**Good practices**

**Introduction**

This document aims to give advice to the Ministry of Justice and the Serbian Bar (most of the issues will need to be dealt with by the Bar) on the range of issues outside the formal implementation of the directives which will arise on Serbia’s accession to the EU, or indeed – like the section on future technological changes – which will impact on the Serbian legal profession in the near future in any case.

**Directories**

On accession to the EU, the Serbian Bar will be invited to join the Find-A-Lawyer search engine located on the European Commission’s e-justice portal (<https://e-justice.europa.eu/content_find_a_lawyer-334-en.do>). This joins most EU national bars’ electronic directories to an EU-wide search function (a small minority of countries have not yet joined). Search categories include area of practice and languages spoken, along with location and name. The CCBE is currently developing this facility further through an EU-funded project, Find-A-Lawyer 3, and the Serbian Bar might find it useful to send a representative to these meetings so as to prepare itself for future changes. At any rate, the Bar should examine the e-Justice portal website, to align its own data as much as possible in advance of accession, to be sure that it can join easily after that.

For the purposes of planning for the future, the Serbian Bar should also be aware that the CCBE is using the electronic Find-A-Lawyer directories for another purpose: that of verifying the role of a lawyer in cross-border electronic proceedings (the Find-A-Lawyer 2 and 3 projects, in combination with e-CODEX).

Given the direction in which the world is travelling - more and more business on-line - it is clear that the management of electronic lawyer directories (making sure that they are compatible with EU systems, ensuring that the information held is flexible towards changing trends and information needs) will become a core business of the Bar. Decisions should be made early on about how this can be most efficiently managed – for instance, whether it should be centralised, what kind of compatible software to use, etc. That is why it is recommended that the Bar send now a representative to follow the CCBE’s developments on this aspect.

**Discriminating against Serbian lawyers**

There are a number of areas where the local rules for lawyers are stricter than those for EU lawyers. For instance, if the rules on qualifying as a Serbian lawyer are much stricter than in other Member States, you may find that young lawyers prefer to qualify elsewhere, and then come back to practise in Serbia through the use of the EU lawyers’ directives. Other Member States which have had such stricter conditions for their own lawyers have found just that: their nationals migrate to another Member State to qualify, and then come back to register as a European lawyer in their home state – see, for instance, (Case C‑118/09) Koller.

Therefore, it is wise – but not compulsory - to ensure that access to the local list and to the European list is subject to broadly similar conditions, to avoid forum shopping undermining the Serbian route to qualification.

There are other examples: the justifications for the one-office rule, or even for limited liability partnerships, might also become more difficult to uphold if EU lawyers successfully practise without them.

**Professional indemnity insurance**

There is a good deal of information on the CCBE website about how other Member States handle professional indemnity insurance arrangements. For instance, the answers to a 2014 questionnaire yield useful information about others’ systems, amounts covered, premiums paid and activities covered: <http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Comparative_Table_Qu1_1415355108.pdf>.

In addition, the following useful documents are available:

1. Minimum standards for European lawyers professional indemnity insurance - <http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/minimum_standards_on1_1203412931.pdf>

1. A model questionnaire on professional indemnity insurance for lawyers requesting registration under the Establishment Directive 98/5/CE - <http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/insurance_common_que1_1203413109.pdf>

1. A general position paper on professional indemnity insurance in Europe - <http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/20150424_EN__CCBE_Po1_1436794390.pdf>

**Continuing legal education**

If the Serbian Bar were to adopt a compulsory continuing legal education system in the future, the CCBE has a recommended model scheme. The aim is that Bars thinking of adopting such a system will find the answers to their questions in the document: <http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_training_ccbe_mod1_1182247022.pdf>

The CCBE also has a resolution which will be useful for the Serbian Bar when it joins the EU and has to cope with the presence of EU lawyers in its jurisdiction. This resolution has recommendations on how to deal with the continuing training requirements of registered European lawyers: <http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/29112013_EN_CCBE_res1_1386580122.pdf>

Finally in the area of training, the CCBE has a ‘Recommendation on Training Outcomes for European Lawyers’. It is a guide to what lawyers in any Member State should know in order to qualify as a lawyer. Such common ground is important, since the basis of the free movement regime among European lawyers is mutual recognition and mutual trust, which functions better with a common agreement among the bars on the essentials of lawyer training:

<http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Training_Outcomes1_1196675213.pdf>

**ID cards**

The CCBE issues ID cards for European lawyers – see <http://www.ccbe.eu/index.php?id=30&L=0>. This is particularly useful in that it is more easily recognised across borders. Many Member States now use the CCBE card as their own national identity card, with the local bar information on one side, and the CCBE information on the other. Some bars use their cards to carry electronic information about their lawyers, which can be used on national electronic systems to access court files, say. Further information can be obtained from the CCBE secretariat.

