

## EUROPEAN UNION LAWYERS DEONTOLOGY

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*“ The law practice is old as the bench, noble as the virtue, useful as the justice”.*

**D’ Aguesseau**

*We live in a continue change society where the conflicts between the people get finally before instance. Although, the justice may be for the both sides and it can be found only in a trial. The people must understand and learn the meaning of justice in society and the professional help from a lawyer is inevitable and absolutely necessary. Before law, the equity belongs to the judges, persons who have professional training for a correctly interpretation of laws.*

*The lawyers, also law specialists, next to the duty of defending and promote the interests of their clients, they have to facilitate the justice process and work together with judges, sometime with the prosecutor, to accomplice the justice.*

*The lawyer, regarding his independent and liberal profession, is guided by the principles named in art. 103 from Romanian Lawyers Statute: “ the free practice, the dignity, the conscience, the independence, the probity, the humanism, the honor, the loyalty, the delicates, the moderation, the tact and not finally the brotherhood feeling, principles which are founded in the lawyer oath from the beginning of their careers: “I swear to respect and to protect the Constitution and the others laws of my country, the rights and liberties of people, to practice law with dignity, independence and honesty. So help me, God.*

The lawyers promote and defend the rights and the liberties of the people (art. 2, (2)/ L51/1995 – for the Romanian lawyers profession.)

Next to internal laws which settle the activity of Romania lawyers, we will bring to your attention in following paragraphs the purviews of “Deontological Code of Lawyers in European Union” adopted in the Plenary Session in 28 th of November 1998 and after in 6 th of December 2002.

It is very important for Romanian lawyer, but for his client also, to know the purviews from this Code, as it is showed in art. 1.3. : “ *In a society based on respect for justice, the lawyer has an eminent role. His mission is not limited for a mandate execution only in name of law. The lawyer is indispensable for the justice and it’s people, and he has the obligation to protect the rights and the liberties of people: he is also the adviser and the advocate of his client”.* That shows how important is the lawyer mission in a European State.

The deontological purviews guarantee that the lawyer mission is fulfilled to high standards, for the clients, for the bench, for his profession, and disobeying them entails disciplinary sanctions.

Regarding art. 1.3.1. from the Deontological Code: The progressive functioning of European Union and European economical Space, the intensification of lawyers activity outside their countries, led to defining of some uniform purviews for all European lawyers, no matter of the Bar where the lawyer belongs. The purpose of these purviews was first of all for attenuation of the difficulties which

derive from the applicability of a double deontology, shown also in art. 4 of 77/249 Directive, in 22 th of March 1977”.

The general willing is that the Code purviews to be approved from now on, as the assurance expression shared by all the European Union Bars Association and by all European Economical Space Bars Association, to be applicable, in the shortest possible time, heeding the national procedures or European Economical Space procedures, to be considered in which revision of intern deontological laws, for progressive harmonization of intern laws.

The European purviews pursue that the intern laws to be interpreted and to be applied in a manner that is conform with The Code purviews. When The Code purviews will be applicable in “out of the frontiers” activity, the lawyer shall follow the laws from his own Bar, but only those which are conform with The Code purviews.

Regarding in that direction, we will make a classification, by The Code – 1.4. and 1.5. :

- a) **“Ratione personae”** – the purviews will be applicable to the lawyers of European Union and of the Economical European Space.
- b) **“Ratione materiae”** - the purviews will be applicable to the out of frontier activity, but in European Union and Economical European Space.

### **General Fundamentals:**

a) **The independence of law profession** - the many duties that a lawyer has, requires an absolute independence of profession, with no pressure, with no self interests or with no outside influences. This independence is necessary for trusting justice and for trusting in judge impartiality. For all of these, the lawyer must avoid any prejudice of his own independence and he has to watch for not neglecting his professional ethic just for pleasing his clients, the judge or other people.

The independence is necessary in juridical activity, but also to other juridical issues, and the counseling served by the lawyer to his clients has no real value when it is done only by complaisance or by self interest, or under an outside pressure.

b) **The trust and moral integrity** – There are no relationships based on trust, when the honesty, the probity, the spirit of justice and the sincerity of a lawyer are doubtful. For a lawyer, these traditional virtues are professional obligations.

c) **The confidentiality** – By his profession, the lawyer is the depositary of his client secrets and the addressee of the confidential communications. Without a confidential guaranty, the trust can not exist. Therefore the professional secret is known as a right and a fundamental primary duty.

The lawyer obligation regarding the professional secret is for juridical administration interests, but for the client interests also. For this matter It needs a special protection from the Government. The lawyer must respect the secret of any information that he gets in his activity.

d) **The respect for others Bars Deontology** – During the application of European Union laws and European Economical Space laws, the lawyer from a Member State can be obliged to respect the deontology of a Host Member State Bar Association. The lawyer has to inform himself of laws that he has to respect in a specific area. The CCBE member organizations have to communicate their laws at the CCBE Office, for every lawyer to obtain a copy of it.

e) **Incompatibilities** – For the lawyer to has an independent and correct activity, the exertion of some professions or of some services are incompatible with the law profession.

The lawyer who represent or defend a client in front of justice or in front of public authorities in a Host Member State will respect the incompatibility purviews of that State.

The lawyer who is established in a Host Member State and wants to take there a commercial activity or another different profession from Law profession, is obliged to respect the incompatibility purviews as the other lawyer from that State.

**f) Personal publicity** - The lawyer is authorized to inform the public of his services, but his informations have to be correct, constant and to respect the professional secret and other essential fundamentals of his profession. The personal publicity made by a lawyer, no matter which media form, ex: press, radio, television, electronic commercial communication etc, is authorized only if it respects the laws.

