

Mr. Grzegorz Schetyna
Speaker of Sejm of the Republic of Poland
ul. Wiejska 4/6/8
00-902 Warszawa
Poland
E-mail: Grzegorz.Schetyna@sejm.pl

Brussels, 21 June 2011

Dear Speaker,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE), which is the representative organisation of around 1 million European lawyers through its member bars and law societies from 31 full member countries, and 11 further associate and observer countries.

The CCBE is recognised as the voice of the European legal profession by the national bars and law societies on the one hand, and by the EU institutions on the other.

The Polish delegation to the CCBE (made up of the Polish Bar Council and the National Council of Legal Advisers) has informed the CCBE about the latest discussions on the draft Act on State Legal Examination.

According to the information we have, the draft Act provides for a new type of legal profession, the so-called 'legal counsels', who would be allowed – after graduating from a law faculty - to provide legal advice and act before public authorities and Courts of 1st Instance in certain cases, on behalf of their clients. We understand that this new legal profession would not be subject to any professional training; it could carry out its activities without having to comply with any ethical code or disciplinary regime.

The CCBE is seriously concerned about the consequences on the administration of justice and society in general.

Rules on training, ethics and discipline are key to the profession. The purpose of professional training for lawyers is to ensure that clients receive high quality service. It is in the interest of clients that lawyers have a good professional education, enabling them to recognise the client's problems and needs, and that lawyers have the skills to give the best advice in the quickest possible time, thereby also reducing the cost for the client. The rules of professional conduct are designed to ensure the proper performance by the lawyer of his/her function. The failure of the lawyer to observe these rules may result in disciplinary sanctions.

In the CCBE's view, a high standard of professional competence, rules of professional conduct and a functioning disciplinary regime are a cornerstone for the furtherance of the rule of law within a democratic society.

The CCBE would like to refer in this context to the United Nations [Basic Principles](#) on the Role of Lawyers of 1990 which underline the importance of these issues for lawyers (annex 1). Principle 9 states that governments shall ensure that lawyers have “*appropriate education and training*” and “*are made aware of the ideals and ethical duties of the lawyer*”. Principle 26 provides that “*Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms*”.

In addition, the Council of Europe [Recommendation Rec\(2000\)21](#) on the freedom of exercise of the profession of lawyer of 2000 emphasises the importance of training, ethics and discipline in relation to the legal profession (annex 2). In Principle II, it states that “*all necessary measures should be taken in order to ensure a high standard of legal training and morality as a prerequisite for entry into the profession and to provide for the continuing education of lawyers*”. Principle V states that Bars and other lawyers’ association should ensure, inter alia, to “*promote the highest possible standards of competence of lawyers and maintain respect by lawyers for the standards of conduct and discipline*”. Principle VI states that “*Where lawyers do not act in accordance with their professional standards, set out in codes of conduct drawn up by Bar associations or other associations of lawyers or by legislation, appropriate measures should be taken, including disciplinary proceedings.*”

The CCBE seriously doubts that the draft Law will be able to comply with these international and European standards (lack of a proper training, as well as of an ethical and disciplinary regime).

This new profession would probably also operate in a European vacuum: a number of European rules and standards contained in European Union instruments, which apply to lawyers, would not be applicable to this profession. We believe that this could lead to a situation of discrimination and unequal treatment amongst professionals providing legal services.

We would also like to inform you that the CCBE - being aware of the importance of high quality training for lawyers - adopted in 2007 a [Recommendation](#) on Training Outcomes of European Lawyers (annex 3). The Recommendation sets out the knowledge, competences and skills that lawyers should have when entering into the profession. It provides, for instance, that lawyers will need to know about their ethical duties (professional secrecy, independence, avoidance of conflict of interest, just to give a few examples); they also need to be able to manage a law firm and have the necessary analytical and negotiations skills. These are just some of the outcomes put forward in the CCBE paper.

The CCBE has also developed [ethical rules](#) for the lawyers in Europe: ‘The Charter of Core Principles of the European Legal Profession and the Code of Conduct for European lawyers’ (annex 4). The Charter contains a list of ten core principles common to the national and international rules regulating the legal profession. The Code applies to the cross-border activities of lawyers within Europe: it contains the general principles of the lawyers (independence, confidentiality, the client’s interests etc); and it sets standards for the lawyer’s relations with clients, courts and between lawyers. The CCBE’s [recommendations](#) on disciplinary process for the legal profession set out the main principles to be observed with regard to disciplinary proceedings (annex 5).

We wonder how the new Polish profession would be able to comply with these standards; standards which are established in the interest of the client in order to guarantee high quality legal services.

Overall, we cannot see how the Polish authorities are able guarantee that law graduates will have the necessary knowledge, competences and skills, for carrying out their activities in line

with European and international standards, which are necessary in a society based on the rule of law and the administration of justice.

We urge you to seriously re-consider the current draft law; we are happy to discuss this with you the issue raised in our letter, if you find it helpful.

We look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Dal', written over a long horizontal line that tapers to a point on the right side.

Georges-Albert Dal
CCBE President

Cc:

Mr. Krzysztof Kwiatkowski, Minister of Justice
E-mail: bm@ms.gov.pl

Mr. Andrzej Zwara, President of the Polish Bar Council
E-mail: info@nra.pl

Mr. Maciej Bobrowicz, President of the National Council of Legal Advisers
E-mail: ciesielski@kirp.pl

Annex 1

Basic Principles on the Role of Lawyers

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safeguards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest,

The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Qualifications and training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the

ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.

11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Freedom of expression and association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Professional associations of lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

Annex 2

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation Rec(2000)21

of the Committee of Ministers to member states

on the freedom of exercise of the profession of lawyer

(Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to the provisions of the European Convention on Human Rights;

Having regard to the United Nations Basic Principles on the Role of Lawyers, endorsed by the General Assembly of the United Nations in December 1990;

Having regard to Recommendation No. R (94) 12 on the independence, efficiency and role of judges, adopted by the Committee of Ministers of the Council of Europe on 13 October 1994;

Underlining the fundamental role that lawyers and professional associations of lawyers also play in ensuring the protection of human rights and fundamental freedoms;

Desiring to promote the freedom of exercise of the profession of lawyer in order to strengthen the rule of law, in which lawyers take part, in particular in the role of defending individual freedoms;

Conscious of the need for a fair system of administration of justice which guarantees the independence of lawyers in the discharge of their professional duties without any improper restriction, influence, inducement, pressure, threats or interference, direct or indirect, from any quarter or for any reason;

Aware of the desirability of ensuring a proper exercise of lawyers' responsibilities and, in particular, of the need for lawyers to receive sufficient training and to find a proper balance between their duties towards the courts and those towards their clients;

Considering that access to justice may require persons in an economically weak position to obtain the services of lawyers,

Recommends the governments of member states to take or reinforce, as the case may be, all measures they consider necessary with a view to the implementation of the principles contained in this recommendation.

For the purpose of this recommendation, "lawyer" means a person qualified and authorised according to the national law to plead and act on behalf of his or her clients, to engage in the practice of law, to appear before the courts or advise and represent his or her clients in legal matters.

Principle I - General principles on the freedom of exercise of the profession of lawyer

1. All necessary measures should be taken to respect, protect and promote the freedom of exercise of the profession of lawyer without discrimination and without improper interference from the authorities or the public, in particular in the light of the relevant provisions of the European Convention on Human Rights.
2. Decisions concerning the authorisation to practice as a lawyer or to accede to this profession, should be taken by an independent body. Such decisions, whether or not they are taken by an independent body, should be subject to a review by an independent and impartial judicial authority.
3. Lawyers should enjoy freedom of belief, expression, movement, association and assembly, and, in particular, should have the right to take part in public discussions on matters concerning the law and the administration of justice and to suggest legislative reforms.
4. Lawyers should not suffer or be threatened with any sanctions or pressure when acting in accordance with their professional standards.
5. Lawyers should have access to their clients, including in particular to persons deprived of their liberty, to enable them to counsel in private and to represent their clients according to established professional standards.
6. All necessary measures should be taken to ensure the respect of the confidentiality of the lawyer-client relationship. Exceptions to this principle should be allowed only if compatible with the rule of law.
7. Lawyers should not be refused access to a court before which they are qualified to appear and should have access to all relevant files when defending the rights and interests of their clients in accordance with their professional standards.
8. All lawyers acting in the same case should be accorded equal respect by the court.

Principle II - Legal education, training and entry into the legal profession

1. Legal education, entry into and continued exercise of the legal profession should not be denied in particular by reason of sex or sexual preference, race, colour, religion, political or other opinion, ethnic or social origin, membership of a national minority, property, birth or physical disability.
2. All necessary measures should be taken in order to ensure a high standard of legal training and morality as a prerequisite for entry into the profession and to provide for the continuing education of lawyers.
3. Legal education, including programmes of continuing education, should seek to strengthen legal skills, increase awareness of ethical and human rights issues, and train lawyers to respect, protect and promote the rights and interests of their clients and support the proper administration of justice.

Principle III - Role and duty of lawyers

1. Bar associations or other lawyers' professional associations should draw up professional standards and codes of conduct and should ensure that, in defending the legitimate rights and interests of their clients, lawyers have a duty to act independently, diligently and fairly.

2. Professional secrecy should be respected by lawyers in accordance with internal laws, regulations and professional standards. Any violation of this secrecy, without the consent of the client, should be subject to appropriate sanctions.

3. The duties of lawyers towards their clients should include:

a. advising them on their legal rights and obligations, as well as the likely outcome and consequences of the case, including financial costs;

b. endeavouring first and foremost to resolve a case amicably;

c. taking legal action to protect, respect and enforce the rights and interests of their clients;

d. avoiding conflicts of interest;

e. not taking up more work than they can reasonably manage.