**Discipline**

There are two CCBE documents which may be useful to the Serbian Bar:

* CCBE recommendations on disciplinary process for the legal profession

<http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/CCBE_Recommendations1_1190034926.pdf>

* Summary of disciplinary proceedings and contact points in the EU and EEA Member States

<http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Table_discipline__Ma1_1335781934.pdf>

**World Trade Organisation**

All the Member States of the EU are members of the World Trade Organisation (WTO). Obviously, international trade is dealt with elsewhere in the accession negotiations. But membership of the WTO will affect Serbian lawyers, because legal services are included within the WTO’s jurisdiction through the General Agreement on Trade in Services (GATS). The EU has sole competence for negotiating trade agreements on behalf of the Member States. The CCBE has a committee – International Legal Services – which deals with these negotiations on behalf of European lawyers.

The International Bar Association has done a good deal of work on the subject of international trade in legal services. The first document which should be read by the Bar is the IBA’s GATS handbook, which is an invaluable guide to the content, meaning, procedures and terminology involved in the negotiations around trade in legal services. The IBA has also passed a number of resolutions over the years to assist bars in these negotiations. All of these documents can be found at the following link:

<http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/BIC_ITILS_Committee/Default.aspx>

Finally, the IBA has developed a very significant and useful resource, a database of information about regulation of legal services around the world. It provides individual lawyers and law firms with information to assist them in representing their clients internationally and in developing their businesses. It also assists bar, governments and other institutions that are looking to change the way they regulate practice by foreign lawyers within their own jurisdiction. The database contains information broken down by country on the following:

* Lawyer titles and the legislation governing legal practice
* How lawyers from this country become licensed to practise?
* What trade in legal services commitments the country has made in the WTO?
* What other commitments in free trade agreements or other reciprocal arrangements the country has made?
* Possibilities for foreign lawyers to provide transactional legal services, appear in court or undertake arbitration
* Conditions governing practice in the country of individual foreign qualified lawyers, including licensing arrangements if relevant.
* Conditions governing practice in the country by foreign law firms, including licensing arrangements if relevant.
* Possibilities for foreign and local lawyers to work together formally in employment and partnership arrangements

It can be found at the following link: <http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/BIC_ITILS_Committee/The_Regulation_of_Interational_Legal_Services.aspx>

Given the complexity of terminology, procedures and content, it is recommended that the Serbian Bar appoint an expert who can acquaint him/herself with the material quoted above. It would be best if this person would be in contact with the CCBE’s International Legal Services committee as well.

**Technological changes**

IT innovation - the growth in technology, and particularly in platforms through which many players can be linked on a scale unimaginable before (for instance, consumers to information and basic procedures, lawyers to clients, and so on) - has brought many changes in its wake. This is an international development, not specifically European, and indeed is growing mainly in the USA, but spreading to Europe. Here are some of the changes being brought about:

• Advice can be sought, and documents can be created automatically, by clients themselves on the internet, without the intervention of a lawyer

• Many duties previously undertaken by lawyers can be commoditised – the provision of standard contracts, filling out forms, finding precedents, creating bundles of documents

• Artificial intelligence can answer questions that humans used to answer

• Legal services can be provided nationally and across borders by unregulated on-line service providers with powerful IT tools

• Legal services can be undertaken cheaply in other countries with lower labour costs

• Disputes can be settled on-line by computer programs without the intervention of lawyers or even human arbitrators.

There are now many large and unregulated players using platform solutions: RocketLawyer, LegalZoom, Modria, Avvo are some. They operate not just in the USA. In non-English speaking countries, their equivalents are growing up. This is a significant threat in the rise of the unregulated sector.

Here are some of the questions which arise from these developments. They may seem distant from Serbia - and the relatively small size of the Serbian legal market, together with the Serbian language, may protect Serbia from such developments for a time. But they are likely to arise in the foreseeable future.

