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CCBE Recommendation on Training Outcomes for European Lawyers

Conseil des barreaux européens – Council of Bars and Law Societies of Europe
association internationale sans but lucratif

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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&InstranetImage=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.