At the 1978 conference of the International Bar Association in Sydney, one of the main topics for discussion was "Government Regulation of the Practice of Law as it affects the scope of professional conduct and practice of lawyers". The Secretary-General of the Law Council of Australia posed a number of connected questions of which four can be taken as illustrating a problem which is common to many parts of the world:

1. Should there be reciprocity of admission between States?

2. Should provision be introduced in all States to legitimise the practice of law by the "commuter advocate"?

3. Would admitting authorities benefit from the formation of a "Consultative Committee of Law Admitting Authorities" to enable interstate discussion and consultation to take place on these issues?

4. Should discussions be held between legal professional bodies to produce a common code of conduct?

The purpose of this article is to explain why these questions have become important in the countries of the European Community and how they are being tackled.

The Treaty of Rome, which in 1957 established the European Economic Community, provides for the free movement of goods, persons, services and capital within the territory of the member states. Where the right of free movement exists, it is a personal right of the citizen protected by Community law which prevails over the national
law of the member States. Very soon after the EEC was set up, it was realised that these provisions might have serious implications for the legal profession—particularly if they meant that a lawyer from one member State was free to set up in practice on a permanent basis, or to provide services on a temporary basis, in another member State. A group of lawyers belonging to the Union Internationale des Avocates (UIA), which might loosely if inaccurately be described as the civil law counterpart of the IBA, therefore formed a "Commission Consultative des Barreaux des Pays des Communates Europeennes".

It was not until 1974 that the Court of Justice of the Community decided authoritatively that the Treaty applies to the legal profession, with all the consequences which flow from that. In the meanwhile, however, the "Commission Consultative" had become an institution in its own right, composed of officially nominated representatives of the Bars of the member States. With the accession of two English-speaking states, it acquired the English title "Consultative Committee of the Bars and Law Societies of the European Community", or CCBE for short.

One feature of the CCBE which goes back to its origins in the UIA is that, although the Committee as such consists of national delegations from the member States, there have always been observer delegations from other European countries some of which are not, and probably never will be, members of the Community. The result has been that the effect of Community action in neighbouring countries and the experience of those countries can be taken into account, and the "candidate countries" can begin to come to terms with their problems before formal accession. The observers make a valuable contribution to the discussions and prevent them becoming too introverted or self-centred—an accusation often levelled against the EEC itself.

The organisation of the profession in Europe differs markedly from State to State. The divided profession in the UK and Ireland, and the division of the UK into 3 autonomous jurisdictions (England, Scotland and Northern Ireland) present special but not unique problems since, for example, there are over 180 autonomous Bars in France with no single national Bar authority. In terms of numbers, Luxembourg has less than 200 registered practitioners while the UK has over 40,000. It is clearly impossible to devise a system of representation to take account of all the local variations, and the rough but effective solution is that each member State is allowed a delegation of 6 members. It is then up
to each of them to decide how the delegation will be made up. Belgium has equal representation of Flanders, Wallonia and Brussels; the UK and Ireland have equal representation of barristers and solicitors, further divided in the UK between England, Scotland and Northern Ireland; Germany has equal representation of the rule-making and disciplinary bodies (the Rechtsanwalts-kammern) on the one hand and the professional "trade union" (the Anwaltverein) on the other.

The amount of the subscription is weighted in favour of the smaller countries, but they tend to send fewer delegates, so that only 30-40 delegates are actually present at each meeting. Some delegations make a practice of sending the President, Chairman or Secretary-General of the national Bar authority, but not all. Continuity of experience and close knowledge of the subject-matter has proved to be at least as important as status, provided there is a good system of reporting back.

The President is elected for a period of 2 years. The Secretary-General is a practising advocate in Brussels and there is no full-time secretariat. This has disadvantages, but it has allowed the organisation to grow naturally without threatening to usurp the authority of the national bodies.

The CCBE meets twice, sometimes three times, a year in a different country on each occasion, including the observer countries. Again, the lack of a permanent base has some disadvantages but it does allow the delegates to meet members of the local bars and learn their problems at first hand, while offering some safeguard against over-centralisation another frequent criticism of the EEC itself.

