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Services as Objects of International Trade: Bartering the Legal Profession

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ABSTRACT

The General Agreement on Trade in Service calls for members of the World Trade Organization (WTO) to further liberalize and expand opportunities for international trade in services. With legal services included in this mandate, requests for specific commitments and offers have been made by WTO Member States. While services as components of international trade is new to many of the WTO Member States, free movement of services has been addressed by the European Union (EU) since the inception of the European Economic Community. Thus EU directives, declarations, codes and case law serve as valuable resources to WTO Member States as they seek to liberalize the provision of legal services.

Within the EU, lawyers from EU Member States can work temporarily or permanently in another EU Member State by complying with the provisions of the Lawyers' Services Directive or the Lawyers' Establishment Directive. The EU, however, proposes handling cross-border practice with lawyers from non-EU Member states who are WTO members through Foreign Legal Consultant recognition, something considerably more restrictive than what is accorded lawyers from EU Member States. In that the EU is looked to as a leader in facilitating the provision of legal services, it seems the EU is missing an opportunity to shape the globabilization of the legal profession by further expanding liberalization opportunities for international trade in legal services.

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I. INTRODUCTION

Considering services as components of international trade is not a new concept to the Member States of the European Union (EU). Since the 1957 Treaty of Rome (EEC Treaty) that created the European Economic Community (EEC), the free movement of services has been addressed.[1] In the years that followed the EEC Treaty, the Member States specifically focused on individual service components, including the legal profession and lawyers' freedom to provide legal services.[2] While trade in services may not be a new concept to the EU, it is a relatively new concept to many of the 148 nations[3] that are

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1. Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC Treaty]. The EEC Treaty was amended by the Treaty on European Union (EU Treaty), which created the European Union, and changed the name of the EEC to the European Community (EC). Treaty on European Union and Final Act, Feb. 7, 1992, 1992 O.J. (C 224) 2, 31 I.L.M. 247. The EU is made up of the EC, the European Coal and Steel Community (ECSC), and the European Atomic Energy Community (Euratom). While there are three communities in the EU, only one set of institutions exist. *See* T.C. HARTLEY, THE FOUNDATIONS OF EUROPEAN COMMUNITY LAW 7–9 (4th ed. 1998). The Treaty of Amsterdam, which became effective in 1999, afforded further amendments and renumbered the treaty articles. Treaty of Amsterdam, Oct. 2, 1977, 1999 O.J. (C 340) 1. This Article will indicate the original numbering of the treaty articles.

2. *See* discussion *infra* Part III.A.

3. *See* Robert Evans, *WTO Services Talks Give Slight Lift to Doha Round*, REUTERS, July 4, 2005, *available at* http://www.alertnet.org/thenews/newsdesk/L04701788.htm.

members of the World Trade Organization (WTO),[4] an entity that was created as part of the 1994 Uruguay Round GATT Agreement.[5]

One of the agreements annexed to the Agreement Establishing the World Trade Organization is the General Agreement on Trade in Services (GATS).[6] The GATS is the first multilateral trade agreement that applies to services rather than goods.[7] For the first time, "the largely invisible services trade"[8] is a target for globalization and international regulation. The GATS has been referred to as "the most important single development in the multilateral trading system since the GATT itself came into effect in 1948."[9] As WTO Member States work toward eliminating barriers that deny market access or otherwise discriminate against foreign service providers,[10] they are likely to borrow concepts from the EU as they attempt to facilitate change in the provision of legal services. This situation presents the EU with a unique opportunity to help shape the globalization of the legal profession.

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4. Marrakesh Agreement Establishing the World Trade Organization, April 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144. The WTO is an international governmental organization with full legal capacity to establish legal relationships with other governmental and non-governmental organizations. The WTO has an organizational structure that encompasses the position of Secretary General, the Secretariat, and numerous specialized bodies. *Id.* It inherited principles of bilateralism and reciprocity from the 1947 General Agreement on Tariffs and Trade (GATT). *See* Genc Trnavci, *The Virtues and Vices of the World Trade Organization and Proposals for Its Reform*, 18 EMORY INT'L L. REV. 421, 421–22 (2004). *See also infra* note 5.

5. GATT, which pertains to trade in goods, came into being in 1947. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194. Realizing that GATT was ill-suited to address the ever increasing international trade in the 1980s, trade representatives met in Punta del Este, Uruguay in 1986 to engage in multilateral trade negotiations. After more than seven years of negotiation, which came to be known as the Uruguay Round, the Uruguay Round of the GATT was signed on April 15, 1994. 33 I.L.M. 1125.