* Collaborative platforms (as described above) – the provision of legal advice through IT platforms is the way of the future, since it reaches a mass audience and is able to provide legal services cheaply; who owns the platform both captures the value of the market, and decides on the applicable rules. If collaborative platforms offering legal services grow in size to be equivalent to Google or Facebook, the bars may face extreme marginalisation or even extinction. Should bars themselves run platforms (although they are not in the IT business and are risk-averse)?
* Lawyer rating websites – citizens are used to consulting the internet before they buy anything these days, and there is no reason why lawyers should be exempt from the trend. The bars face two choices: to allow such sites to grow unchecked (the present position), or to take control of lawyer rating websites and run them themselves or at any rate to regulate them.
* Lawyer ID for national and cross-border electronic legal services – more countries are developing systems for electronic filing and other services related to legal services; at the core is the ability for the lawyer to prove his or her identity as a lawyer. In countries with national ID cards, this service can be provided through the ID card; in countries without an ID card, the bars need to consider whether they will provide this service, or yield control of lawyers’ identity to another provider. Once cross-border electronic services become possible, lawyers’ electronic ID will be even more important, and given the lead-in time for such initiatives, thinking should begin now.

**Other changes when Serbia accedes to the EU**

VAT

VAT is an EU-wide tax which also applies to legal services, and so Serbian lawyers will be subject to its regime on accession.

Money laundering

On accession, Serbian lawyers will become subject to the EU anti money laundering directives, imposing a duty on them in certain circumstances to make reports on suspicious transactions. The CCBE, IBA and American Bar Association have published a very useful guide for lawyers, called ‘A Lawyer's Guide to Detecting and Preventing Money Laundering’, which may help the Serbian Bar with preparations for practitioners on accession:

<http://www.anti-moneylaundering.org/AboutAML.aspx>

Data protection

Data protection is another area of EU competence, and EU rules will apply to all Serbian lawyers as from accession. There is a new data protection directive, which will come into force in two years’ time, and so be the governing law by the time of Serbian accession. Information about the new directive can be found here: <http://ec.europa.eu/justice/data-protection/reform/index_en.htm>

Criminal law/Family and succession/Company law etc

There is a vast quantity of EU law on substantive law subjects, some of which are listed in the heading. Obviously, Serbian lawyers will need to acquaint themselves with it in order to be able to advise their clients. The big law firms are likely to feel the impact most quickly through the needs of their large corporate clients in fields like energy or environment, but the likely increase in EU cross-border movement of people will mean that all lawyers in due course will regularly come across cases with an EU element.

The European Commission’s e-Justice portal is an excellent starting resource to track down these laws, and find out more in general about justice issues in the EU:

(<https://e-justice.europa.eu/home.do?plang=en&action=home>)

**Bar capacity**

A sensitive matter is the capacity of the Serbian Bar to cope with all the coming changes. In my view, it does not have sufficient resources to deal with the many changes that will come. A few examples (by no means all) of the work that will need to be undertaken:

* the Bar will need to follow the work of the CCBE more closely, and attend more meetings, as a full member as opposed to in its current capacity as an observer member. President Dojordjevic is a splendid representative of the Serbian Bar to the CCBE, but there will need to be more people involved – to prepare responses to the many questionnaires, to attend committee meetings (some of the relevant committees have been mentioned above), to monitor the impact of the many policy documents that the CCBE prepares, and to publicise the consequences of important changes to the Board and to the membership;
* ideally, the bar should prepare guidance in advance of accession for its members on the likely impact on firms of various items mentioned above – for instance, of VAT, data protection and money laundering. This will require the investment of resources;
* there will need to be work done to prepare the systems and procedures for (for example):
* Register E for registering European lawyers under the Lawyers’ Establishment Directive 98/5/E
* the aptitude test or period of adaptation (whichever is chosen) under the Professional Qualifications Directive 2005/36/EC
* the introduction of whatever replaces the current tariff

This will require a budget. It could be invested in extra staff for the Serbian Bar, which might be the best method. But it is not the only model. The Japan Federation of Bar Associations, for instance, has a system whereby it recruits high quality young lawyers for a fixed period to work for the Bar on particular issues, and the same system could be used here. But some investment in expertise and the delivery of outcomes will be necessary.