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CCBE Model Scheme for Continuing Professional Training

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

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CCBE Model Scheme for Continuing Professional Training

Introduction

Continuing Training¹ is of great importance to lawyers and their clients. For everyone seeking legal advice, it is important that their lawyer is familiar with the latest developments in the fields in which they practise. The CCBE recognises this importance, and therefore considers that all lawyers in Europe should participate in Continuing (Professional) Training programmes, and that the Bars and Law Societies of the CCBE should all develop, in their own specific way, programmes and/or regulations for Continuing Training.

During its Plenary Session in November 2003, the CCBE adopted the 'Recommendation on Continuing Training' in order to support its members in achieving the goals of continuing training. In order to continue this support to its members, the CCBE deems it important to adopt a model scheme for Continuing Training, and to make this available to its members.

This model scheme is neither binding nor mandatory for the Bars and Law Societies of the CCBE. It serves as an example for those members of the CCBE who have the competence and will to introduce Continuing Training within their home jurisdictions. This scheme offers a framework for the development of guidelines or regulations focused on the home jurisdictions of the members of the CCBE. Examples of regulations currently applying within the Bars and Law Societies of several European countries can be found on the website of the CCBE under 'Continuing Professional Training Schemes'.²

The Model Scheme for Continuing Professional Training was adopted by the Plenary Session of the CCBE on 24/25 November 2006.

¹ The CCBE Recommendation of 2003 referred to "continuing training"; this is often referred to as "professional development"; but the term "continuing training" is used to maintain CCBE continuity.

² See http://www.ccbe.org/en/comites/formation_en.htm.

Article 1

Definitions

- a. Lawyer: As defined in Article ... of the Act on Advocates, as well as a lawyer registered with the Bar Association pursuant to Article 3 of EC Directive 98/5/EC.³

This depends on the law of the relevant State. In most cases reference can be made to some kind of act governing the legal profession and to the Establishment Directive. Another possibility is to revert to the 'list of lawyers' in art 2.1 of the Directive 98/5/EC.

- b. Bar or Law Society: Body of lawyers responsible for administering the regulation of the legal profession.
- c. Training Institution: Institution where courses are given by persons skilled in the provision of professional training.

In most jurisdictions with Continuing Professional Training programmes, law firms can also be acknowledged as training institutions. These firms can also provide 'in house courses' for continuing professional training.

- d. Training credits are credits which can be obtained if the lawyer has performed one of the following actions:
1. **Followed training** which benefits professional skills provided by a training institution, where the lawyer has proof from the institution that the training has actually been followed and completed or that a test or examination related to that training has been successfully passed.

Bars and Law Societies can define the relationship between the number of hours of training and the number of credits given (i.e. one hour of training equals one credit). In some countries only training followed at institutions recognised by the Bar or Law Society will qualify for training credits. In some countries a percentage of the credits has to be obtained at such institutions. If a system of recognised institutions is introduced it will be necessary for an additional article in this scheme (or for an additional scheme) regulating the recognition (quality level, evaluation of courses, monitoring etc). Bars and Law Societies may decide to recognise credits retrospectively.

*Such a scheme should make allowance for mutual recognition of accreditation of training institutions as far as possible, in order to avoid the necessity for multiple accreditation by training providers. Another point to consider is the mutual recognition of continuing training that is followed abroad. Bars and Law Societies should introduce a system of recognition of training followed in training institutions of other EEA jurisdictions.*⁴

³ See http://www.ccbe.org/doc/En/etablissement_version_consolidee%20_en.pdf.

⁴ **CCBE Guidelines on the implementation of the Establishment Directive, point 13. Continuing education***** (http://www.ccbe.org/doc/En/guid_en.pdf)

In order to avoid the multiple application of continuing professional education schemes, where a lawyer is established under the Directive in a Member State other than that in which he or she is qualified, the lawyer shall be subject to the continuing professional education rules of the host State bar, except where the home State bar has rules which oblige the lawyer to continue home State professional education wherever he or she is based. In addition, the bars and law societies of all Member States are encouraged to develop flexible continuing professional education rules which will permit migrant lawyers to satisfy them by undertaking continuing professional education not only in host state law but also in home state law.

CCBE recommendation on continuing training (Nov. 2003)
(http://www.ccbe.org/doc/En/ccbe_recommendation_continuing_training_281103_en.pdf)
Recognise – (...)