6. General Agreement on Tariffs and Trade: Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, General Agreement on Trade in Services, Annex 1B, 33 I.L.M. 1167 (1994) [hereinafter GATS].

7. *See* GATS (GENERAL AGREEMENT ON TRADE IN SERVICES), A HANDBOOK FOR INTERNATIONAL BAR ASSOCIATION MEMBER BARS 3 (International Bar Association, 2002), *available at* http://www.ibanet.org/images/downloads/gats.pdf [hereinafter GATS HANDBOOK].

8. Robert F. Taylor & Philippe Metzger, *GATT and Its Effect on the International Trade in Legal Services*, 10 N.Y. INT'L L. REV. 1, 4 (1997).

9. An Introduction to the GATS, WTO Secretariat, Trade in Services Division (Oct. 1999), *available at* www.wto.org/english/tratop_e/serv_e/serv_e.htm (last visited July 29, 2005).

10. *See* Michael J. Chapman & Paul J. Tauber, *Liberalizing International Trade in Legal Services: A Proposal for an Annex on Legal Services Under the General Agreement on Trade in Services*, 16 MICH. J. INT'L L. 941, 965–66 (1995).

II. GENERAL AGREEMENT ON TRADE IN SERVICES

The GATS is not considered the final word on international trade in services, rather it is considered only a beginning. We are cautioned that the rules are incomplete and untested because the GATS package contains a "promise that successive rounds of negotiations will be undertaken to continue opening up world trade in services."[11] The GATS presents a central set of rules, but the GATS obligations of each Member depend on the duties the Member has specifically undertaken. Under the agreement, a country is bound only to the extent that it has made concessions.[12] This unique aspect of GATS stands in direct contrast to obligations under GATT, which can be understood by reference to its general rules.[13]

The underlying GATS agreement contains twenty-nine articles and six parts.[14] Part I sets the scope and defines the agreement.[15] Part II deals with general obligations and disciplines.[16] Part III contains rules governing specific commitments Member States have put in schedules.[17] Part IV concerns the schedules themselves and addresses future negotiations. The remaining parts cover institutional and final provisions.[18]

A. *The Basic Agreement*

The scope of the basic GATS agreement specifically addresses services in the following components: services supplied from the territory of one party to the territory of another; services supplied in the territory of one party to the consumers of any other; services provided through the presence of service-providing entities of one party in the territory of any other; and services provided by nationals of one party in the territory of any other.[19] Jonathan Goldsmith, Secretary General of the Council of the Bars and Law Societies of the

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11. An Introduction to the GATS, *supra* note 9.
12. *Id.*
13. *Id.*
14. *Id.* (explaining that there are eight annexes to the GATS, eight ministerial decisions, and an "Understanding" which bear on the GATS rules and on negotiations on services).
15. *See* GATS, *supra* note 6.
16. *Id.*
17. *Id.*
18. *Id.* In WTO document MTN.GNS/W/120, "legal services" are listed as a sub-section of (1) business services and (A) professional services. *See* GATS HANDBOOK, *supra* note 7, at 6.
19. *See* GATS, *supra* note 6, art. I.

European Union (CCBE),[20] has described these four modes of supply in terms of the legal profession as follows:

(1) the service crosses the border (Mode 1)
(2) the client crosses the border (Mode 2)
(3) the lawyer's office crosses the border and a branch is opened (Mode 3)
(4) the lawyer personally crosses a border (Mode 4).[21]

The agreement applies to measures taken by central, regional, or local governments and authorities.[22] This is particularly relevant for lawyers since in a number of countries, including the United States, the legal profession is regulated by regional entities.[23]

The central component of the second part of the GATS, which sets out general obligations and disciplines, is the most-favored-nation clause (MFN). Considered the cornerstone of the agreement,[24] each member "shall accord immediately and unconditionally to services and service suppliers of any other Member, treatment no less favorable than that it accords to like services and service suppliers of any other country."[25] Under the MFN doctrine, a GATS Member must treat service providers from other GATS Members similarly. There are provisions for exemptions,[26] however, as well as what some have considered "caveats."[27] While few Members have invoked MFN exemptions in legal services,[28] the caveats may be significant to the legal profession. For instance, given the differences between the legal professions in various countries,[29] it may be difficult to discern what

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20. *See infra* note 84 and accompanying text.