A Working Party, consisting of the President, Secretary General and one (or sometimes two) members of each delegation meets at least once in the interval between main meetings to prepare the agenda for the next meeting and to take any urgent decisions.

Detailed study of particular topics is undertaken either by a single "Rapporteur" or by an ad hoc Committee. In addition there are independent Committees dealing with specialist areas of Community law—e.g. Company Law and Competition Law. These Committees are composed of lawyers with special knowledge and experience of the subject-matter and they are virtually autonomous, having direct contacts with the relevant Directorates of the EEC Commission to which they submit reports and observations.
The fact that the Treaty of Rome has now been authoritatively held to apply to the legal profession has the immediate consequence that, so far from his activities being illegal (as they are in some other parts of the world), the "Commuter advocate" has rights which he can enforce under Community law. So the problem for the Bars of the Community is not whether the mobility of the profession should be recognized as a fact of life, but how it ought to be regulated in the interests of the client, the more general public interest, and the long-term interests of the profession itself. It is easy to say that all professional rules are based on professional protectionism so long as one forgets that most of them have their origin in consumer protection. The difficulty today lies in the fact that the profession is so old, and its traditions and methods are of such long standing, that one cannot really say what life would be like without a particular rule or restriction. Would the client be better served? If so, does it necessarily follow that the public interest would be better served, or are there cases where the immediate interests of the individual client must give way to a wider public interest? How far does this public interest demand a fairly strict degree of control over the whole profession at the risk of inhibiting the inventive ideas of individual practitioners?

In this respect, one great merit of the European Community lies in the very diversity of its legal systems and traditions. A rule which is jealously defended in one country may not exist in another, and perhaps the immediate reaction is to say that this proves that the rule is unnecessary. But because the rule is jealously defended where it exists, it becomes necessary to dig deeper and find out why it exists. The justification for the rule may depend very much on local circumstances or on special features of the local legal system.

For this reason it is easier to propose that there should be a common code of conduct than to produce a code which every country can accept. How, for example, does one harmonise the rules on confidentiality of letters written by one lawyer to another? In 5 member states, these letters are deemed to be confidential unless the contrary is said expressly, or appears by necessary implication from the terms of the letter; in the other 4 States, the opposite rule applies. The reason for the difference lies, not in the perversity of the legal profession, but in the fact that the legal systems of Europe make different assumptions about the relationship between lawyer and client, and between both of them and the courts or other State authorities.
While it has not yet been possible to arrive at a common 'code', it has proved relatively easy to identify the common principles on which the national codes are based. While the national rules may be different, the idea that lawyers should be able to communicate on a confidential or 'without prejudice' basis has its ultimate justification in the mutual interest of clients and of society that disputes should be settled amicably without resort to litigation.

In 1977, the CCBE issued a "Declaration on the principles of professional conduct of the Bars and Law Societies of the European Community", known as the "Declaration of Perugia" because the first draft was presented to a meeting in that city. Many of the Bars and Law Societies have adopted the Declaration of Perugia *as part of their professional code.

The CCBE has also set up a "Council for Advice and Arbitration" to resolve problems of conflict between national rules. Thus, where there was doubt as to whether a lawyer is personally liable for the fees and expenses of his foreign correspondent even if the client is insolvent, the Council delivered the following opinion:—

"In professional relations between members of Bars of different countries, where a lawyer does not confine himself to recommending another lawyer or introducing him to the client but himself entrusts a correspondent with a particular matter or seeks his advice, he 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 personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of his disclaimer of responsibility for the future."

The Treaty of Rome requires the Community authorities (ultimately the Council of Ministers) to promulgate directives for the mutual recognition of diplomas, certificates and titles, and to co-ordinate the legal and administrative rules concerning access to, and the exercise of, the professions. A "directive" is binding on the member states as to the result to be achieved, but leaves to the national authorities the

* The text of this declaration is published at the end of this Article. —Ed.
choice of form and methods. A directive therefore has to be implemented by appropriate national legislation.

In March 1977, the Council of Ministers promulgated a directive concerning the provision of services by lawyers in other member States. This had to be implemented by national legislation in the member States by March 1979. Unfortunately, the directive bears all the hallmarks of political compromise, and a clear view of its effect must await detailed study of the national legislation (which can, incidentally, be challenged if contrary to the principles of Community Law).

