

Mr. Zoran Milanović
Prime Minister of the Republic of Croatia
Markov trg 2, Zagreb
Republic of Croatia

Brussels, 11 October 2012

Dear Prime Minister,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE). The CCBE represents the Bars and Law Societies of 31 member countries and 11 further associate and observer countries, and through them around 1 million European lawyers.

The CCBE has been informed by the Croatian Bar Association (one of the CCBE's two associate members which is expected to be granted full CCBE membership immediately after accession of Croatia to the EU) about the developing problem relating to the possible introduction of fiscal cash registers for lawyers in Croatia.

I understand that there are ongoing discussions about a possible introduction of fiscal cash registers for lawyers in Croatia. The CCBE was asked by the Croatian Bar Association to provide its views on the issue.

I also inform you that since the very beginning of the discussion of such ideas in the Federation of Bosnia and Herzegovina and in the Republic of Serbia, where, however, such ideas were finally rejected, the CCBE has followed very closely and with concern the issue and has taken a position based on European and international legal texts which enshrine the fundamental role of lawyers in a society based on the rule of law and the lawyers' rights and duties as well as those of Bars and Law Societies.

At the outset, the CCBE would like to note that Bars and Law Societies are independent, self-governing bodies, which are in charge of regulating and administering the legal profession. Independence of Bars as well as of its individual members is an indispensable part of the rule of law, without which a modern democratic society cannot exist.

Furthermore, the CCBE would like to emphasise that lawyers are guardians of fundamental rights, freedoms and liberties as well as of the rule of law principle. Lawyers ensure the essential foundations of a democratic society, having a vital role in the administration of justice and in maintaining the rule of law. The role of lawyers in society has been explicitly recognised, inter alia, by the Council of Europe Recommendation Nr. R (2000) 21 on the freedom of exercise of the profession of lawyer of 25 October 2000 as well as by the United Nations Basic Principles on the Role of Lawyers of 14 December 1990 and indeed by the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights.

The CCBE would also like to recall that lawyers are subject to strict deontological rules and bound to safeguard core values such as independence, absence of conflicts, integrity and professional secrecy / confidentiality which are fundamental for and in the lawyer-client

relationship. The rules applicable to lawyers are there to secure the rights and benefits of their clients in the interest of effective access to justice and a sound legal order.

The CCBE carried out a survey in 2009 which showed that generally there is, in our opinion, a European *acquis* not to require lawyers to use fiscal cash registers. There are reasons that countries do not impose fiscal cash registers for lawyers. Such registers are normally used for commercial activities (selling of goods) but not for regulated professional activities (service rendering). It is acknowledged that lawyers have a very particular role in the administration of justice and therefore their services cannot be compared to standard commercial sales activities. Rendering legal advice and legal representation of citizens is not comparable to a commercial commodity.

If the use of fiscal cash registers became mandatory for lawyers in Croatia, European fundamental rights would be at risk as well as the lawyers' professional duties towards their clients. This would have serious negative implications for the administration of justice as a whole. In several European countries, for instance, the name of the client is part of the protection scope of confidentiality / professional secrecy; or the nature of the legal service cannot be given. Under all regimes, there are mechanisms for the protection of professional secrecy of lawyers and all lawyers have the duty to keep clients' matters confidential in the overriding interest of fundamental rights' protection. The CCBE understands that the currently discussed proposals in Croatia would, however, require lawyers to reveal the names of their clients and the nature of the legal service provided. This would go not only against the existing Croatian Bar Association's professional rules. We refer in this context to the letter of the Croatian Bar Association sent to the Ministry of Justice of the Republic of Croatia of 5 September 2012 which explains very clearly the problems and dangers linked to the use of fiscal cash registers by lawyers.

For the above mentioned reasons, the CCBE is of the opinion that introducing cash registers for lawyers in Croatia would represent a disproportionate intrusion in fundamental principles which govern the lawyers' profession in the interest of the rule of law in all Europe. Ideas aiming at a solid taxation system in the commercial sector should not at the same time undermine fundamental rule of law principles and core values of the legal profession.

The CCBE is ready to contribute further with its expertise and would appreciate being informed about further developments on the issue.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Prunbauer-Glaser', with a long, sweeping tail stroke extending downwards and to the right.

Marcella Prunbauer-Glaser
CCBE President