21. Jonathan Goldsmith, *Global Legal Practice and GATS: A Bar Viewpoint*, 22 PENN ST. INT'L L. REV. 625, 627 (2004). Mode 3 covers only the office and local staff, not lawyers. *Id.*

22. *See* GATS, *supra* note 6, art. I.

23. *See* Taylor & Metzger, *supra* note 8, at 15. Just as the legal profession in the United States is regulated by the individual states, lawyers in Germany are regulated by the *Länder* and lawyers in Switzerland are regulated by the Cantons. *Id.*

24. *Id.* at 16; Harry G. Broadman, *International Trade and Investment in Services: A Comparative Analysis of NAFTA*, 27 INT'L LAW. 623, 633 (1993).

25. GATS, *supra* note 6, art. II.

26. Realizing that service activity may not always be susceptible to MFN treatment, conditions for exemptions are included as an annex and provide a ten-year limitation on duration and review after five years. *Id.*, Annex on Article II Exemptions.

27. *See* Taylor & Metzger, *supra* note 8, at 16.

28. *See* Chapman & Tauber, *supra* note 10, at 970. Among the countries that have filed MFN exemptions in legal services are China, Singapore, the Dominican Republic, and Brunei Darussalam. *Id.* at 965 n.146.

29. The legal professions and legal systems vary significantly from country to country. For instance, just within the EU alone, some countries operate under a civil system and some under a common law system. Divisions among legal professionals also vary, with different countries embracing different classifications of legal professionals whose scope of practice varies considerably. *See* Taylor & Metzger, *supra* note 8, at 6; Louise L. Hill, *Lawyer Publicity in the European Union: Bans are Removed but Barriers Remain*, 29 GEO. WASH. J. INT'L L. & ECON. 381, 403–42 (1995).

constitutes "like services."[30] Also, since WTO Members may favor regional trading arrangements or economically integrated areas[31] and grant "advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed,"[32] it is unclear whether foreign service providers will be treated equally. Part II of the GATS also calls for transparency of measures of general application that affect the operation of the agreement so that service providers will know what laws and regulations they face.[33] Members are additionally urged to recognize the education or other qualifications of service suppliers of Member States.[34] Incident to such mutual recognition of qualifications, however, is the requirement that other Members with comparable standards be given an opportunity to participate on the same basis.[35]

Part III of the GATS provides rules that shape each WTO Member State's individual commitment to admit foreign suppliers of services to its market.[36] Part III's two main articles address market access and national treatment; which are provisions applicable to scheduled sectors.[37] These are not general obligations but apply only to commitments made in national schedules.[38] Regarding market access, each Member is to give no less favorable treatment to the services and service suppliers of Members than is provided in its schedule of commitments.[39] Regarding national treatment, treatment

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30. *See* Taylor & Metzger, *supra* note 8, at 16.

31. GATS, *supra* note 6, art. V. This indicates that the favorable treatment which the EU countries accord to the lawyers in the EU Member States does not have to be extended to lawyers of WTO Member States who are not members of the EU. *See* Kenneth S. Kilimnik, *Lawyers Abroad: New Rules for Practice in a Global Economy*, 12 DICK. J. INT'L L. 269, 306–24 (1994). The EC constitutes the most complete and far-reaching example of regional economic integration. *See* Frederick M. Abbott, *GATT and the European Community: A Formula for Peaceful Coexistence*, 12 MICH. J. INT'L L., 1, 38 (1990).

32. GATS, *supra* note 6, art. II.

33. *Id.* art. III.

34. *Id.* art. VII.

35. *Id.*

36. *Id.* arts. XVI–XVIII.

37. *Id.*

38. *Id.*

39. *Id.* art. XVI. The article sets out six forms of measure affecting free market access that may not be applied to the foreign service or its supplier unless their use is clearly provided for in the schedule. They are:

- limitations on the number of service suppliers;
- limitations on the total value of service transactions or assets;
- limitations on the total number of service operations of the total quantity of service output;
- limitations on the number of persons that may be employed in a particular sector or by a particular supplier;

of foreign services and service suppliers must be no less favorable than that which a Member gives its own services and suppliers.[40] In essence, the minimum, or worst treatment that may be given, is set.[41] Market access is considered the "entry ticket" or "entry restriction," while national treatment is an "operating restriction."[42] The rationale behind tying the latter to underlying commitments—rather than making it generally applicable—is that free access to the market will result since any regulatory advantage enjoyed by the domestic service supplier will be removed.[43]

