

Représentant les avocats d'Europe
Representing Europe's lawyers

CODE OF CONDUCT FOR EUROPEAN LAWYERS

Conseil des barreaux européens - Council of Bars and Law Societies of Europe
association internationale sans but lucratif
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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 includes an Explanatory Memorandum which was updated during the CCBE Plenary Session on 19 May 2006.

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1. PREAMBLE

1.1. The Function of the Lawyer in Society

In a society founded on respect for the rule of law the lawyer fulfils a special role. 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 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 co-operating 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 Availibility 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 without 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 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.

EXPLANATORY MEMORANDUM

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 updated on the occasion of the CCBE Plenary Session on 19 May 2006.

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 rules 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 and the EEA, and lawyers of the 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 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 or as Observer Members, namely:

Austria	Rechtsanwalt;
Belgium	avocat / advocaat / Rechtsanwalt;
Bulgaria	advokat;
Croatia	odvjetnik;
Cyprus	dikegóros;
Czech Republic	advokát;
Denmark	advokat;
Estonia	vandeadvokaat;
Finland	asianajaja / advokat;
FYROMacedonia	advokat;
France	avocat;
Germany	Rechtsanwalt;
Greece	dikegóros;
Hungary	ügyvéd;
Iceland	lögmaður;
Ireland	barrister, solicitor;
Italy	avvocato;
Latvia	zvērināts advokāts;
Liechtenstein	Rechtsanwalt;
Lithuania	advokatas;
Luxembourg	avocat / Rechtsanwalt;
Malta	avukat, prokuratur legali;
Netherlands	advocaat;
Norway	advokat;
Poland	adwokat, radca prawny;
Portugal	advogado;
Romania	avocat;
Slovakia	advokát / advokátka;
Slovenia	odvetnik / odvetnica;
Spain	abogado / advocat / abokatu / avogado;
Sweden	advokat;
Switzerland	Rechtsanwalt / Anwalt / Fürsprech / Fürsprecher / avocat / avvocato /advokat;
Turkey	avukat;
Ukraine	advocate;
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 and the EEA and lawyers of the 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 the 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 perceptions 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 Availibility 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 and 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 at the head of 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 the client's best interests are served, there is full disclosure to the client and 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.