4. Lawyers should respect the judiciary and carry out their duties towards the court in a manner consistent with domestic legal and other rules and professional standards. Any abstention by lawyers from their professional activities should avoid damage to the interests of clients or others who require their services.

Principle IV - Access for all persons to lawyers

1. All necessary measures should be taken to ensure that all persons have effective access to legal services provided by independent lawyers.

2. Lawyers should be encouraged to provide legal services to persons in an economically weak position.

3. Governments of member states should, where appropriate to ensure effective access to justice, ensure that effective legal services are available to persons in an economically weak position, in particular to persons deprived of their liberty.

4. Lawyers' duties towards their clients should not be affected by the fact that fees are paid wholly or in part from public funds.

Principle V - Associations

1. Lawyers should be allowed and encouraged to form and join professional local, national and international associations which, either alone or with other bodies, have the task of strengthening professional standards and safeguarding the independence and interests of lawyers.

2. Bar associations or other professional lawyers' associations should be self-governing bodies, independent of the authorities and the public.

3. The role of Bar associations or other professional lawyers' associations in protecting their members and in defending their independence against any improper restrictions or infringements should be respected.

4. Bar associations or other professional lawyers' associations should be encouraged to ensure the independence of lawyers and, inter alia, to:

- a. promote and uphold the cause of justice, without fear;
 - b. defend the role of lawyers in society and, in particular, to maintain their honour, dignity and integrity;
 - c. promote the participation by lawyers in schemes to ensure the access to justice of persons in an economically weak position, in particular the provision of legal aid and advice;
 - d. promote and support law reform and discussion on existing and proposed legislation;
 - e. promote the welfare of members of the profession and assist them or their families if circumstances so require;
 - f. co-operate with lawyers of other countries in order to promote the role of lawyers, in particular by considering the work of international organisations of lawyers and international intergovernmental and non-governmental organisations;
 - g. promote the highest possible standards of competence of lawyers and maintain respect by lawyers for the standards of conduct and discipline.
5. Bar associations or other professional lawyers' associations should take any necessary action, including defending lawyers' interests with the appropriate body, in case of:
- a. arrest or detention of a lawyer;
 - b. any decision to take proceedings calling into question the integrity of a lawyer;
 - c. any search of lawyers themselves or their property;
 - d. any seizure of documents or materials in a lawyers' possession;
 - e. publication of press reports which require action on behalf of lawyers.

Principle VI - Disciplinary proceedings

1. Where lawyers do not act in accordance with their professional standards, set out in codes of conduct drawn up by Bar associations or other associations of lawyers or by legislation, appropriate measures should be taken, including disciplinary proceedings.
2. Bar associations or other lawyers' professional associations should be responsible for or, where appropriate, be entitled to participate in the conduct of disciplinary proceedings concerning lawyers.
3. Disciplinary proceedings should be conducted with full respect of the principles and rules laid down in the European Convention on Human Rights, including the right of the lawyer concerned to participate in the proceedings and to apply for judicial review of the decision.
4. The principle of proportionality should be respected in determining sanctions for disciplinary offences committed by lawyers.



Représentant les avocats d'Europe
Representing Europe's lawyers

CCBE Recommendation on Training Outcomes for European Lawyers

CCBE Recommendation on Training Outcomes for European Lawyers

Preamble	3
1. Deontology and professional status	4
1.1. Substantive Knowledge.....	4
1.1.1. Deontology	4
1.1.2. Professional status	4
1.2. Practical knowledge and skills	4
2. Implementing the work of the lawyer	5
2.1. Substantive knowledge	5
2.2. Practical knowledge and skills	6
2.2.1. Skills for the acquisition of knowledge.....	6
2.2.2. Analytical ability	6
2.2.3. Ability to consider the client's needs	6
2.2.4. Ability to communicate	6
3. Means of performing the lawyer's mission	7
3.1. Substantive knowledge	7
3.2. Practical knowledge and skills	7
3.2.1. Abilities regarding relationships.....	7
Conclusions	7
Annex	8

Preamble

The Bars and Law Societies of the CCBE, taking account of the ongoing construction of the European Qualification Framework and the development of a Higher Education Area in Europe as well as the *CCBE Resolution on Training for Lawyers in the European Union*¹ and wishing to promote the development of national training outcomes and to facilitate the free movement of lawyers hereby recognises²

- that free movement of lawyers has now advanced to allow, in appropriate cases, access to professional training as well as to the legal professions themselves; and
- that the exercise of the profession of lawyer requires a very high standard of professional competence of their members, and those aspiring to become members of the legal profession. Such a high standard of professional competence of lawyers is a cornerstone for the furtherance of the rule of law and democratic society; and
- that all CCBE Bars and Law Societies embrace and wish to promote through their training the core principles recognised in the *CCBE Charter of Core Principles of the European legal profession*;³ and
- that Bars and Law Societies recognise the need to promote, through training, the essential deontological rules and practices of the legal profession;
- and recognising therefore the importance of promoting a transparent set of training outcomes for lawyers in Europe;

hereby sets out its view of the main training outcomes necessary for a European lawyer.

The training outcomes below are organised in three sections.

1. The first section sets out the outcomes relating to deontology and professional rules. Their function is to make future lawyers aware of their professional identity and of the role of the profession within the administration of justice and in society at large. Through mastering these outcomes future lawyers learn **who lawyers are**.

2. The second section's outcomes relate to the execution of the mission of lawyers. They describe, in general terms, the theoretical and practical knowledge that lawyers should have in order successfully to perform their functions. Through mastering these outcomes future lawyers learn **what lawyers do**.

3. The third section's outcomes are related to the organisation of the activities of lawyers. If lawyers, fully aware of their mission and role, and in possession of all the necessary technical skills are to perform their functions more effectively, they must understand these outcomes as they explain **how lawyers should work**.

¹ CCBE Resolution on training for lawyers in the European Union (November 2000), see http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/form_enpdf1_1183977205.pdf

² In this Recommendation the term "lawyer" is used in the sense mentioned in article 1 of Directive 1998/5/EC (1998) OJ L77/36 as amended.

³ CCBE Charter of Core Principles of the European legal profession (November 2006), see http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Charter_of_core_prin1_1183986811.pdf.

1. Deontology and professional status

It is of fundamental importance for lawyers to have full knowledge and understanding of professional and ethical rules, as expressed in national codes of conduct, as well as in the CCBE cross border code of conduct. They must act in accordance with such rules so that they can fulfil their mission in the public interest. Lawyers should not only comply with such rules but also should be able to develop their own professional identity by applying such rules in their everyday actions. Adherence to the principles and values of the profession allows lawyers to serve, in the best possible way, both the interest of their clients and the public interest in the promotion of justice and the upholding of rule of law at the same time.

The CCBE believes that the mission of promoting the rule of law can be fulfilled by individual lawyers only if professional rules and principles are used as a guidance for day to day activities of lawyers.

Future lawyers should not only have regard to the specific technical legal problems with which they are dealing, but should also deal with their tasks in a wider ethical context, taking into account that the functions which lawyers perform are not only for the benefit of their clients but also for society at large. Professional rules must be used as a guide to foster the quality of such legal services.

In this regard, for instance, a lawyer should be aware of rules on communication and publicity not only to avoid behaviour incompatible with professional ethics but also to learn how to communicate effectively with the public in order to protect the interest of clients.

1.1. Substantive knowledge

1.1.1. Deontology

- [a] understanding of the function and the role of the legal profession;
- [b] understanding of professional and ethical rules, including the meaning of terms like independence, professional secrecy, client confidentiality, legal professional privilege and representation of interests;
- [c] understanding of the rights and duties arising from the collegiate nature of the legal profession, especially those derived from relationships with colleagues, clients, opposing parties courts and other public bodies and Bars and Law Societies;
- [d] understanding of the rights and duties arising out of the giving of advice;
- [e] understanding of rights and duties in the mission of assistance and representation before courts;
- [f] understanding of standards applicable to lawyers' fees;
- [g] understanding of standards applicable to handling clients' funds;
- [h] understanding of rules relating to communication and publicity.

1.1.2. Professional status

- [a] understanding of the organisation of and the services provided by the Bars and Law Societies;
- [b] understanding of the disciplinary and sanctioning regime;
- [c] understanding of professional liability and of professional civil indemnity insurance;
- [d] understanding of the various legal forms which a legal practice may take;
- [e] understanding of the status of colleagues and partners.

1.2. Practical knowledge and skills

- [a] ability to work in the framework of professional deontology and to respect it;
- [b] ability to assess one's own competence regarding the request of a client for advice or representation;
- [c] ability to make a reasoned decision as to the choice of legal form and mode of governance of the law firm or practice;
- [d] ability to behave professionally and with integrity.

2. Implementing the work of the lawyer

A high level of professional competence is one of the core principles of the legal profession. It is confirmed in the CCBE Charter of Core Principles,⁴ the Council of Europe Recommendation on the freedom of exercise of the profession of lawyer⁵, the European Parliament resolution on the legal professions and the general interest in the functioning of legal systems⁶ and the United Nations Basic Principles on the Role of Lawyers.⁷ Lawyers cannot effectively advise or represent the client unless they have had the training necessary to enable a professional to keep pace with continuous changes in law and practice and in the related technological, social and economic environments.

Future lawyers should master the major concepts of the legal system in which they are working and use such concepts to provide their clients with the most effective solutions to their problems. This implies not only a knowledge of the law, but also a mastery of methods which ensure that the law itself is used correctly. Lawyers should be able to orient the client towards timely and cost effective solutions.

Future lawyers should learn not only how to conduct a critical analysis of the law, but also how to ascertain the necessary details of situations which they are asked to handle. After having analysed the facts, and in the light of the law, it is fundamental that they know how to communicate the result of their analysis to their clients and – if necessary – to other parties with an interest.

