



European Company Lawyers Association

Draft November 15, 2015

**Position of the European Company Lawyers Association (ECLA)
in respect of the proposed
Transatlantic Trade and Investment Partnership (TTIP)**

The TTIP, intended to liberalize economic exchange between the U.S. and the E.U., will include provisions to facilitate the mutual recognition of professional qualifications, such as legal professionals.

ECLA is an association representing some twenty national company lawyer, law society and in-house legal associations within Europe, themselves including over 45,000 legal professionals. Among the primary missions of ECLA is the promotion of the role and position of company lawyers with regard to regulatory opportunities and threats. The TTIP offers an opportunity of historical dimension to facilitate the practice of law by legal professionals between the continents.

Most European countries do not require in-house counsel to be members of the bar, and some countries, mostly civil law, prohibit a lawyer from being a member of the bar while practicing in-house (e.g., Italy, France or Sweden). A minority of European countries either require bar membership for in-house counsel (e.g., the United Kingdom or Ireland), or allow in-house counsel to remain members of the bar subject to certain conditions (e.g., Germany). For most countries in the E.U., in-house lawyers lawfully practicing law within their jurisdictions, would nevertheless be unable to provide evidence of good standing from a bar association or provide a professional license. Common among all European jurisdictions is the requirement to complete an intensive training and educational program, comparable to the stringent program required for lawyers admitted to a bar association.

It has come to ECLA's attention that the Council of Bars and Law Societies of Europe (CCBE) has adopted a position on February 27, 2014, that (i) in-house counsel and (ii) access to the EU laws on free movement of lawyers (the Services Directive 77/249/EEC and the Establishment Directive 98/5/EC) should be excluded from the TTIP due to the complexity of the issues. !

ECLA has also been made aware of the position of the American Bar Association (ABA, with whom ECLA maintains a partnership), as of November 19, 2014, which favors inclusion of these two issues within the TTIP discussions, which it views as serious impediments to the free movement of legal professionals, particularly objectionable because the exclusion would be based on nationality and not competence. Notably, the ABA has adopted model rules to facilitate practice of law by foreign lawyers in the US, which have been adopted by many state regulatory authorities and bar associations. ECLA has informed the ABA of its support for their position by letter dated October 12, 2015.



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Accordingly, ECLA has adopted the following official position at its general meeting on November 20, 2015 :

- ECLA supports the inclusion of legal services within the TTIP, in order to reduce unnecessary barriers and to ensure that lawyers, whether such lawyers are engaged in private practice or as in-house counsel, are able to serve their clients across borders, whether within the U.S. or the E.U.
- ECLA supports the inclusion of in-house counsel within the TTIP, and the free movement of these lawyers between the U.S. and the E.U., whether or not the local jurisdiction in which the in-house counsel practices requires such counsel to be a member admitted to the national or local bar association or law society or such counsel derives his authority to practice in-house directly from the law, without the possibility or requirement to be barred as such.
- In order to give full effect to the free movement of European in-house counsel within the E.U. as well as between the E.U. and the U.S., ECLA supports modifying the scope of the Services and Establishment Directives to apply not only to lawyers admitted to a national or local bar association or law society, but also lawyers who lawfully practice law in-house within a jurisdiction of the E.U.
- ECLA supports the adoption by TTIP of a standard recognizing the ability for any in-house counsel looking to benefit from TTIP to provide either (i) a certificate of good standing from a national or local bar association, where the counsel's jurisdiction allows in-house counsel to be members of the bar, or (ii) evidence of being able to lawfully practice under the laws of an EU jurisdiction, combined with an employer's certificate attesting to the lawyer's employment in the capacity of in-house counsel, where counsel is not required or allowed to be a member of a bar when practicing in-house.

November 20, 2015