

Tackling the lawyers' interest in TTIP.

1. My name is Mickaël Laurans and I represent the 3 UK Law Societies here in Brussels. Today, I am speaking on behalf of the Law Society of England and Wales.
2. The Law Society represents over 166,000 solicitors of England and Wales. The profession extends far beyond our borders with over 6,000 solicitors overseas. At its heart is the City of London, one of the top and truly global legal and dispute resolution centres, with over 200 "foreign" law firms established there. It is also, I would argue, a great asset for the EU as a whole.
3. The lawyers' interest in the TTIP negotiations is twofold: first and foremost, as advisers to their clients: some relishing the new trade opportunities TTIP - if successful - could create; some concerned about the impact of its potential provisions.
4. Second, and that will be the main focus of my presentation, whether TTIP can deliver on an improved trade in legal services between the EU and the US. It is in this respect that the Law Society of England and Wales is working on behalf of its members.
5. In tackling the lawyers' own interest in TTIP, I will concentrate on three main issues: an overview of the current situation; what we would like to see from the TTIP negotiations; and, last but not least, what challenges we face along the way.

Overview of the Current Situation

6. The current situation on either side of the pond is relatively positive, "relatively" being the important word.
7. The US is a key market for the Law Society. E&W firms can be found in the key states of New York, New Jersey, Delaware, California, Connecticut, and the District of Columbia, states where they can use their own name and employ local/foreign lawyers to advise on the law in which they are qualified. Similarly, our solicitors work in the US and elsewhere in the world for US law firms. As of today, we have some 421 solicitors established in the US.
8. In return England and Wales offers an open market, with over half of the 200 or so "foreign" law firms with an office there being US law firms.
9. The recent years have also seen a number of high profile mergers between US and E&W law firms, leading us to think that the distinction between "foreign" and "domestic" law firms is of less relevance. I will come back to that later on.
10. Less positive points include:
 - Permanent practice. Not all US states allow foreign lawyers to establish.
 - Temporary practice. Only 7 US States have some form of Foreign Legal Consultant licence for temporary practice. It is illegal for an English solicitor to fly to most US states to give advice on English law. The client would need to fly to London!
 - Minimum experience requirements which prevent newly qualified lawyers from establishing in the US or requalifying as soon as they or their law firm would like. The length of

time varies between states but this practice discriminates against newly qualified lawyers and makes it harder for both UK and US firms with a London office to transfer lawyers between offices.

- Requalification requirements for solicitors which differ according to how they qualified in E&W – whether one followed the traditional route to qualification or one of the 3 other routes open to them. This is actually the most frequent complaint by our members regarding the US, and most particularly NY State.
- Prohibition on law firm structures, most particularly in relation to non-lawyer involvement in law firms which has been a recent development in a number of EU Member States. In 2012, for example, the NY State Bar ruled that a NY Attorney could not be an employee of an out-of-state or foreign firm owned or managed by non-lawyers, even if this is permitted in the other jurisdiction.

11. Last but not least, the relatively positive experience between the US and E&W, buttressed by a joint heritage in the Common Law (with the possible exception of Louisiana), is not necessarily repeated with lawyers from/in other EU Member States and there is a need to recognise this as an issue in the TTIP negotiations.

What we are looking for in the TTIP negotiations

12. The Law Society is keen for the TTIP negotiators to be ambitious in seeking liberalisation:
 - on all modes of practice (temporary practice, permanent establishment, etc);
 - on all types of legal work (advice in home law, EU law, international law, third country law in which one is qualified; international mediation; and international arbitration);
 - in all 50 US states;
 - in partnership/employment requirements;
 - in requalification requirements;
 - in law firm structure requirements.

13. In practice, that would mean:
 - the extension of US States with a Foreign Legal Consultant (FLC) status for permanent practice from 32 to 50 as well as the end of a minimum practice requirement in many States;
 - the extension of US States with a FLC status for temporary practice from 7 to 50;
 - the extension of US States allowing foreign lawyers to take their bar exam from 28 to 50. Ability to be determined on foreign title (e.g. solicitor) and not on domestic route to qualification;
 - Finding a proportionate solution to the issue of firm structures.

14. Equally of interest to us is the issue of in-house (i.e. company) practice, and we would indeed like to see the recent American Bar Association Model Rule to allow foreign lawyers to practice as in-house counsel in US-based companies to be made available to solicitors and implemented in all US States.

What challenges remain

15. This is what we would like from the TTIP negotiations. However, we need to be aware that, in order to get there, we face two main challenges or difficulties that make us very cautiously optimistic (and sometimes pessimistic) about the likelihood of success.
16. The first of these challenges is the fact that legal services regulation is not a federal matter in the US. Regulation takes place at State level and in most cases is carried out by the Judiciary itself, i.e. the Chief Justices. What that means under the US doctrine of separation of powers is that the US Federal Government negotiator cannot bind the State Judiciaries and that the negotiations would need to include a body called the Conference of Chief Justices for US commitments on legal services to be genuine, effective and binding. That is the first, important challenge we face.
17. The second challenge is even more daunting and lies in the fact that the US does not have – contrary to the EU – free trade in legal services at the domestic level. While, in the EU, a lawyer from one member state can enjoy the rights to practice on a temporary basis, establish permanently and/or requalify in all the other member states, a US attorney does not and his/her rights would very much vary on a state-by-state basis. We are therefore asking for rights that may not even exist for US attorneys and I think our American friends and colleagues will need to think long and hard on how to improve free movement in legal services both within the US as well as between the US and the EU.
18. Earlier in my presentation, I referred to a number of high profile mergers between US and UK law firms and whether the

concept of the "nationality" of a large law firm - as opposed to the qualifications of the lawyers working within it - still made any sense. With this in mind, I would argue (and conclude) that one clear test of success for the TTIP – and I am conscious that I putting the bar high – would be for an international law firm, composed of EU and US lawyers working together, to be able to service its clients across the 50 US states from one, two or several US bases and vice-versa in the EU across the 28 Member States. I wish everyone involved in the negotiations courage and good fortune.

19. Thank you.

1362 words

9 minutes

Mickaël Laurans
Head of the Brussels Office
The Law Societies' Joint Brussels Office
Avenue des Nerviens/Nerviërsiaan, 85
B-1040 Brussels
Belgium
Tel: +32 (0)2 743 85 85
Fax: +32 (0)2 743 85 86
www.lawsociety.org.uk (England and Wales)
www.lawscot.org.uk (Scotland)
www.lawsoc-ni.org (Northern Ireland)