The credibility of the legal profession, and ultimately of a legal system, is closely linked to the practical ability of individuals and organisations to enjoy the full and effective protection of the law in the most affordable and timely manner. Future lawyers should learn how to ensure that such full and effective protection is made available. In so doing they will fulfil their duty of loyalty to the client, and thereby uphold the dignity and honour of the legal profession, the rule of law and the fair administration of justice.

2.1. Substantive knowledge

- [a] thorough understanding of the principal features and the major concepts, values and principles of the legal system, including the European dimension (including institutions, procedures);
- [b] detailed knowledge beyond the core of the basic legal system⁸ and knowledge in at least some specialised fields of law;
- [c] knowledge of procedural law and of alternative dispute resolution mechanisms;
- [d] knowledge of techniques of drafting, in particular drafting of contracts;
- [e] knowledge of negotiation techniques.

⁴ See footnote 3 above.

⁵ Recommendation Rec(2000)21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer, see <https://wcd.coe.int/com.instranet.InstraServlet?Command=com.instranet.CmdBlobGet&DocId=370284&SecMode=1&Admin=0&Usage=4&IntranetImage=62250>.

⁶ European Parliament resolution on the legal professions and the general interest in the functioning of legal systems, see <http://www.europarl.europa.eu/sides/getDoc.do?sessionId=398C892CD33BF59E9DB3BF3AE2362941.node2?language=EN&ubRef=-//EP//TEXT+TA+P6-TA-2006-0108+0+DOC+XML+V0//EN>.

⁷ United Nations Basic Principles on the Role of Lawyers, see http://www.unhchr.ch/html/menu3/b/h_comp44.htm.

⁸ The core knowledge includes in particular knowledge of civil law (obligations, tort, property law and the law of succession), constitutional and administrative law, human rights law, criminal law and European Law.

2.2. Practical knowledge and skills

2.2.1. Skills for the acquisition of knowledge

2.2.1.1. Ability in legal research

- [a] ability to identify legal issues;
- [b] ability to locate primary and secondary legal resources.

2.2.1.2. Skills in updating knowledge

- [a] ability to produce a synthesis of relevant doctrinal and policy issues in relation to a legal topic;
- [b] ability to make a critical assessment of the merits of particular arguments;
- [c] ability to identify elements of a problem which need further research;
- [d] ability to apply knowledge of the law to the facts of a new case.

2.2.2. Analytical ability

- [a] ability to analyse problems from various perspectives;
- [b] ability to establish logical relationships between various sub-aspects;
- [c] ability to make a coherent analysis of complex information;
- [d] ability to appreciate the long-term consequences of decisions.

2.2.3. Ability to consider the client's needs

2.2.3.1. Ability to listen to the client's request and to analyse the client's request

- [a] ability to make a comparative assessment having taken account of all relevant factors;
- [b] ability to form an opinion in complex situations;
- [c] ability to evaluate the interests of the opposing party;
- [d] ability to form an independent opinion in the interests of the client;
- [e] ability to provide objective advice to the client.

2.2.3.2. Customer focus

- [a] ability to focus on the client's needs and circumstances;
- [b] ability to master the necessary means of communication with the client;
- [c] ability to analyse and be able to offer solutions to legal problems;
- [d] ability to present reasoned advice as to the choice between alternative solutions;
- [e] ability to communicate knowledge to and on behalf of clients in a structured way;
- [f] ability to develop non legal knowledge useful to the understanding of the requests of the clients and the professional practice.

2.2.4. Ability to communicate

- [a] ability to provide clear and sound advice;
- [b] ability to communicate effectively both verbally and in writing;
- [c] ability to plead;
- [d] ability to present a coherent argument both verbally and in writing;
- [e] ability to work efficiently either alone or as a member of a team;
- [f] ability to negotiate;
- [g] ability to chair meetings and conduct interviews.

3. Means of performing the lawyer's mission

Efficient and effective organisation is a key element for a lawyer wanting to protect the client's interest.

Clients should be confident that their documents and commercial secrets are well protected, that cases are allocated within a firm according to competence and that they can obtain legal assistance from their lawyer when they need it and in the most effective manner.

Future lawyers should be aware that strict legal competence alone is not enough: they should learn and observe all procedures aimed at protecting clients' interests (notably professional secrecy/client confidentiality, avoidance of conflicts of interests etc.) and at ensuring that the office runs as smoothly and effectively as possible. Future lawyers should learn to observe the duty of loyalty towards their colleagues. This is a basic principle of the profession. Its observance will facilitate their success in the profession and will benefit their clients.

3.1. Substantive knowledge

Knowledge relevant to the running of a law firm or an individual practice: application of practical elements, inter alia, in accountancy law, tax law, company law, social law, and insurance law.

3.2. Practical knowledge and skills

3.2.1. Abilities regarding relationships

[a] ability to develop and maintain personal relationships with clients, colleagues and other contact persons;

[b] ability to create a time schedule or establish priorities for personal work or that of others.

Conclusions

Lawyers trained to achieve the outcomes outlined in this document will be able to make a positive contribution to the protection of the interests of their clients as well as to the rule of law and protection of fundamental rights and freedoms of everyone. This set of training outcomes should ease the free movement of lawyers, as well as free movement for potential lawyers who have not yet completed their training.

Annex

Definitions

Educational terms

The diversity existing between the European Member States of the EU, EEA and Switzerland with respect to the education and training of lawyers allows such education and training to be attributed to several discrete phases. The education and training provided in each of the phases has varying contents depending on the country or system of reference. Therefore, with a view to acquiring a better and more uniform understanding and in avoiding errors of interpretation resulting from the use of the same terminology with different meanings, the following definitions are proposed:

Pre-professional education

This consists of the education which permits one to obtain a qualification at university level. This is the university law degree or alternative equivalent route usually necessary before commencing professional training.

The aim of university legal studies is primarily to teach the academic knowledge of law rather than its practical application. The latter can be taught during the post-graduate practical legal training which is necessary in most jurisdictions.

We note here that "employability", a term used in the Bologna-Sorbonne-discussion to describe one aim of academic education, should not be interpreted as the "ability to practice as a lawyer".⁹ In the context of legal education the term should rather be interpreted as "the competence to join the labour market" or "the competence to undertake professional training".

Professional training

Professional training normally starts after university studies and lasts as long as required in order to enable registration in the corresponding professional body as a practising or fully qualified lawyer.

When, in a particular legal system, there are various possible forms of registration, the relevant registration will be the one that does not establish any difference or limitation in the exercise of the legal profession with regard to the senior qualified lawyer, with the exception of access to higher appeal courts, in those countries/systems which require complementary professional experience or training for this purpose.

For the purposes of this document, those registered as apprentices, trainee lawyers or under any similar expression that would have as a consequence a limitation of the exercise of the profession of lawyer shall also be considered as under professional training.

The fact that in certain jurisdictions professional training might involve the granting of an additional academic qualification (e.g. an LLM) would not prevent that training of being considered professional for the purposes of this Recommendation.

Continuing education

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

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

⁹ Lawyer as defined in footnote 2 above.



**CHARTER OF CORE PRINCIPLES
OF THE EUROPEAN LEGAL PROFESSION
AND
CODE OF CONDUCT
FOR EUROPEAN LAWYERS**

Edition 2010
CCBE

Responsible editor: Jonathan Goldsmith
Avenue de la Joyeuse Entrée, 1-5 - B-1040 Brussels
Tél.: +32 (0)2 234 65 10 - Fax: +32 (0)2 234 65 11/12
email: ccbe@ccbe.eu - <http://www.ccbe.eu>

The Council of Bars and Law Societies of Europe (CCBE) has as its principal object to represent its member bars and law societies, whether they are full members (i.e. those of the European Union, the European Economic Area and the Swiss Confederation), or associated or observer members, on all matters of mutual interest relating to the exercise of the profession of lawyer, the development of the law and practice pertaining to the rule of law and the administration of justice and substantive developments in the law itself, both at a European and international level (Article III 1.a. of the CCBE Statutes).

In this respect, it is the official representative of bars and law societies which between them comprise around 1 million European lawyers.

The CCBE has adopted two foundation texts, which are included in this brochure, that are both complementary and very different in nature.

The more recent one is the ***Charter of Core Principles of the European Legal Profession*** which was adopted at the plenary session in Brussels on 24 November 2006. The Charter is not conceived as a code of conduct. It is aimed at applying to all of Europe, reaching out beyond the member, associate and observer states of the CCBE. The Charter contains a list of ten core principles common to the national and international rules regulating the legal profession.

The Charter aims, inter alia, to help bar associations that are struggling to establish their independence; and to increase understanding among lawyers of the importance of the lawyer's role in Society; it is aimed both at lawyers themselves and at decision makers and the public in general.

The ***Code of Conduct for European Lawyers*** dates back to 28 October 1988. It has been amended three times; the latest amendment took place at the plenary session in Oporto on 19 May 2006. It is a binding text on all member States: all lawyers who are members of the bars of these countries (whether their bars are full, associate or observer members of the CCBE) have to comply with the Code in their cross-border activities within the European Union, the European Economic Area and the Swiss Confederation as well as within associate and observer countries.

These two texts include a commentary for the first one, and an explanatory memorandum for the second one.

It is unnecessary to emphasise the importance of the set of norms set out in these two documents, which are the basis of the deontology of the European legal profession, and which contribute to shaping the European lawyer and the European bar.

