in the service of the public. More importantly, for judges, "quality" is defined essentially as behaviour of lawyers in their relations with the court. Also, judges do not know which information clients provide to their lawyers. Lastly, in the interest of the rule of law, a certain distance should be kept between judges and individual lawyers. In light of these considerations, any measuring of quality through judges will soon face its limits.

Certification bodies outside the profession can be competent to judge organisational processes. Nevertheless, their certificates solely take into account abstract workflow assessments. Under any circumstances certifying bodies must respect the right of clients to professional secrecy. Therefore, they cannot have access to files. The use of such a kind of evaluation depends highly on the law firm. It has to be kept in mind, that adhering to certified workflows does not necessarily equate to quality. Some firms might profit from such a check-up, for others, this does not provide any additional value.

The quality of services can also be measured by other lawyers. In some member states, quality measuring involves peer reviews. This includes both compulsory ones such as checks carried out by the Bar as a supervisory authority and voluntary peer mechanisms, for example, with regard to a specialisation or another sort of certificate.

Bars play an important role in the supervision of lawyers. Because of their unique position they can ensure the independence of the profession through all their measures and the adherence to core values, such as professional secrecy. Both elements guarantee the protection of the clients' fundamental rights.

Several national practices exemplify this point.

In Austria, the regional Bars have the authority to supervise the professional conduct of lawyers. In this capacity, they can carry out on-site checks and audits regarding deontological and other obligations. The regional Bars - when performing on-site visits at law firms - check the compliance of lawyers, trainee lawyers and the law firm employees regarding deontological rules and professional conduct. Also, a client money and fiduciary audit is conducted, including beneficial ownership regulations or a review of the registering of last wills. Lawyers have to provide the regional Bars with any information requested and allow insights, for example, into escrow/segregated accounts and any documents relating to them. With regard to disciplinary procedures, anybody may complain to the Bar – even anonymously – about a lawyer. In addition to disciplinary proceedings (and sanctions), lawyers can be sued for malpractice, including damages, in civil procedures. Civil liability for malpractice is a mechanism that exists and can be triggered by clients, in parallel (and cumulatively) to disciplinary sanctions, in the majority of, if not all, EU member states and constitutes a strong factor in ensuring quality.

In Belgium, lawyers who provide legal aid are subject to a specific supervision by the Bar. The Bar is expressly entitled to check various aspects of legal aid rendered to clients. Due to the involvement of the Bar, professional secrecy can be guaranteed even when individual files are checked.

In March 2020, a new system was introduced in the Netherlands which obliges lawyers to take part in a form of structured feedback. This system expressly promotes quality and discussions between peers. There are three forms of structured feedback to choose from: so-called intervision, peer review and structured intercollegiate consultation.

In addition to the initial training regimes, Bars and Law Societies across the EU also require continuing professional development of lawyers in accordance with the [CCBE Recommendation on Continuing Training](#) (2003) and the [CCBE Resolution on Continuing Legal Education](#) (2013).

Also, various systems exist in member states which document specialist knowledge of lawyers. Jurisdictions with a specialisation regime tend to have precise rules regulating the bestowing and use of a specialist's title, usually expecting specialists to have an extensive practical and theoretical experience in the field in question.⁶

Besides, both disciplinary proceedings and procedures regarding the use of professional indemnity insurance can be components of external quality measurement.⁷

4. Conclusion

The analysis in this paper shows that there is not one sole way how to ensure quality in legal services.

The competence of lawyers is ensured by a number of measures. A high level of initial training, continuing education and robust deontological rules form the basis to guarantee high-quality legal services. Additional measures are imposed in all member states to further underpin these efforts, such as specific certificates for specialists or strict liability regimes with preventive effects.

Generally, Bars and Law Societies as well as law firms can choose from a variety of complementary approaches. An individual mix of measures is important in order to ensure that the chosen means reinforce each other.

Disciplinary oversight by Bars and Law Societies warrants the ethics of the profession. This means an additional layer of protection for clients. Moreover, deontological rules neutralise effects of information asymmetry between lawyers and their clients, including effectively inhibiting the former to take any advantage from this.

With regard to the fact that the independence of lawyers is a corner stone of the rule of law, only independent Bars can supervise lawyers. In this sense, also the role of private contractors or even the

⁶ For example, in Germany the title of *Fachanwalt* (specialist lawyer) is awarded by regional Bars to lawyers who demonstrate special theoretical knowledge and practical experience in a specific field. To obtain the *Fachanwalt* title, usually, a successfully completed specialist lawyer course is necessary, which follows specified requirements such as completing at least 120 hours and writing at least three supervisory papers. In addition, specific practical experience with cases in the area of specialization is mandatory. Afterwards, anyone who uses a specialist lawyer title must prove annually professional training to the prescribed extent.

See also CCBE comparative note on national regimes of specialization, available [here](#).

⁷ However, both always have to be put in context, such as regarding the reasons for individual disciplinary proceedings or the use of professional indemnity insurance, for example, whether there were external factors such as an unusual high number of young lawyers joining the profession. Also, the decisions of insurance companies are driven by their economic interest.

state must be limited also in the area of quality control. This is in the interest of clients who can be sure that their lawyers are not subject to any undue external pressure and especially do not depend on the good-will of the state. Only independent lawyers can effectively defend and protect their clients' rights.

Article 47 of the Charter of Fundamental Rights clearly states the right for effective legal advice, defence and representation in the interest of the client.

However, the European Commission continuously questions the effectiveness of professional rules and seems to favour something that can be described as “free and perfect competition”, including mechanisms and concepts from industrial sectors which have nothing in common with professional services, let alone legal services.⁸

One recent study⁹ on this issue showed a severe lack of understanding of the main features of the legal profession and mechanisms to protect clients. It was based on a concept of quality mostly reduced to the satisfaction of consumers which is an insufficient approach in the light of undeniable information asymmetry, not to mention other severe methodological shortcomings of this study¹⁰.

The CCBE urges the Commission to reassess their approach and not to take any risks for a merely theoretical economic stimulus which can by its nature only range from non-existent to strictly minimal. Continuing pressure by the European Commission which puts into question deontological rules and the role of Bars and Law Societies can turn out hazardous for the interests of clients and the rule of law.

⁸ See for instance, European Commission, Effects of regulation on service quality, November 2018, available [here](#). See also European Commission, The impact of regulatory environment on digital automation in professional services, March 2021, available [here](#). See also European Commission, Communication on taking stock of and updating the reform recommendations for regulation in professional services of 2017, July 2021, available [here](#). *Inter alia*, at no point, the connection between professional regulation of lawyers and the rule of law is raised. Independent, self-regulated bars are even used as a negative factor in the methodology of the restrictiveness indicator.

⁹ European Commission, Effects of regulation on service quality, November 2018, available [here](#).

¹⁰ The CCBE addressed a letter to the European Commission on 25th June 2019, in which numerous methodological shortcomings were highlighted and the CCBE expressed serious doubts about the robustness of the published findings. Unfortunately, the study was still used as a reference in the Single Market Performance Report 2019 (SWD(2019) 444 final, footnote 34), available [here](#). Despite the CCBE's criticism, this study was again referred to more recently in the Staff Working Document accompanying the Communication on taking stock of and updating the reform recommendations for regulation in professional services of 2017, July 2021, page 9, available [here](#).