The directive provides (1) for the mutual recognition of professional titles (barrister, solicitor, etc) as entitling a lawyer to practice in another country; (2) for the right of a lawyer from one country to appear in the courts of another, at least where he works "in conjunction with" a lawyer entitled to practise in those courts; (3) for the extent to which the local rules apply; and (4) for the creation of a system of transnational discipline and control.

Even before the directive was implemented, the CCBE devised a Professional Identity Card, printed in the 6 Community languages, so that a lawyer can establish his right to practice in other member States. The cards will be issued by the national "Admitting Authorities" of the member States.

The first of these Identity Cards was handed over at a ceremony in Brussels in October, 1978 attended by many dignitaries and officials of the Community institutions. This recognition of the CCBE as a new "Community institution" in its own right, although it began as an informal committee of an international organisation, shows the truth of the principle enunciated by Jean Monnet (father of the European Community) that recognition of common problems produces common action.

To judge by our experience, the increasing mobility of the legal profession is an inevitable consequence of increasing speed of movement and communication. It creates problems which are common to all parts of the world. The Bars and Law Societies of Western Europe have been forced to face up to these problems by the terms of the Treaty of Rome itself and, while our particular solutions may not be suitable
for transplantation elsewhere, our experience may be a helpful guide to others.

It is hoped too, that the experience of the European Community in seeking to reconcile the long-standing differences of approach and method between the traditional legal systems of Western Europe will be a new source of inspiration to others in the free world, the roots of whose legal heritage lie in Western Europe.

THE DECLARATION OF PERUGIA ON THE PRINCIPLES OF PROFESSIONAL CONDUCT OF THE BARS AND LAWS SOCIETIES OF THE EUROPEAN COMMUNITY.

(16. IX. 1977)

I The Nature of Rules of Professional Conduct:

Rules of professional conduct are not designed simply to define obligations, a branch of which may involve a disciplinary sanction. A disciplinary sanction is imposed only as a remedy of last resort. It can indeed be regarded as an indication that the self-discipline of the members of the profession has been unsuccessful.

Rules of professional conduct are designed through their willing acceptance by the lawyers concerned to ensure the proper performance by lawyers of a function which is recognised as essential in all civilised societies.

The particular rules of each Bar or Law Society are linked to its own traditions and are adapted to the organisation and sphere of activity of the profession in the country concerned, 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.

In seeking a common basis for a code of professional conduct for the Community one must start from the common principles which are the source of specific rules in each member country.
II The Function of the Lawyer in Society:

A lawyer’s function in society does not begin and end with the faithful performance of what he is instructed to do so far as the law permits. A lawyer must serve the interests of justice as well as those who seek it and it is his duty, not only to plead his client’s cause, but to be his adviser. A lawyer’s function, therefore, lays on him a variety of duties and obligations (sometimes appearing to be in conflict with each other) towards:

the client;

the client’s family and other people towards whom the client is under a legal or moral obligation;

the courts and other authorities before whom the lawyer pleads his client’s cause or acts on his behalf;

the legal profession in general and each fellow member of it in particular; and

the public for whom the existence of a free and independent but regulated profession is an essential guarantee that the rights of man will be protected.

Where there are so many duties to be reconciled, the proper performance of the lawyer’s function cannot be achieved without the complete trust of every one concerned. All professional rules are based from the outset upon the need to be worthy of the trust.

III Personal Integrity:

Relationships of trust cannot exist if a lawyer’s personal honour, honesty and integrity are open to doubt. For the lawyer these traditional virtues are professional obligations.

IV Confidentiality:

1. It is of the essence of a lawyer’s function that he should be told by his client things which the client would not tell to others, and that he should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. The obligation of confidentiality is therefore recognised as the primary and fundamental right and duty of the profession.
2. While there can be no doubt as to the essential principle of the duty of confidentiality, the Consultative Committee has found that there are significant differences between the member countries as to the precise extent of the lawyer's rights and duties. These differences which are sometimes very subtle in character especially concern the rights and duties of a lawyer vis-à-vis his client, the courts in criminal cases and administrative authorities in fiscal cases.