31 January 2008

CHARTER OF CORE PRINCIPLES OF THE EUROPEAN LEGAL PROFESSION	4
A COMMENTARY ON THE CHARTER OF CORE PRINCIPLES OF THE EUROPEAN LEGAL PROFESSION	5
CODE OF CONDUCT FOR EUROPEAN LAWYERS	10
1. PREAMBLE	10
1.1. The Function of the Lawyer in Society.....	10
1.2. The Nature of Rules of Professional Conduct	10
1.3. The Purpose of the Code.....	11
1.4. Field of Application <i>Ratione Personae</i>	11
1.5. Field of Application <i>Ratione Materiae</i>	12
1.6. Definitions.....	12
2. GENERAL PRINCIPLES	12
2.1. Independence.....	12
2.2. Trust and Personal Integrity.....	13
2.3. Confidentiality	13
2.4. Respect for the Rules of Other Bars and Law Societies.....	13
2.5. Incompatible Occupations.....	13
2.6. Personal Publicity	14
2.7. The Client's Interest.....	14
2.8. Limitation of Lawyer's Liability towards the Client	14
3. RELATIONS WITH CLIENTS	14
3.1. Acceptance and Termination of Instructions	14
3.2. Conflict of Interest	15
3.3. <i>Pactum de Quota Litis</i>	15
3.4. Regulation of Fees.....	16
3.5. Payment on Account.....	16
3.6. Fee Sharing with Non-Lawyers	16
3.7. Cost of Litigation and Availability of Legal Aid	16
3.8. Client Funds.....	16
3.9. Professional Indemnity Insurance	17
4. RELATIONS WITH THE COURTS.....	17
4.1. Rules of Conduct in Court	17
4.2. Fair Conduct of Proceedings	17
4.3. Demeanour in Court	17
4.4. False or Misleading Information	18
4.5. Extension to Arbitrators etc.....	18

5.	RELATIONS BETWEEN LAWYERS	18
	5.1. Corporate Spirit of the Profession	18
	5.2. Co-operation among Lawyers of Different Member States	18
	5.3. Correspondence between Lawyers	18
	5.4. Referral Fees	19
	5.5. Communication with Opposing Parties	19
	5.6. (Deleted by decision of the Plenary Session in Dublin on 6 December 2002)	19
	5.7. Responsibility for Fees	19
	5.8. Continuing Professional Development	19
	5.9. Disputes amongst Lawyers in Different Member States	19
	EXPLANATORY MEMORANDUM	21

"In a society founded on respect for the rule of law the lawyer fulfils a special role. The lawyer's duties do not begin and end with the faithful performance of what he or she 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 or she is trusted to assert and defend and it is the lawyer's duty not only to plead the client's cause but to be the client's adviser. Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in Society."

– the CCBE's Code of Conduct for European Lawyers, article 1.1

There are core principles which are common to the whole European legal profession, even though these principles are expressed in slightly different ways in different jurisdictions. The core principles underlie the various national and international codes which govern the conduct of lawyers. European lawyers are committed to these principles, which are essential for the proper administration of justice, access to justice and the right to a fair trial, as required under the European Convention of Human Rights. Bars and law societies, courts, legislators, governments and international organisations should seek to uphold and protect the core principles in the public interest.

The core principles are, in particular:

- (a) the independence of the lawyer, and the freedom of the lawyer to pursue the client's case;
- (b) the right and duty of the lawyer to keep clients' matters confidential and to respect professional secrecy;
- (c) avoidance of conflicts of interest, whether between different clients or between the client and the lawyer;
- (d) the dignity and honour of the legal profession, and the integrity and good repute of the individual lawyer;
- (e) loyalty to the client;
- (f) fair treatment of clients in relation to fees;
- (g) the lawyer's professional competence;
- (h) respect towards professional colleagues;
- (i) respect for the rule of law and the fair administration of justice; and
- (j) the self-regulation of the legal profession.

¹ Adopted at the CCBE Plenary Session on 25.11.2006

1. On 25 November 2006 the CCBE unanimously adopted a "Charter of core principles of the European legal profession". The Charter contains a list of ten principles common to the whole European legal profession. Respect for these principles is the basis of the right to a legal defence, which is the cornerstone of all other fundamental rights in a democracy.
2. The core principles express the common ground which underlies all the national and international rules which govern the conduct of European lawyers.
3. The Charter takes into account:
 - national professional rules from states throughout Europe, including rules from non-CCBE states, which also share these common principles of European legal practice³,
 - the CCBE's Code of Conduct for European Lawyers,
 - the Principles of General Application in the International Bar Association's International Code of Ethics⁴,
 - recommendation Rec (2000) 21 of 25 October 2000 of the Committee of Ministers of the Council of Europe to member states on the freedom of exercise of the profession of lawyer⁵,
 - the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (Cuba), 27 August to 7 September 1990⁶,
 - the jurisprudence of the European Court of Human Rights and the European Court of Justice, and in particular the judgment of 19 February 2002 of the European Court of Justice in *Wouters v. Algemene Raad van de Nederlandse Orde van Advocaten* (C-309/99)⁷,
 - the Universal Declaration of Human Rights⁸, the European Convention on Human Rights⁹, and the European Union Charter of Funda-

2 Adopted at the CCBE Plenary Session on 11.05.2007

3 The national codes of conduct can be found on [CCBE web site](#).

4 [General Principles of the Legal Profession](#), adopted by the International Bar Association on 20 September 2006.

5 [Recommendation No. R\(2000\)21](#) of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer (Adopted by the Committee of Ministers on 25 October 2000 at 727th meeting of the Ministers' Deputies).

6 [Basic Principles on the Role of Lawyers](#), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

7 [Case C-309/99 J.C.J Wouters, J.W. Savelbergh, Price Waterhouse Belastingadviseurs BV v. Algemene Raad van de Nederlandse Orde van Advocaten](#), [2002] ECR I-1577.

8 [The Universal Declaration of Human Rights](#), adopted by the General Assembly of the United Nations on 10 December 1948.

9 [Convention for the Protection of Human Rights and Fundamental Freedoms](#), signed by the members of the Council of Europe on 4 November 1950 in Rome.

mental Rights¹⁰,

- the European Parliament resolution on the legal professions and the general interest in the functioning of legal systems, 23 March 2006¹¹.
4. The Charter is designed to serve as a pan-European document, reaching out beyond the member, associate and observer states of the CCBE. It is hoped that the Charter will be of help, for instance, to bar associations that are struggling to establish their independence in Europe's emerging democracies.
 5. It is hoped that the Charter will increase understanding among lawyers, decision makers and the public of the importance of the lawyer's role in society, and of the way in which the principles by which the legal profession is regulated support that role.
 6. The lawyer's role, whether retained by an individual, a corporation or the state, is as the client's trusted adviser and representative, as a professional respected by third parties, and as an indispensable participant in the fair administration of justice. By embodying all these elements, the lawyer, who faithfully serves his or her own client's interests and protects the client's rights, also fulfils the functions of the lawyer in Society - which are to forestall and prevent conflicts, to ensure that conflicts are resolved in accordance with recognised principles of civil, public or criminal law and with due account of rights and interests, to further the development of the law, and to defend liberty, justice and the rule of law.
 7. The CCBE trusts that judges, legislators, governments and international organisations will strive, along with bar associations, to uphold the principles set out in the Charter.
 8. The Charter is prefaced by an extract from the preamble to the Code of Conduct for European lawyers, including the assertion that: "Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in Society." The rule of law is closely associated with democracy as currently understood in Europe.
 9. The Charter's introductory paragraph claims that the principles in the Charter are essential for the fair administration of justice, access to justice and the right to a fair trial, as required by the European Convention on Human Rights. Lawyers and their bar associations will continue to be in the forefront in campaigning for these rights, whether in Europe's new emerging democracies, or in the more established democracies where such rights may be threatened.

10 [Charter of Fundamental Rights of the European Union](#), signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 December 2000.

11 European Parliament [resolution](#) on the legal professions and the general interest in the functioning of the legal systems, adopted on 23 March 2006.

Principle (a) – the independence of the lawyer, and the freedom of the lawyer to pursue the client's case:

A lawyer needs to be free - politically, economically and intellectually - in pursuing his or her activities of advising and representing the client. This means that the lawyer must be independent of the state and other powerful interests, and must not allow his or her independence to be compromised by improper pressure from business associates. The lawyer must also remain independent of his or her own client if the lawyer is to enjoy the trust of third parties and the courts. Indeed without this independence from the client there can be no guarantee of the quality of the lawyer's work. The lawyer's membership of a liberal profession and the authority deriving from that membership helps to maintain independence, and bar associations must play an important role in helping to guarantee lawyers' independence. Self-regulation of the profession is seen as vital in buttressing the independence of the individual lawyer. It is notable that in unfree societies lawyers are prevented from pursuing their clients' cases, and may suffer imprisonment or death for attempting to do so.

Principle (b) – the right and duty of the lawyer to keep clients' matters confidential and to respect professional secrecy:

It is of the essence of a lawyer's function that the lawyer should be told by his or her client things which the client would not tell to others - the most intimate personal details or the most valuable commercial secrets - and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there can be no trust. The Charter stresses the dual nature of this principle - observing confidentiality is not only the lawyer's duty, - it is a fundamental human right of the client. The rules of "legal professional privilege" prohibit communications between lawyer and client from being used against the client. In some jurisdictions the right to confidentiality is seen as belonging to the client alone, whereas in other jurisdictions "professional secrecy" may also require that the lawyer keeps secret from his or her own client communications from the other party's lawyer imparted on the basis of confidence. Principle (b) encompasses all these related concepts - legal professional privilege, confidentiality and professional secrecy. The lawyer's duty to the client remains even after the lawyer has ceased to act.