The fifth and sixth parts of the GATS contain institutional and final provisions, which differ little from the provisions of other agreements in the Uruguay Round.[44] Part IV of the GATS, however, implements liberalization. Two of its articles are technical: they set out the rules for specific commitments on services[45] and provide rules for modifying or withdrawing commitments.[46] The most important section of Part IV, Article XIX, calls for WTO Member States to enter into "successive rounds of negotiations . . . with a view to achieving a progressively higher level of liberalization."[47] In committing governments to repetitive efforts to expand opportunities for international trade in services, it guarantees that the GATS agreement is only the beginning of a continuing enterprise.[48]

Each WTO Member State completed a Schedule of Specific Commitments by December 1993.[49] The Schedules contain two types of promises: those that apply horizontally to all sectors and those specifically identified for specific service sectors in which a country is willing to assume designated obligations.[50] Regarding generally

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- measures that restrict or require supply of the service through specific types of legal entity or joint venture; and
- percentage limitations on the participation of foreign capital, or limitations on the total value of foreign investment.

Id.

40. *Id.* art. XVII.
41. *See* An Introduction to the GATS, *supra* note 9.
42. *See* Taylor & Metzger, *supra* note 8, at 23, 25.
43. *See* An Introduction to the GATS, *supra* note 9.
44. *Id.*
45. GATS, *supra* note 6, art. XX.
46. *Id.* art. XXI.
47. *Id.* art. XIX.
48. *See* An Introduction to the GATS, *supra* note 9.
49. The schedules of WTO Member States can be found at http://www.wto.org/english/tratop_e/schedules_e/goods_scedules_e.htm.
50. *See* An Introduction to the GATS, *supra* note 9. Fifty-eight countries listed legal services on their schedule; however, the degree to which these countries chose to comply with obligations such as market access, national treatment, and domestic regulations, depends on the manner in which the legal services were included. *See* GATS HANDBOOK, *supra* note 7, at 17. The following are among the commitments made: host country law, international law, home country law, third country law, and other legal services such as documentation and certification services. *Id.*

applicable provisions, by agreeing to become a WTO Member, a country agrees to comply with the GATS. Implicit in this obligation is the MFN requirement,[51] transparency,[52] the procedural review section of the domestic regulation provision,[53] and recognition.[54] The GATS also requires an ongoing obligation of WTO Members. A "progressive liberalization" provision required a new round of negotiations about services within five years of 1994.[55] Ongoing work is also required to develop "disciplines" to ensure that measures relating to qualifications and licensing do not constitute unnecessary barriers to trade.[56]

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51. GATS, *supra* note 6, art. II.

52. *Id.* art. III.

53. *Id.* art. VI. WTO Member States are required to maintain or institute procedures to have an objective and impartial review of any negative decisions by a country to exclude foreign service providers. *Id.*

54. *Id.* art. VII.

55. *Id.* art. XIX.

56. *Id.* art. VI. Paragraphs 1, 3, 5, and 6 of Article VI, domestic regulation provisions that apply to scheduled services, provide as follows:

> (1) In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
>
> . . . .
>
> (3) Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.
>
> . . . .
>
> (5)(a) In sectors in which a Member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:
>
> (i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and
>
> (ii) could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made.
>
> (b) In determining whether a Member is in conformity with the obligations under paragraph 5(a), account shall be taken of international standards of relevant international organizations applied by that Member. (The term "relevant international organizations" refers to international bodies whose membership is open to relevant bodies of at least all Members of the WTO.)

B. *Horizontal Disciplines on Domestic Relations*

In response to the mandates of the GATS, there is ongoing activity to develop horizontal disciplines on domestic relations.[57] In 1998, the Council for Trade in Services, which includes representatives from all Member States and is the WTO policy-making body for services, issued a document that addresses the accounting sector.[58] This action was taken in response to the GATS mandate to prepare disciplines on domestic regulation to ensure that licensing and qualification measures were not more burdensome than necessary to fulfill a legitimate objective and did not constitute barriers to trade.[59] The Working Party on Domestic Regulation (WPDR), in which each WTO Member State is entitled to participate, is considering whether the "Disciplines for the Accountancy Sector" should be extended horizontally to other service sectors, including legal service sectors.[60] While the WPDR has been working on the development of horizontal disciplines on domestic regulation for over five years, few practical results have been achieved.[61]

> (6) In sectors where specific commitments regarding professional services are undertaken, each Member shall provide for adequate procedures to verify the competence of professionals of any other Member.