3. Where there is any doubt the Consultative Committee is of opinion that the strictest rule should be observed—that is the rule which offers the best protection against breach of confidence.

4. The Consultative Committee most strongly urges the Bars and Law Societies of the community to give their help and assistance to members of the profession from other countries in guaranteeing protection of professional confidentiality.

V Independence:

1. The multiplicity of duties to which a lawyer is subject require his absolute independence, free from all other influences, especially such as may arise from his personal interests. The disinterestedness of the lawyer is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore show himself to be as independent of his client as of the court and be careful not to curry favour with the one or the other.

2. This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to his client has no real value if it is given only to ingratiate himself to save his personal interests or in response to outside pressure.

3. The rule against representation of conflicting interests, and the rules which prohibit a lawyer carrying on certain other forms of activity are designed to guarantee the lawyer's independence in accordance with the traditions and customs of each country.

VI The Corporate Spirit of the Profession:

1. The corporate spirit of the profession ensures a relationship of trust between lawyers for the benefit of their clients and in order to avoid litigation. It can never justify setting the interests of the profession against those of justice or of those who seek it.
2. In some Community Countries, all communications between lawyers (written or by word of mouth) are regarded as being confidential. This principle is recognised in Belgium, France, Italy, Luxembourg and the Netherlands. The law of the other countries does not accept this as a general principle: even the express statement that a letter is confidential (or "without prejudice") is not always sufficient to make it so. In order to avoid any possibility of misunderstanding which might arise from the disclosure of something said in confidence, the Consultative Committee considers it prudent that a lawyer who wishes to communicate something in confidence to a colleague the rules of whose country are different from his own, should ask before hand whether and to what extent his colleague is able to treat it as such.

3. A lawyer who seeks the assistance of a colleague in another country must be sure that he is properly qualified to deal with the problem. Nothing is more damaging to trust between colleagues than a casual undertaking to do something which the person giving it cannot do because he is not competent to do so. It is therefore the duty of a lawyer who is approached by a colleague from another country not to accept instructions in a matter which he is not competent to undertake. He should give his colleague all the information necessary to enable him to instruct a lawyer who is truly capable of providing the service asked for.

4. As regards the financial obligations of a lawyer who instructs a lawyer of another country, the Council for Advice and Arbitration of the Consultative Committee issued the following opinion on 29th January, 1977:

In professional relations between members of Bars of different countries, where a lawyer does not confine himself to recommending another lawyer or introducing him to the client but himself entrusts a correspondent with a particular matter or seeks his advice, he 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 personal responsibility to the amount of the fees, costs and outlays incurred before intimation to the foreign lawyer of his disclaimer of responsibility for the future.

VII Professional Publicity

1. In all member countries of the Community lawyers are forbidden to seek personal publicity for themselves or to tout for business. This
prohibition is designed for the protection of the public and of the high standing of the profession. The extent of the prohibition is not the same in every country. In some countries, it is laid down in national legislation which provides for a criminal penalty in case of breach. It is therefore possible that a lawyer from another country who engages a prohibited form of publicity may mislead the public and run the risk of criminal proceedings. In general, there is nothing to prevent a lawyer using cards and writing paper in the form authorised by his own professional body. Beyond that, he would be wise to ask the professional organisation of the host country for guidance in advance.

2. In some countries publicity which is designed to provide information for the public or for lawyers in other countries is permitted if it is approved by or under the auspices of the professional organisations. Lawyers from other countries may use such means of publicity in so far as the rules of their own Bar or Law Society permit them to do so.

VIII Respect for the Rules of other Bars and Law Societies

The Directive of 22nd March, 1977 specifies the circumstances in which a lawyer from another Community country is bound to comply with the rules of the Bar or Law Society of the host country. Lawyers have a duty to inform themselves as to the rules which will affect them in the performance of any particular activity. The Bar or Law Society of the host country has a duty to reply to their questions as to the content and effect of its own rules, always having regard to their purpose which is to protect those who require the professional services of a lawyer. Lawyers should always have in mind that the manner in which they behave will reflect on the professional organisation to which they belong, on their colleagues and on all their clients.