• that for European Economic Area migrant lawyers double continuing education requirements should not be required in accordance with the CCBE Guidelines on the Implementation of the Establishment Directive (98/5/EC of 16th February 1998) paragraph 13, thus promoting the mutual recognition of training;

2. **Given training** which benefits professional skills on behalf of an institution recognised by the Bar or Law Society.

Here again the Bars and Law Societies can define the relationship between number of hours and credits given.

3. **Written** a legal article that is published.

Further quality requirements can be defined, such as the length of the article (number of words), the standard of the journal involved, and so on. This means that a lawyer who has published a legal article in a medical journal can still obtain credits. It is not advisable to assess the number of credit points earned by writing an article on the basis of the number of hours spent writing it.

4. **Performed any other act** during a period of time to be established by the Bar or Law Society, which may or may not be subject to certain conditions, and which qualifies as a training course which benefits the professional skills of the lawyer.

This provision offers the Bars and Law Societies the opportunity to recognise activities other than those listed under 1 to 3. For example: distance learning, training abroad, teaching at training institutions other than those named in 2 above (such as higher vocational training), taking part in certain types of peer-group or peer review learning and self study. This can be developed in the form of a decree specifying the acts constituting the training, such as the 'Requirements' in England and Wales or the Dutch 'Recognition of Training' Decree.

Article 2

This scheme applies to all lawyers.

Continuing training begins with admission to the Bar or Law Society and once any traineeship has been completed. This scheme applies to a 'finished product'. Bars and Law Societies could consider introducing the obligations in stages (e.g. starting with newly qualified lawyers). Non practising lawyers may be excluded from this requirement.

Article 3

- a. The lawyer must earn at least "X" [e.g. 16] training credits per year.

The number of credits is to be established by the Bar or Law Society (annually or by separate decree). The Bar or Law Society might choose a period other than one year, for example, the number of points/hours in three years (or other period). In the various jurisdictions the obligations are different⁵.

- b. The obligation mentioned under Article 3(1) shall be reduced proportionally if the rules have applied to the lawyer for less than 11 months in any year.

This provision should allow flexibility in the continuing training obligations of lawyers who will be registered or will complete their traineeship during the course of the year.

- c. Some of the training points should be earned from following legal training, including EU law and professional ethics and professional rules.

⁵ E.g. Belgium 20 hours in three years (French and German-speaking bar), Belgium 16 hours (Flemish Bar), England and Wales (Law Society) 16 hours, Netherlands 16 points, Finland three days, France 20 hours. (These examples are from 2006.)

The 2003 Recommendation of the CCBE mentions that a lawyer should take courses in EU law and professional ethics and professional rules too. However, this requirement may be adapted to the specific situation in the Bar or Law Society.

- d. The maximum number of credits that can be obtained through an activity as referred to in Article 1(d)4 is 'Y'.

This optional provision enables the Bar or Law Society to limit the number of points that can be obtained by following or giving training through the special activities mentioned in Article 1(d)4.

- e. A lawyer may use excess credits to reduce the number of credits to be earned in the following two years.

It is essential that the lawyer follows professional training on a regular, yearly basis. It is however possible that a lawyer follows or gives a training which, because of its intensiveness, is awarded many training points. A Bar or Law Society may decide to permit a lawyer to carry over any excess points to the following year. A Bar or Law Society may limit the number of points and period of validity of this 'carry forward' system. It is necessary to explain the system very well and to keep it simple and comprehensible, to make sure that lawyers apply it correctly.

Article 4

The lawyer may request exemption from all or part of the continuing training obligation set out in Article 3(1) under specific circumstances.

The Bar or Law Society may draw up further rules regarding the implementation of this exemption. One can imagine circumstances in which release of lawyers from the obligation is justified, for example, in the case of long-term disability or if the lawyers have complied with the continuing training obligations of the State where they are established.

Article 5

The lawyer is obliged to record the number of training points earned and to keep the relevant certificates and/or exam records. Lawyers may be required to submit these records and the documentary proofs for inspection.

Different countries may have different systems of checking the fulfilment of the continuing training obligations. Bars or Law Societies may determine how long such records should be kept. The central filing of credits is a possible method, or a system of random checks by the Bar or Law Society could be made or registration of the recognised training institution is also possible. In the latter case care must be taken not to make cross border continuing training impossible or too difficult.

Article 6

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This article could regulate the disciplinary implication when a lawyer does not satisfy the obligation referred to in Article 3. The definitive text will also depend on the professional rules and the system of disciplinary rules per EU member state. There might be general disciplinary rules e.g. in the law on advocates.