Principle (c) – avoidance of conflicts of interest, whether between different clients or between the client and the lawyer:

For the proper exercise of his or her profession, the lawyer must avoid conflicts of interest. So a lawyer may not act for two clients in the same matter if there is a conflict, or a risk of conflict, between the interests of those clients. Equally a lawyer must refrain from acting for a new client if the lawyer is in possession of confidential information obtained from another current or former client. Nor must a lawyer take on a client if there is a conflict of interest between the client and the lawyer. If a conflict of interest arises in the course of acting

for a client, the lawyer must cease to act. It can be seen that this principle is closely linked to principles (b) (confidentiality), (a) (independence) and (e) (loyalty).

Principle (d) – the dignity and honour of the legal profession, and the integrity and good repute of the individual lawyer:

To be trusted by clients, third parties, the courts and the state, the lawyer must be shown to be worthy of that trust. That is achieved by membership of an honourable profession; the corollary is that the lawyer must do nothing to damage either his or her own reputation or the reputation of the profession as a whole and public confidence in the profession. This does not mean that the lawyer has to be a perfect individual, but it does mean that he or she must not engage in disgraceful conduct, whether in legal practice or in other business activities or even in private life, of a sort likely to dishonour the profession. Disgraceful conduct may lead to sanctions including, in the most serious cases, expulsion from the profession.

Principle (e) – loyalty to the client:

Loyalty to the client is of the essence of the lawyer's role. The client must be able to trust the lawyer as adviser and as representative. To be loyal to the client, the lawyer must be independent (see principle (a)), must avoid conflicts of interest (see principle (c)), and must keep the client's confidences (see principle (b)). Some of the most delicate problems of professional conduct arise from the interaction between the principle of loyalty to the client and principles which set out the lawyer's wider duties – principle (d) (dignity and honour), principle (h) (respect towards professional colleagues) and in particular principle (i) (respect for the rule of law and the fair administration of justice). In dealing with such issues the lawyer must make it clear to the client that the lawyer cannot compromise his or her duties to the court and to the administration of justice in order to put forward a dishonest case on behalf of the client.

Principle (f) – fair treatment of clients in relation to fees:

A fee charged by a lawyer must be fully disclosed to the client, must be fair and reasonable, and must comply with the law and professional rules to which the lawyer is subject. Although professional codes (and principle (c) in this Charter) stress the importance of avoiding conflicts of interest between lawyer and client, the matter of the lawyer's fees seems to present an inherent danger of such a conflict. Accordingly, the principle dictates the necessity of professional regulation to see that the client is not overcharged.

Principle (g) – the lawyer's professional competence:

It is self-evident that the lawyer cannot effectively advise or represent the client unless the lawyer has the appropriate professional education and training. Recently, post-qualification training (continuing professional development) has gained increasing emphasis as a response to rapid rates of change

in law and practice and in the technological and economic environment. Professional rules often stress that a lawyer must not take on a case which he or she is not competent to deal with.

Principle (h) – respect towards professional colleagues:

This principle represents more than an assertion of the need for courtesy – although even that is important in the highly sensitive and highly contentious matters in which lawyers are frequently involved on behalf of their respective clients. The principle relates to the role of the lawyer as intermediary, who can be trusted to speak the truth, to comply with professional rules and to keep his or her promises. The proper administration of justice requires lawyers to behave with respect to each other so that contentious matters can be resolved in a civilised way. Similarly it must be in the public interest for lawyers to deal in good faith with each other and not to deceive. Mutual respect between professional colleagues facilitates the proper administration of justice, assists in the resolution of conflicts by agreement, and is in the client's interest.

Principle (i) – respect for the rule of law and the fair administration of justice:

We have characterised part of the role of the lawyer as acting as a participant in the fair administration of justice. The same idea is sometimes expressed by describing the lawyer as an “officer of the court” or as a “minister of justice”. A lawyer must never knowingly give false or misleading information to the court, nor should a lawyer ever lie to third parties in the course of his or her professional activities. These prohibitions frequently run counter to the immediate interests of the lawyer's client, and the handling of this apparent conflict between the interests of the client and the interests of justice presents delicate problems that the lawyer is professionally trained to solve. The lawyer is entitled to look to his or her bar association for assistance with such problems. But in the last analysis the lawyer can only successfully represent his or her client if the lawyer can be relied on by the courts and by third parties as a trusted intermediary and as a participant in the fair administration of justice.

Principle (j) – the self-regulation of the legal profession:

It is one of the hallmarks of unfree societies that the state, either overtly or covertly, controls the legal profession and the activities of lawyers. Most European legal professions display a combination of state regulation and self-regulation. In many cases the state, recognising the importance of the core principles, uses legislation to buttress them – for instance by giving statutory support to confidentiality, or by giving bar associations statutory power to make professional rules. The CCBE is convinced that only a strong element of self-regulation can guarantee lawyers' professional independence vis-à-vis the state, and without a guarantee of independence it is impossible for lawyers to fulfil their professional and legal role.

This Code of Conduct for European Lawyers 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, 6 December 2002 and 19 May 2006. The Code also takes into account amendments to the CCBE Statutes formally approved at an Extraordinary Plenary Session on 20 August 2007.

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. The lawyer's duties do not begin and end with the faithful performance of what he or she 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 or she is trusted to assert and defend and it is the lawyer's duty not only to plead the client's cause but to be the client's adviser. Respect for the lawyer's professional function is an essential condition for the rule of law and democracy in society.

A lawyer's function therefore lays on him or her 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 the client's cause or acts on the client's behalf;
- the legal profession in general and each fellow member of it in particular;
- 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 civilised societies. The failure of the lawyer to observe these rules may result in disciplinary sanctions.

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", notably as set out in Articles 4 and 7.2 of Directive 77/249/EEC and Articles 6 and 7 of Directive 98/5/EC.

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 a lawyer's cross-border activities the lawyer will remain bound to observe the rules of the Bar or Law Society to which he or she belongs to the extent that they are consistent with the rules in this Code.

1.4. Field of Application *Ratione Personae*

This Code shall apply to lawyers as they are defined by Directive 77/249/EEC and by Directive 98/5/EC and to lawyers of the Associate and Observer Members of the CCBE.

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

1.6. Definitions

In this Code:

"Member State" means a member state of the European Union or any other state whose legal profession is included in Article 1.4.

"Home Member State" means the Member State where the lawyer acquired the right to bear his or her professional title.

"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.

"Directive 77/249/EEC" means Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

"Directive 98/5/EC" means Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 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.

2. GENERAL PRINCIPLES

2.1. Independence

- 2.1.1. The many duties to which a lawyer is subject require the lawyer's absolute independence, free from all other influence, especially such as may arise from his or her 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 or her independence and be careful not to compromise his or her professional standards in order to please the 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 the client has no value if the lawyer gives it only to ingratiate him- or herself, to serve his or her 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 the lawyer should be told by his or her client things which the client would not tell to others, and that the lawyer 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 the lawyer in the course of his or her professional activity.
- 2.3.3. The obligation of confidentiality is not limited in time.
- 2.3.4. A lawyer shall require his or her associates and staff and anyone engaged by him or her 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

When practising cross-border, a lawyer from another Member State may be bound to comply with the professional rules 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 the CCBE are obliged to deposit their codes of conduct at the Secretariat of the 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 or her functions with due independence and in

a manner which is consistent with his or her duty to participate in the administration of justice a lawyer may be prohibited from undertaking certain 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 or she wishes 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 or her 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 communications 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 the client and must put those interests before the lawyer's own interests or those of fellow members of the legal profession.

2.8. Limitation of Lawyer's Liability towards the Client

To the extent permitted by the law of the Home Member State and the Host Member State, the lawyer may limit his or her liabilities towards the client in accordance with the professional rules to which the lawyer 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 that party's instructions. The lawyer may, however, act in a case in which he or she has been instructed by another lawyer acting for the party or where the case has been assigned to him or her 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 or her when the specific circumstances show that the identity, competence and authority are uncertain.

- 3.1.2. A lawyer shall advise and represent the client promptly, conscientiously and diligently. The lawyer shall undertake personal responsibility for the discharge of the client's instructions and shall keep the client informed as to the progress of the matter with which the lawyer has been entrusted.
- 3.1.3. A lawyer shall not handle a matter which the lawyer knows or ought to know he or she is not competent to handle, without cooperating with a lawyer who is competent to handle it.

A lawyer shall not accept instructions unless he or she 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 or her 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 or all of the clients concerned when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where the lawyer's independence may be impaired.
- 3.2.3. A lawyer must also refrain from acting for a new client if there is a risk of breach of a 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 the 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. "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 the Competent Authority having jurisdiction over the lawyer.

3.4. Regulation of Fees

A fee charged by a lawyer shall be fully disclosed to the client, shall be fair and reasonable, and shall comply with the law and professional rules to which the lawyer is subject.

3.5. Payment on Account

If a lawyer requires a payment on account of his or her 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. A lawyer may not share his or her 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 and the professional rules to which the lawyer is subject.

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 of Litigation 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 the client of the availability of legal aid where applicable.

3.8. Client Funds

3.8.1. Lawyers who come into possession of funds on behalf of their clients or third parties (hereinafter called "client funds") have to deposit such money into an account of a bank or similar institution subject to supervision by a public authority (hereinafter called a "client account"). A client account shall be separate from any other account of the lawyer. All client funds received by a lawyer should be deposited into such an account unless the owner of such funds agrees that the funds should be dealt with otherwise.

