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CCBE update

The General Agreement on Trade in Services (GATS)

Conseil des Barreaux de l'Union européenne – Council of the Bars and Law Societies of the European Union

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RAT DER ANWALTSCHAFTEN DER EUROPÄISCHEN UNION - CONSEJO DE LOS COLEGIOS DE ABOGADOS DE LA UNION EUROPEA - CONSIGLIO DEGLI ORDINI FORENSI DELL'UNIONE EUROPEA - RAAD VAN DE BALIES VAN DE EUROPESE UNIE - CONSELHO DAS ORDENS DE ADVOGADOS DA UNIÃO EUROPEIA - ΣΥΜΒΟΥΛΙΟ ΤΩΝ ΔΙΚΗΓΟΡΙΚΩΝ ΣΥΛΛΟΓΩΝ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ - RÅDET FOR ADVOKATSAMFUND I DEN EUROPAEISKE UNION - EUROOPAN UNIONIN ASIANAJAJALITTOJEN NEUVOSTO - RÅÐ LÖGMANNAFELAGA I EVROPUSAMBANDINU - RÅDET FOR ADVOKATFORENINGENE I DET EUROPEISKE FELLESKAP - RÅDET FOR ADVOKATSAMFUNDEN I DEN EUROPEISKA UNIONEN

CCBE update

The General Agreement on Trade in Services (GATS)

1. This update provides a general and brief overview of the current state of play regarding the GATS negotiations. If you wish to obtain more detailed information on GATS and the legal services sector, the International Bar Association recently published a "Handbook for International Bar Association Member Bars" which provides guidance and explanations on GATS issues of interest to the legal profession. This handbook can be accessed through the CCBE website www.ccbe.org.
2. In November 2001, the World Trade Organisation (WTO) Ministerial agreed to launch a new round of services negotiations under the GATS, which would be scheduled to last for 3 years. The date agreed on for Member States to table requests under the new round was 30 June 2002, and to table offers 31 March 2003. The 1 January 2005 is the official date for conclusion of the negotiations.
3. Since the last GATS round, legal services have been included in the ongoing GATS negotiations for liberalisation of access to global markets. Within the framework of the current GATS round, countries will negotiate conditions under which foreign lawyers may practise in another WTO member state.
4. The European Commission negotiates on behalf of the European Union Member States. The Commission consults and works closely with the Member States to ensure that they are in agreement with the Commission's proposals. The Commission also consults with the CCBE to be sure that lawyers' views are taken into account in relation to legal services proposals.
5. In June 2002, the Commission tabled requests to remove trade barriers in the services sectors of 109 WTO members. The CCBE did not submit to the Commission a country by country list of market access barriers that exist in WTO countries. Instead, the CCBE encouraged its member bars to submit lists of barriers. In this regard, the French national bar organisation and the Law Society of England and Wales produced comprehensive country by country requests.
6. At the same time, the Commission has received to date requests from 21 countries that wish greater access to EU markets. The Commission is now preparing its negotiating position regarding what it is prepared to offer. This position will be finalised before the end of March 2003. It should be noted that at the end of the last round in 1994, the Commission had committed the Member States of the European Union to permitting lawyers from other WTO Member States to provide services in home country law and public international law under home title.
7. The CCBE, in consultation with the European Commission, has reached a position regarding access by foreign lawyers to the European Union. For a copy of the CCBE position, please see the annex.
8. In addition to the sector specific requests, the WTO is also working on the development of horizontal disciplines. The WTO is working on the development of disciplines on domestic

regulation to ensure, among other things, that local licensing and qualification measures are not more burdensome than necessary to fulfil a legitimate objective and do not constitute barriers to trade for those trying to enter a particular market. This may mean in the future that bars and law societies in the EU will need to notify publicly any changes that they intend to make to their rule-books, and to allow potential external market users (in other words, foreign lawyers) to comment on the effect of the proposals. These comments will then need to be properly considered by the bars.

9. There are continuing discussions on the effect of two of the GATS terms for the provision of services - Mode 3 (Commercial Presence) and Mode 4 (Presence of Natural Persons). Mode 3 involves the establishment of a permanent presence in a country, such as the opening of an office there. Mode 4 addresses the situation in which foreign lawyers themselves enter a country in order to offer legal services. During the 1994 GATS round, it is believed that the majority of EU Member States understood Mode 3 to cover not only the opening of the office in the host country but also the staffing of it with home country lawyers established in the host country. The correct understanding appears to be that Mode 3 covers only the opening of the office itself (including the possibility of it being staffed by local staff only), whereas the services of established lawyers from the home country working from such offices would fall under Mode 4, just as with other temporary services of travelling lawyers.

10. Another point of interest concerns the classification of terminology relating to legal services. Currently, WTO Member States use the definition of 'Legal Services' as provided for in the WTO's Services Sectoral Classification List (MTN.GNS/W/120 of 10 July 1991). In March 2002, Australia tabled a proposal to expand the current classification list to reflect more clearly the commercial realities of international trade in legal services, and provide a framework for Members to have enhanced flexibility in making commitments. The Australian reclassification uses largely the terminology favoured by the International Bar Association, with well-known phrases such as 'home country law', 'host country law' and 'third country law'. The CCBE is monitoring the debate, and contributing to it both in the International Bar Association and in comments to the European Commission.

11. A final point of interest concerns the Disciplines for the Accountancy Sector. In 1998, the WTO Working Party on Domestic Regulation prepared Disciplines for the Accountancy Sector. The WTO is considering whether it would be possible to extend the Accountancy Disciplines to all service sectors, including legal services. The International Bar Association is being consulted on this issue. The WTO Member States have agreed in the past that each country's representative should consult the relevant domestic organisations about these issues.

For further information on any of these issues, please contact Peter Mc Namee at mcnamee@ccbe.org

Annex

CCBE position regarding access by foreign lawyers to the European Union

In connection with the GATS, the CCBE member organisations are prepared to apply the Foreign Legal Practitioner (FLP) concept to lawyers from States outside the EU wishing to establish themselves in an EU Member State as follows, with the term "home country" standing for a EU Non-member State and the term "host country" standing for an EU Member State:

- a) The FLP is recognised by the host country on the basis of Art. VII GATS 1994, provided he is a member of a comparable independent regulated bar with a code of conduct in line with the code of conduct of the CCBE and its member organisations and has a sufficient and comparable education or experience obtained, requirements met or licences or certifications granted in his home country.
- b) The FLP must register as such with the bar and/or competent authorities of the host country.
- c) The professional conduct of the FLP in the host country is regulated under the ethical rules of the bar and/or competent authorities of the host country, notwithstanding the fact that the ethical rules of the host country may be stricter than those of the home country.
- d) The FLP must practice in the host country under his home title.
- e) The FLP must give legal advice only in his home country law and/or in international public law (excluding European Community law).
- f) The FLP is not permitted to represent anybody in court and before administrative authorities except where no requirement for representation by a lawyer exists.
- g) The FLP may associate with host country lawyers and may be employed by host country lawyers, to the extent permitted to them, for the joint exercise of the profession.