Id. Member States are obligated to comply with paragraphs 1, 3 and 6, regardless of limitations included in individual schedules. Obligations under paragraph 5 may depend on how the WTO Member State scheduled legal services. *See* GATS HANDBOOK, *supra* note 7, at 20.

57. *See* Laurel S. Terry, *GATS, Legal Services, and Bar Examiners: Why Should You Care?*, THE BAR EXAMINER, May 2002, at 25, 27.

58. GATS HANDBOOK, *supra* note 7, at 33–34, 36. The "Decision on Professional Services" was adopted on April 15, 1994, along with other WTO agreements. It directed the Council on Trade in Services to create a Working Party on Professional Services (WPPS) and begin developing disciplines by focusing on the accountancy sector. For those Member States that listed accountancy on their Schedules of Specific Commitments, the Disciplines are integrated into the GATS. The Disciplines apply to domestic regulation provisions. The Schedules apply to market access regulations. Shortly after the Disciplines for the Accountancy Sector were issued, the WTO Council for Trade in Services replaced the WPPS with a new entity, the Working Party on Domestic Regulation (WPDR). *Id.*

59. *Id.* at 3–4.

60. *Id.* at 4. The WPDR has been discussing the scope and content of possible horizontal disciplines that could be applied across the board to multiple service sectors. *See* GATS HANDBOOK, *supra* note 7, at 37. In 1999, the WTO Secretariat released two papers that addressed domestic regulation and horizontal disciplines that contained the following four key issues: the meaning of the term "necessity"; applicability of the transparency provisions; the equivalency doctrine; and voluntary versus mandatory international standards. *See* Council for Trade in Services, *Note by the Secretariat: Article VI:4 of the GATS: Disciplines on Domestic Regulation Applicable to All Services*, S/C/W/96 (Mar. 1, 1999); Council for Trade in Services, *Note by the Secretariat: International Regulatory Initiatives in Services*, S/C/W/97 (Mar. 1, 1999).

61. *See* International Center for Trade and Sustainable Development Consultations, Assessing Current Proposals on Horizontal Disciplines on Domestic

Representatives of the WTO Member States have been consulting their domestic organizations about the issue of extending the accountancy sector disciplines; not surprisingly, many service sectors, including legal services representatives, feel they deserve their own discipline.[62]

C. *Doha Round of Negotiations*

A segment of the Doha Round of negotiations for further liberalization of trade in services recently concluded in Geneva, Switzerland, where the WTO Secretariat[63] is based. In 2001, in Doha, Qatar, the WTO Member States agreed to begin a new comprehensive round of negotiations to promote the economic growth of all trading partners that would build on the services negotiations undertaken in GATS 2000.[64] The Doha Development Agenda set a deadline of January 1, 2005, for the conclusion of negotiations with an interceding timeline for specific commitment requests and initial offers.[65] Admittedly "well behind schedule" with the Geneva meetings, there is hope that major progress will be made by negotiators before the upcoming meeting of the WTO in Hong Kong.[66] While the number of offers in the services sector picked up in mid-

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Regulation: What are the Next Steps? (Mar. 7, 2005), http://www.ictsd.org/dlogue/2005-03-07/2005-03-07_desc.htm (last visited July 29, 2005).

62. *See* Terry, *supra* note 57, at 27. Among the bar associations that have objected to extending the accountancy disciplines to the legal profession are the Japan Federation of Bar Associations, the CCBE, the Federation of Law Societies of Canada, the Canadian Bar Association, and the American Bar Association Section of International Law and Practice. *See* GATS HANDBOOK, *supra* note 7, at 41.

63. The WTO Secretariat is the administrative body of the WTO. It is headed by a Director General and is responsible for synthesizing the information collected from WTO Member States, preparing minutes of meetings, collecting statistics, and preparing analyses. The Secretariat does not have a decision making role. *See* Trnavci, *supra* note 4, at 422; Overview of the WTO Secretariat, The WTO: Secretariat and Budget, http://www.wto.org/english/thewto_e/secre_e/intro_e.htm (last visited July 29, 2005).

64. *See* Terry, *supra* note 57, at 27–28.

65. *Id.* at 28. Initial requests for specific commitments were to be made by June 30, 2002. After receipt of these requests, responses in the form of offers were to be transmitted by March 31, 2003. *Id.* The "requests" and "offers" made by a particular sector are bifurcated or decoupled, and not necessarily symmetrical. Because the negotiations are not bilateral with respect to a particular sector, an entity often requests more than it offers, giving a country's professional negotiators more with which to work. *See* GATS HANDBOOK, *supra* note 7, at 48–49.