- 3.8.2. The lawyer shall maintain full and accurate records showing all the lawyer's dealings with client funds and distinguishing client funds from other funds held by the lawyer. Records may have to be kept for a certain period of time according to national rules.
- 3.8.3. A client account cannot be in debit except in exceptional circumstances as expressly permitted in national rules or due to bank charges, which cannot be influenced by the lawyer. Such an account cannot be given as a guarantee or be used as a security for any reason. There shall not be any set-off or merger between a client account and any other bank account, nor shall the client funds in a client account be available to defray money owed by the lawyer to the bank.
- 3.8.4. Client funds shall be transferred to the owners of such funds in the shortest period of time or under such conditions as are authorised by them.
- 3.8.5. The lawyer cannot transfer funds from a client account into the lawyer's own account for payment of fees without informing the client in writing.
- 3.8.6. The Competent Authorities in Member States shall have the power to verify and examine any document regarding client funds, whilst respecting the confidentiality or legal professional privilege to which it may be subject.

3.9. Professional Indemnity Insurance

- 3.9.1. Lawyers shall be insured against civil legal liability arising out of their legal practice to an extent which is reasonable having regard to the nature and extent of the risks incurred by their professional activities.
- 3.9.2. Should this prove impossible, the lawyer must inform the client of this situation and its consequences.

4. RELATIONS WITH THE COURTS

4.1. Rules of Conduct in Court

A lawyer who appears, or takes part in a case, before a court or tribunal 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.

4.3. Demeanour in Court

A lawyer shall while maintaining due respect and courtesy towards the court defend the interests of the client honourably and fearlessly with-

out regard to the lawyer's own interests or to any consequences to him- or herself 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 the lawyer's 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 matter which the lawyer is not competent to undertake. The lawyer should in such case be prepared to help that colleague to obtain the information necessary to enable him or her 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 intends to send communications to a lawyer in another Member State, which the sender wishes to remain confidential or without prejudice he or she should clearly express this intention prior to communicating the first of the documents.
- 5.3.2. If the prospective recipient of the communications is unable to ensure their status as confidential or without prejudice he or she should inform

the sender accordingly without delay.

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 him- or herself.

5.5. Communication with Opposing Parties

A lawyer shall not communicate about a particular case or matter directly with any person whom he or she 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 Plenary Session in Dublin on 6 December 2002)

5.7. Responsibility for Fees

In professional relations between members of Bars of different Member States, where a lawyer does not confine him- or herself to recommending another lawyer or introducing that other lawyer to the client but instead him- or herself entrusts a correspondent with a particular matter or seeks the correspondent's advice, the instructing lawyer 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 or her personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of the instructing lawyer's disclaimer of responsibility for the future.

5.8. Continuing Professional Development

Lawyers should maintain and develop their professional knowledge and skills taking proper account of the European dimension of their profession.

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 the lawyer shall draw the matter to the attention of that 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.

This Explanatory Memorandum was prepared at the request of the CCBE Standing Committee by the CCBE's deontology working party, who were responsible for drafting the first version of the Code of Conduct itself. It seeks to explain the origin of the provisions of the Code, to illustrate the problems which they are designed to resolve, particularly in relation to cross-border activities, and to provide assistance to the Competent Authorities in the Member States in the application of the Code. It is not intended to have any binding force in the interpretation of the Code. The Explanatory Memorandum was adopted on 28 October 1988 and updated on the occasion of the CCBE Plenary Session on 19 May 2006. The Explanatory Memorandum also takes into account amendments to the CCBE Statutes formally approved at an Extraordinary Plenary Session on 20 August 2007. The list of professions in the commentary on article 1.4 is subject to modification.

The original versions of the Code are in the French and English languages. Translations into other Community languages are prepared under the authority of the national delegations.

Commentary on Article 1.1 – The Function of the Lawyer in Society

The Declaration of Perugia, adopted by the CCBE in 1977, laid down the fundamental principles of professional conduct applicable to lawyers throughout the EC. The provisions of Article 1.1 reaffirm the statement in the Declaration of Perugia of the function of the lawyer in society which forms the basis for the rules governing the performance of that function.

Commentary on Article 1.2 – The Nature of Rules of Professional Conduct

These provisions substantially restate the explanation in the Declaration of Perugia of the nature of professional conduct and how particular rules depend on particular local circumstances but are nevertheless based on common values.

Commentary on Article 1.3 – The Purpose of the Code

These provisions introduce the development of the principles in the Declaration of Perugia into a specific Code of Conduct for lawyers throughout the EU the EEA and Swiss Confederation, and lawyers of the Associate and Observer Members of the CCBE, with particular reference to their cross-border activities (defined in Article 1.5). The provisions of Article 1.3.2 lay down the specific intentions of the CCBE with regard to the substantive provisions in the Code.

Commentary on Article 1.4 – Field of Application Ratione Personae

The rules are stated to apply to all lawyers as defined in the Lawyers Services Directive of 1977 and the Lawyers Establishment Directive of 1998, and lawyers of the Associate and Observer Members of the CCBE. This includes lawyers of the states which subsequently acceded to the Directives, whose names have been added by amendment to the Directives. The Code accordingly applies to all the lawyers represented on the CCBE, whether as full Members, Associ-

ate Members or Observer Members, namely:

Albania	Avokat
Armenia	Pastaban
Austria	Rechtsanwalt;
Belgium	avocat / advocaat / Rechtsanwalt;
Bosnia & Herzegovina	advokat / odvjetnik;
Bulgaria	advokat;
Croatia	odvjetnik;
Cyprus	dikegóros;
Czech Republic	advokát;
Denmark	advokat;
Estonia	vandeadvokaat;
Finland	asianajaja / advokat;
FYROMacedonia	advokat;
France	avocat;
Georgia	Advokati / Advokatebi
Germany	Rechtsanwalt;
Greece	dikegóros;
Hungary	ügyvéd;
Iceland	lögmaður;
Ireland	barrister, solicitor;
Italy	avvocato;
Latvia	zvērīnāts advokāts;
Liechtenstein	Rechtsanwalt;
Lithuania	advokatas;
Luxembourg	avocat / Rechtsanwalt;
Malta	avukat, prokuratur legali;
Montenegro	advokat;
Moldova	Avocat
Netherlands	advocaat;
Norway	advokat;
Poland	advokat, radca prawny;
Portugal	advogado;
Romania	avocat;
Serbia	advokat;
Slovakia	advokát / advokátka;
Slovenia	odvetnik / odvetnica;
Spain	abogado / advocat / abokatu / avogado;
Sweden	advokat;
Switzerland	Rechtsanwalt / Anwalt / Fürsprech / Fürsprecher / avocat / avvocato /advokat;
Turkey	avukat;
Ukraine	advokat;
United Kingdom	advocate, barrister, solicitor.

It is also hoped that the Code will be acceptable to the legal professions of other non-member states in Europe and elsewhere so that it could also be applied by appropriate conventions between them and the Member States.

Commentary on Article 1.5 – Field of Application Ratione Materiae

The rules are here given direct application only to “cross-border activities”, as defined, of lawyers within the EU, the EEA and Swiss Confederation and lawyers of the Associate and Observer Members of the CCBE - see above on Article 1.4, and the definition of “Member State” in Article 1.6. (See also above as to possible extensions in the future to lawyers of other states.) The definition of cross-border activities would, for example, include contacts in state A even on a matter of law internal to state A between a lawyer of state A and a lawyer of state B; it would exclude contacts between lawyers of state A in state A of a matter arising in state B, provided that none of their professional activities takes place in state B; it would include any activities of lawyers of state A in state B, even if only in the form of communications sent from state A to state B.

Commentary on Article 1.6 – Definitions

This provision defines a number of terms used in the Code, “Member State”, “Home Member State”, “Host Member State”, “Competent Authority”, “Directive 77/249/EEC” and “Directive 98/5/EC”. The reference to “where the lawyer carries on cross-border activities” should be interpreted in light of the definition of “cross-border activities” in Article 1.5.

Commentary on Article 2.1 – Independence

This provision substantially reaffirms the general statement of principle in the Declaration of Perugia.

Commentary on Article 2.2 – Trust and Personal Integrity

This provision also restates a general principle contained in the Declaration of Perugia.

Commentary on Article 2.3 – Confidentiality

This provision first restates, in Article 2.3.1, general principles laid down in the Declaration of Perugia and recognised by the ECJ in the AM&S case (157/79). It then, in Articles 2.3.2 to 4, develops them into a specific rule relating to the protection of confidentiality. Article 2.3.2 contains the basic rule requiring respect for confidentiality. Article 2.3.3 confirms that the obligation remains binding on the lawyer even if he or she ceases to act for the client in question. Article 2.3.4 confirms that the lawyer must not only respect the obligation of confidentiality him- or herself but must require all members and employees of his or her firm to do likewise.

Commentary on Article 2.4 – Respect for the Rules of Other Bars and Law Societies

Article 4 of the Lawyers Services Directive contains the provisions with regard

to the rules to be observed by a lawyer from one Member State providing services on an occasional or temporary basis in another Member State by virtue of Article 49 of the consolidated EC treaty, as follows:

- (a) activities relating to the representation of a client in legal proceedings or before public authorities shall be pursued in each Host Member State under the conditions laid down for lawyers established in that state, with the exception of any conditions requiring residence, or registration with a professional organisation, in that state;
- (b) a lawyer pursuing these activities shall observe the rules of professional conduct of the Host Member State, without prejudice to the lawyer's obligations in the Member State from which he or she comes;
- (c) when these activities are pursued in the UK, "rules of professional conduct of the Host Member State" means the rules of professional conduct applicable to solicitors, where such activities are not reserved for barristers and advocates. Otherwise the rules of professional conduct applicable to the latter shall apply. However, barristers from Ireland shall always be subject to the rules of professional conduct applicable in the UK to barristers and advocates. When these activities are pursued in Ireland "rules of professional conduct of the Host Member State" means, in so far as they govern the oral presentation of a case in court, the rules of professional conduct applicable to barristers. In all other cases the rules of professional conduct applicable to solicitors shall apply. However, barristers and advocates from the UK shall always be subject to the rules of professional conduct applicable in Ireland to barristers; and
- (d) a lawyer pursuing activities other than those referred to in (a) above shall remain subject to the conditions and rules of professional conduct of the Member State from which he or she comes without prejudice to respect for the rules, whatever their source, which govern the profession in the Host Member State, especially those concerning the incompatibility of the exercise of the activities of a lawyer with the exercise of other activities in that state, professional secrecy, relations with other lawyers, the prohibition on the same lawyer acting for parties with mutually conflicting interests, and publicity. The latter rules are applicable only if they are capable of being observed by a lawyer who is not established in the Host Member State and to the extent to which their observance is objectively justified to ensure, in that state, the proper exercise of a lawyer's activities, the standing of the profession and respect for the rules concerning incompatibility.