**g) The client interest** – By the laws, the lawyer has the obligation of defending always the client interest, making exception of his own interests, of other lawyer interests, or of the profession generally speaking.

**h) Limit of lawyer responsibility by his client** – As the laws permit, the lawyer can limit his responsibility by the client, according to The Deontological Code which he has to respect.

Adequate to 3.1.1 from The Code: “ The lawyer does not act only when he is authorized by his client, making an exception although when he gets a commission from other lawyer who represents the client or from a competent bench.

The lawyer must try, reasonably, to know the person or the authority identity, competence and possibilities, when these issues are doubtful.” Therefore, the lawyer morality has to be to the highest level.

The lawyer can not advise or represent more than one client in the same trial, when there is a conflict of interests or when the risk of such a conflict exists. The lawyer must refuse to represent all clients involved in a trial, when he observe a conflict of interests, when the professional secret is violated or when the profession independence does not exist anymore. A lawyer must not accept another client, if some old informations from another client favors the new client ill-founded.

Very important is art. 3.3 from The Code – “**De quota litis**” **Pact:** “ this is a convention between the lawyer and his client, before the end of the trial which is very important for the client, convention that forecasts that the client should pay the lawyer a part of what he is gaining in trial, like: a sum of money, or other goods or values”. The lawyer can not settle his fee like this. “Is not such a pact the convention that says that the fee is proportional with the value of the trial, if this fee is official, or is authorized by the competent authority of which the lawyer depends.

The lawyer must inform his client of all costs, and the whole sum of the trial must be balanced and justified. The lawyer must not split his fees with other person that is not a lawyer, only if that the association with that person is authorized by the laws. This purview is not applicable if the fee is paid to a lawyer successors or to a lawyer which resigned for being a successor of that lawyer’s client.

Art. 3.7.1. from The Code says: “ the lawyer must try, always, to find a solution for his client properly with the fee, and he has to, in opportune moments, to advise his client to make agreements or other ways to avoid the trial.” If the client may benefit of free defense, the lawyer must inform the client.

Regarding Chap. 3.8., we make the following notes: “ If the lawyer has some how funds of his client or some other people funds, he has to follow the next rules. The fund must be in a bank or a similar institution, authorized by public authority. All these funds have to be kept in this way, making an exception only when the client says that the fund have other destination.

All the funds have the specification that belongs to the lawyer clients. All the accounts must be covered at least to the total value of the funds. The funds must be paid immediately to the clients or other ways authorized by the clients.”

There are some more purviews for these kind of funds, which have to be respected by the lawyers.

Another important issue is the **professional assurance**. The lawyer must assure him for professional responsibility, respecting the internal purviews of the State that he belongs. If the lawyer can not obtain an assurance by the existing laws, he has to inform his clients about it. The lawyer from

a Host Member State, can be authorized by the Member State where he come from, to respect the purviews of assurance from the Host Member State. This issue also has to be known by his clients.

Regarding the relationship with the judges, the lawyer must respect the purviews from that bench.

Chap. 4.2 says: “ The lawyer must respect, in any circumstance, the conflicting character of the trial. He can not, for example, to make contact with a judge, for that trial, without inform the adverse part first. He cannot send to a judge, notes, papers or any other documents, if they are not communicated first to the lawyer of the adverse part, making an exception only if the laws permit that. If the laws do not forbid that, the lawyer cannot propose to the bench a possible solution for the trial, made by any of the lawyers, without an express authorization from the lawyer of the adverse part.”

The lawyer must not inform the judge with a false information.

The laws applicable for the lawyer – judge relationship, are applicable to the arbiter, expert or any other person relationship.

A very important chapter of The Deontological Code, is reserved for the relationships between the lawyers, with the following aspects:

**a) The fraternity** – the relationships between lawyers must be trustful, for the client interests, and for avoiding the useless trials or for a prejudice of the profession. Even though, the fraternity must not make an opposition between the lawyers interests and the client interests. The lawyer must has by a colleague a trustful and honest behavior.

**b) The co-operation between different Member States lawyers** – it is the duty for every lawyer to not accept a cause for what he has not the require competence. In such a situation, he must help a colleague to contact another lawyer who can has that competence. When two lawyers from different States work together, both have the duty to be aware of the laws, Bars or their professional differences that can exist.

**c) The correspondence between lawyers** – if a lawyer send to a Different State Lawyer “confidential” or “without prejudice” mail, he has to specify this thing clearly, starting with the sending moment. If the addressee cannot respect that, he must return the mail unopened.

**d) The fees for recommendations** – the lawyer cannot ask or accept a fee from another lawyer or person just because he recommended a lawyer for a client, or because he sent a client to a different lawyer. The same, the lawyer is not allowed to pay a fee, just because someone sent him a client.

**e) The intercourse with the opponent part** – the lawyer must not contact a person who is represented by another lawyer, only in the situation that he is authorized by that lawyer.

**f) The pecuniary onus** – Regarding the Different Member States relationships between lawyers, the lawyer who does not limit to recommend another lawyer to a client, but he just ask that lawyer about the cause, is personally obliged, to pay that lawyer a fee for his services or to cover the expenses that the lawyer supported for the cause.

**g) The training of beginner lawyers** – For a high level profession, it’s necessary to be promoted a better knowledge of laws and of the procedure purviews. For that reason, the lawyer must be able to prepare young lawyers from Different Member States.

**h) The Member States Lawyers conflicts** – When a lawyer thinks that another lawyer didn’t respect a deontological purview, he must let him know about it. When it appears a conflict between lawyers ( professionally or personally) they have to solve the problem friendly first.