The Lawyers Establishment Directive contains the provisions with regard to the rules to be observed by a lawyer from one Member State practising on a permanent basis in another Member State by virtue of Article 43 of the consolidated EC treaty, as follows:

- (a) irrespective of the rules of professional conduct to which he or she is subject in his or her Home Member State, a lawyer practising under his home-country professional title shall be subject to the same rules of professional conduct as lawyers practising under the relevant professional title of the Host Member State in respect of all the activities the lawyer pursues in its territory (Article 6.1);
- (b) the Host Member State may require a lawyer practising under his or her home-country professional title either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that state lays down for professional activities pursued in its territory.

Nevertheless, a lawyer practising under his or her home-country professional title shall be exempted from that requirement if the lawyer can prove that he or she is covered by insurance taken out or a guarantee provided in accordance with the rules of the Home Member State, insofar as such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the Competent Authority in the Host Member State may require that additional insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the Home Member State (Article 6.3); and

- (c) a lawyer registered in a Host Member State under his or her home-country professional title may practise as a salaried lawyer in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise to the extent that the Host Member State so permits for lawyers registered under the professional title used in that state (Article 8).

In cases not covered by either of these Directives, or over and above the requirements of these Directives, the obligations of a lawyer under Community law to observe the rules of other Bars and Law Societies are a matter of interpretation of any relevant provision, such as the Directive on Electronic Commerce (2000/31/EC). A major purpose of the Code is to minimise, and if possible eliminate altogether, the problems which may arise from "double deontology", that is the application of more than one set of potentially conflicting national rules to a particular situation (see Article 1.3.1).

Commentary on Article 2.5 – Incompatible Occupations

There are differences both between and within Member States on the extent to which lawyers are permitted to engage in other occupations, for example in commercial activities. The general purpose of rules excluding a lawyer from other occupations is to protect the lawyer from influences which might impair the lawyer's independence or his or her role in the administration of justice. The variations in these rules reflect different local conditions, different percep-

tions of the proper function of lawyers and different techniques of rule-making. For instance in some cases there is a complete prohibition of engagement in certain named occupations, whereas in other cases engagement in other occupations is generally permitted, subject to observance of specific safeguards for the lawyer's independence.

Articles 2.5.2 and 3 make provision for different circumstances in which a lawyer of one Member State is engaging in cross-border activities (as defined in Article 1.5) in a Host Member State when he or she is not a member of the Host State legal profession.

Article 2.5.2 imposes full observation of Host State rules regarding incompatible occupations on the lawyer acting in national legal proceedings or before national public authorities in the Host State. This applies whether the lawyer is established in the Host State or not.

Article 2.5.3, on the other hand, imposes "respect" for the rules of the Host State regarding forbidden or incompatible occupations in other cases, but only where the lawyer who is established in the Host Member State wishes to participate directly in commercial or other activities not connected with the practice of the law.

Commentary on Article 2.6 – Personal Publicity

The term "personal publicity" covers publicity by firms of lawyers, as well as individual lawyers, as opposed to corporate publicity organised by Bars and Law Societies for their members as a whole. The rules governing personal publicity by lawyers vary considerably in the Member States. Article 2.6 makes it clear that there is no overriding objection to personal publicity in cross-border practice. However, lawyers are nevertheless subject to prohibitions or restrictions laid down by their home professional rules, and a lawyer will still be subject to prohibitions or restrictions laid down by Host State rules when these are binding on the lawyer by virtue of the Lawyers Services Directive or the Lawyers Establishment Directive.

Commentary on Article 2.7 – The Client's Interest

This provision emphasises the general principle that the lawyer must always place the client's interests before the lawyer's own interests or those of fellow members of the legal profession.

Commentary on Article 2.8 – Limitation of Lawyer's Liability towards the Client

This provision makes clear that there is no overriding objection to limiting a lawyer's liability towards his or her client in cross-border practice, whether by contract or by use of a limited company, limited partnership or limited liability partnership. However it points out that this can only be contemplated where the relevant law and the relevant rules of conduct permit - and in a number of jurisdictions the law or the professional rules prohibit or restrict such limitation of liability.

Commentary on Article 3.1 – Acceptance and Termination of Instructions

The provisions of Article 3.1.1 are designed to ensure that a relationship is maintained between lawyer and client and that the lawyer in fact receives instructions from the client, even though these may be transmitted through a duly authorised intermediary. It is the responsibility of the lawyer to satisfy him- or herself as to the authority of the intermediary and the wishes of the client.

Article 3.1.2 deals with the manner in which the lawyer should carry out his or her duties. The provision that the lawyer shall undertake personal responsibility for the discharge of the instructions given to him or her means that the lawyer cannot avoid responsibility by delegation to others. It does not prevent the lawyer from seeking to limit his or her legal liability to the extent that this is permitted by the relevant law or professional rules - see Article 2.8.

Article 3.1.3 states a principle which is of particular relevance in cross-border activities, for example when a lawyer is asked to handle a matter on behalf of a lawyer or client from another state who may be unfamiliar with the relevant law and practice, or when a lawyer is asked to handle a matter relating to the law of another state with which he or she is unfamiliar.

A lawyer generally has the right to refuse to accept instructions in the first place, but Article 3.1.4 states that, having once accepted them, the lawyer has an obligation not to withdraw without ensuring that the client's interests are safeguarded.

Commentary on Article 3.2 – Conflict of Interest

The provisions of Article 3.2.1 do not prevent a lawyer acting for two or more clients in the same matter provided that their interests are not in fact in conflict and that there is no significant risk of such a conflict arising. Where a lawyer is already acting for two or more clients in this way and subsequently there arises a conflict of interests between those clients or a risk of a breach of confidence or other circumstances where the lawyer's independence may be impaired, then the lawyer must cease to act for both or all of them.

There may, however, be circumstances in which differences arise between two or more clients for whom the same lawyer is acting where it may be appropriate for the lawyer to attempt to act as a mediator. It is for the lawyer in such cases to use his or her own judgement on whether or not there is such a conflict of interest between them as to require the lawyer to cease to act. If not, the lawyer may consider whether it would be appropriate to explain the position to the clients, obtain their agreement and attempt to act as mediator to resolve the difference between them, and only if this attempt to mediate should fail, to cease to act for them.

Article 3.2.4 applies the foregoing provisions of Article 3 to lawyers practising in association. For example a firm of lawyers should cease to act when there is a conflict of interest between two clients of the firm, even if different lawyers in the firm are acting for each client. On the other hand, exceptionally, in the

"chambers" form of association used by English barristers, where each lawyer acts for clients individually, it is possible for different lawyers in the association to act for clients with opposing interests.

Commentary on Article 3.3 – Pactum de Quota Litis

These provisions reflect the common position in all Member States that an unregulated agreement for contingency fees (*pactum de quota litis*) is contrary to the proper administration of justice because it encourages speculative litigation and is liable to be abused. The provisions are not, however, intended to prevent the maintenance or introduction of arrangements under which lawyers are paid according to results or only if the action or matter is successful, provided that these arrangements are under sufficient regulation and control for the protection of the client and the proper administration of justice.

Commentary on Article 3.4 – Regulation of Fees

Article 3.4 lays down three requirements: a general standard of disclosure of a lawyer's fees to the client, a requirement that they should be fair and reasonable in amount, and a requirement to comply with the applicable law and professional rules.

In many Member States machinery exists for regulating lawyers' fees under national law or rules of conduct, whether by reference to a power of adjudication by the Bar authorities or otherwise. In situations governed by the Lawyers Establishment Directive, where the lawyer is subject to Host State rules as well as the rules of the Home State, the basis of charging may have to comply with both sets of rules.

Commentary on Article 3.5 – Payment on Account

Article 3.5 assumes that a lawyer may require a payment on account of the lawyer's fees and/or disbursements, but sets a limit by reference to a reasonable estimate of them. See also on Article 3.1.4 regarding the right to withdraw.

Commentary on Article 3.6 – Fee Sharing with Non-Lawyers

In some Member States lawyers are permitted to practise in association with members of certain other approved professions, whether legal professions or not. The provisions of Article 3.6.1 are not designed to prevent fee sharing within such an approved form of association. Nor are the provisions designed to prevent fee sharing by the lawyers to whom the Code applies (see on Article 1.4 above) with other "lawyers", for example lawyers from non-Member States or members of other legal professions in the Member States such as notaries.

Commentary on Article 3.7 – Cost of Litigation and Availability of Legal Aid

Article 3.7.1 stresses the importance of attempting to resolve disputes in a way which is cost-effective for the client, including advising on whether to attempt

to negotiate a settlement, and whether to propose referring the dispute to some form of alternative dispute resolution.

Article 3.7.2 requires a lawyer to inform the client of the availability of legal aid where applicable. There are widely differing provisions in the Member States on the availability of legal aid. In cross-border activities a lawyer should have in mind the possibility that the legal aid provisions of a national law with which the lawyer is unfamiliar may be applicable.

Commentary on Article 3.8 – Client Funds

The provisions of Article 3.8 reflect the recommendation adopted by the CCBE in Brussels in November 1985 on the need for minimum regulations to be made and enforced governing the proper control and disposal of clients' funds held by lawyers within the Community. Article 3.8 lays down minimum standards to be observed, while not interfering with the details of national systems which provide fuller or more stringent protection for clients' funds.

The lawyer who holds clients' funds, even in the course of a cross-border activity, has to observe the rules of his or her home Bar. The lawyer needs to be aware of questions which arise where the rules of more than one Member State may be applicable, especially where the lawyer is established in a Host State under the Lawyers Establishment Directive.

Commentary on Article 3.9 – Professional Indemnity Insurance

Article 3.9.1 reflects a recommendation, also adopted by the CCBE in Brussels in November 1985, on the need for all lawyers in the Community to be insured against the risks arising from professional negligence claims against them. Article 3.9.2 deals with the situation where insurance cannot be obtained on the basis set out in Article 3.9.1.

Commentary on Article 4.1 – Rules of Conduct in Court

This provision applies the principle that a lawyer is bound to comply with the rules of the court or tribunal before which the lawyer practises or appears.

Commentary on Article 4.2 – Fair Conduct of Proceedings

This provision applies the general principle that in adversarial proceedings a lawyer must not attempt to take unfair advantage of his or her opponent. The lawyer 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 of the other party's lawyer. See also on Article 4.5 below.

Commentary on Article 4.3 – Demeanour in Court

This provision reflects the necessary balance between respect for the court and for the law on the one hand and the pursuit of the client's best interest on the other.

Commentary on Article 4.4 – False or Misleading Information

This provision applies the principle that the lawyer must never knowingly mislead the court. This is necessary if there is to be trust between the courts and the legal profession.

Commentary on Article 4.5 – Extension to Arbitrators etc.

This provision extends the preceding provisions relating to courts to other bodies exercising judicial or quasi-judicial functions.

Commentary on Article 5.1 – Corporate Spirit of the Profession

These provisions, which are based on statements in the Declaration of Perugia, emphasise that it is in the public interest for the legal profession to maintain a relationship of trust and cooperation between its members. However, this cannot be used to justify setting the interests of the profession against those of justice or of clients (see also on Article 2.7).

Commentary on Article 5.2 – Co-operation among Lawyers of Different Member States

This provision also develops a principle stated in the Declaration of Perugia with a view to avoiding misunderstandings in dealings between lawyers of different Member States.

Commentary on Article 5.3 – Correspondence between Lawyers

In certain Member States communications between lawyers (written or by word of mouth) are normally regarded as to be kept confidential as between the lawyers. This means that the content of these communications cannot be disclosed to others, cannot normally be passed to the lawyers' clients, and at any event cannot be produced in court. In other Member States, such consequences will not follow unless the correspondence is marked as "confidential".

In yet other Member States, the lawyer has to keep the client fully informed of all relevant communications from a professional colleague acting for another party, and marking a letter as "confidential" only means that it is a legal matter intended for the recipient lawyer and his or her client, and not to be misused by third parties.

In some states, if a lawyer wishes to indicate that a letter is sent in an attempt to settle a dispute, and is not to be produced in a court, the lawyer should mark the letter as "without prejudice".

These important national differences give rise to many misunderstandings.

That is why lawyers must be very careful in conducting cross-border correspondence.

Whenever a lawyer wants to send a letter to a professional colleague in another Member State on the basis that it is to be kept confidential as between the lawyers, or that it is "without prejudice", the lawyer should ask in advance whether the letter can be accepted on that basis. A lawyer wishing that a communication should be accepted on such a basis must express that clearly in the communication or in a covering letter.

A lawyer who is the intended recipient of such a communication, but who is not in a position to respect, or to ensure respect for, the basis on which it is to be sent, must inform the sender immediately so that the communication is not sent. If the communication has already been received, the recipient must return it to the sender without revealing its contents or referring to it in any way; if the recipient's national law or rules prevent the recipient from complying with this requirement, he or she must inform the sender immediately.

Commentary on Article 5.4 – Referral Fees

This provision reflects the principle that a lawyer should not pay or receive payment purely for the reference of a client, which would risk impairing the client's free choice of lawyer or the client's interest in being referred to the best available service. It does not prevent fee-sharing arrangements between lawyers on a proper basis (see also on Article 3.6 above).

In some Member States lawyers are permitted to accept and retain commissions in certain cases provided: a) the client's best interests are served, b) there is full disclosure to the client and c) the client has consented to the retention of the commission. In such cases the retention of the commission by the lawyer represents part of the lawyer's remuneration for the service provided to the client and is not within the scope of the prohibition on referral fees which is designed to prevent lawyers making a secret profit.

Commentary on Article 5.5 – Communication with Opposing Parties

This provision reflects a generally accepted principle, and is designed both to promote the smooth conduct of business between lawyers and to prevent any attempt to take advantage of the client of another lawyer.

Commentary on Article 5.6 – Change of Lawyer

Article 5.6 dealt with change of lawyer. It was deleted from the Code on 6 December 2002.

Commentary on Article 5.7 – Responsibility for Fees

These provisions substantially reaffirm provisions contained in the Declaration of Perugia. Since misunderstandings about responsibility for unpaid fees are a common cause of difference between lawyers of different Member States,

it is important that a lawyer who wishes to exclude or limit his or her personal obligation to be responsible for the fees of a foreign colleague should reach a clear agreement on this at the outset of the transaction.

Commentary on Article 5.8 – Continuing Professional Development

Keeping abreast of developments in the law is a professional obligation. In particular it is essential that lawyers are aware of the growing impact of European law on their field of practice.

Commentary on Article 5.9 – Disputes amongst Lawyers in Different Member States

A lawyer has the right to pursue any legal or other remedy to which he or she is entitled against a colleague in another Member State. Nevertheless it is desirable that, where a breach of a rule of professional conduct or a dispute of a professional nature is involved, the possibilities of friendly settlement should be exhausted, if necessary with the assistance of the Bars or Law Societies concerned, before such remedies are exercised.



Représentant les avocats
d'Europe
Representing Europe's

CCBE RECOMMENDATIONS ON DISCIPLINARY PROCESS FOR THE LEGAL PROFESSION

CCBE RECOMMENDATIONS ON DISCIPLINARY PROCESS FOR THE LEGAL PROFESSION

“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 civilised societies. The failure of the lawyer to observe these rules may result in disciplinary sanctions.”

– CCBE Code of Conduct for European Lawyers, Preamble 1.2

Each Bar or Law Society has its own system of disciplinary proceedings arising from its own traditions. These proceedings nevertheless are based on a common set of principles that recognise the role of the legal profession within society and the values which are inherent to the legal profession, including the right of Bars and Law Societies to participate in the conduct and decision-making of disciplinary proceedings concerning lawyers. In this regard, reference is also made to international and European instruments.¹ The Bars and Law Societies of Europe are committed to these principles, which are essential for the proper administration of justice, access to justice and the right to a fair trial, as required under the European Convention of Human Rights. Courts, legislators, governments and international organisations should seek to uphold and protect these principles, in the public interest.

The basic principles are, in particular the following:

- (a) although the State may set the framework within which disciplinary proceedings should take place, the proceedings should be independent of state authorities (excluding the ordinary court system);**
- (b) the primary responsibility of the conduct of disciplinary proceedings at first instance concerning lawyers preferably lies with the Bar or Law Society;²**
- (c) disciplinary proceedings should be carried out in accordance with the principles of due process, as laid down in the European Convention on Human Rights, including the right to defend himself/herself through legal assistance;**
- (d) disciplinary proceedings should be separate from criminal trials of the same alleged misconduct;**
- (e) attorney-client privileged confidential information should be protected throughout the disciplinary proceedings, without prejudice to the lawyer’s right to self defence;**

¹ See: Council of Europe Recommendation Rec(2000)21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer of 25 October 2000; Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990; and European Parliament resolution on the legal professions and the general interest in the functioning of legal systems of 23 March 2006 (P6_TA-PROV(2006)0108).

² Except in Norway where lawyers who are not members of the Bar Association can choose a handling of the complaint in first instance by a Disciplinary Committee which is appointed by the government. This also applies to principle (a).

Annex

United Nations

Basic Principles on the Role of Lawyers

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

[...]

Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

Council of Europe

Recommendation Rec(2000)21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer

(Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies)

[...]

Principle VI - Disciplinary proceedings

1. Where lawyers do not act in accordance with their professional standards, set out in codes of conduct drawn up by Bar associations or other associations of lawyers or by legislation, appropriate measures should be taken, including disciplinary proceedings.

2. Bar associations or other lawyers' professional associations should be responsible for or, where appropriate, be entitled to participate in the conduct of disciplinary proceedings concerning lawyers.

3. Disciplinary proceedings should be conducted with full respect of the principles and rules laid down in the European Convention on Human Rights, including the right of the lawyer concerned to participate in the proceedings and to apply for judicial review of the decision.

4. The principle of proportionality should be respected in determining sanctions for disciplinary offences committed by lawyers.

Conseil des barreaux européens – Council of Bars and Law Societies of Europe

association internationale sans but lucratif

Avenue de la Joyeuse Entrée 1-5 – B 1040 Brussels – Belgium – Tel.+32 (0)2 234 65 10 – Fax.+32 (0)2 234 65 11/12 – E-mail ccbe@ccbe.org – www.ccbe.org

17.09.2007

European Parliament resolution on the legal professions and the general interest in the functioning of legal systems of 23 March 2006 (P6_TA-PROV(2006)0108)

[...]

C. whereas the UN's Basic Principles on the Role of Lawyers of 7 September 1990 provide that:

- lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference;
- professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from prosecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and the public interest;
- disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review,

[...]