66. *See* David J. Lynch, *Other Trade Issues Step Up to Spotlight*, USA TODAY, July 29, 2005, at B5, *available at* http://www.usatoday.com/money/economy/trade/2005-07-28-cafta-u.htm. The aim of the Doha Round is to get outline accords in the areas of services, agriculture and tariffs on industrial goods ready for the upcoming meeting of the WTO in Hong Kong. This would leave time to shape the details before the December 2006 deadline for completion of the Round. *See* Evans, *supra* note 3.

2005, Abdel-Hamid Mamdou, director of the WTO Services Division, stated the negotiations "are not out of the troubled area . . . are still facing problems and falling behind."[67] The Doha Round, described as "troubled," is primarily stalled because of matters relating to agriculture and tariffs on industrial goods.[68]

A number of offers have been submitted during the Doha Round that relate to legal services.[69] While an analysis of the submitted proposals relating to legal services shows they differ in many respects, all the offers seem to be in accord with a resolution of the Council of the International Bar Association (IBA) that attempts to voice the common ground among the IBA Member Bars.[70] The resolution states:

> Having due regard to the public interest in deregulating the legal profession as presently undertaken by the WTO and the OECD with the aim of
>
> - amending regulations no longer consistent with a globalized economy and
> - securing the provision of legal services in an efficient manner and at competitive and affordable prices,
>
> the Council of the International Bar Association, considering that the legal profession nevertheless fulfills a special function in society, distinguishing it from other service providers, in particular with regard to its role in facilitating the administration of and guaranteeing access to, justice and upholding the rule of law,
>
> - its duty to keep client matters confidential,
> - its duty to avoid conflicts of interest,
> - the upholding of general and specific ethical and professional standards,
> - its duty, in the public interest, of securing its independence, politically and economically, from any influence affecting its service,
>
> **resolves**
>
> that the preservation of an independent legal profession is vital and indispensable for guaranteeing human rights, access to justice, the rule of law and a free and democratic society and that any steps taken with a view to regulating the legal profession should respect and observe the principles outlined above.[71]

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67. Evans, *supra* note 3 (quoting Abdel-Hamid Mamdou). An alliance grouping service industries stated that WTO talks on the sector "were in crisis because of an absence of national political will to drive them forward." *Id.* Mamdou posits that the new offers show "we are in better shape than we were." *Id.* (quoting Abdel-Hamid Mamdou).

68. *Id.*

69. Professor Laurel Terry maintains a website listing all WPDR working documents listed on the WTO website at http://personal.psu.edu/faculty/l/s/lst3/wpdr-web.htm (last visited July 19, 2005).

70. *See* GATS HANDBOOK, *supra* note 7, at 50.

71. *Id.* at 49–50.

While "[m]uch work remains to keep the WTO Doha talks on track,"[72] according to U.S. Trade Representative Rob Portman, it does not seem to be the services sector that is creating the greatest problem.[73]

III. EUROPEAN UNION

Although trade in services is a relatively new concept to many of the WTO Member States, trade in services has been a component of the EU since its inception. The free movement of goods, persons, services, and capital was called for in the EEC Treaty in 1957.[74] Brought into being for the promotion of trade, the EEC Treaty comprised broader objectives of social and political integration.[75] It

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72. Lynch, *supra* note 66 (quoting Rob Portman).

73. A number of major U.S. law firms have expressed concern that legal services were excluded from the U.S. Trade Representative's list of priority sectors for WTO services negotiations; they have urged that "further trade liberalization be pursued in this sector at the Doha Development Round." Facsimile transmission from Berg and Duffy et al., to Peter Allgeier, Acting United States Trade Representative, Office of the United States Trade Representative (March 18, 2005) [hereinafter Letter to Allgeier]. The communication provides in part as follows:

> Since the beginning of the Doha Round, the US private sector has emphasized the necessity of achieving a commercially valuable agreement in legal services. In today's global environment, reliable and efficient legal services are essential to facilitate development of foreign operations and international trade.

Id.

74. *See* EEC Treaty, *supra* note 1, art. 48, 298 U.N.T.S. at 36.

75. *See* David O'Keeffe, *Current issues in European Integration*, 7 PACE INT'L L. REV. 1, 3 (1995); LINDA S. SPEDDING, TRANSNATIONAL LEGAL PRACTICE IN THE EEC AND THE UNITED STATES (1987). The preamble of the EEC Treaty suggests that its focus is not limited to economic goals, providing in part:

> DETERMINED to establish the foundations of an ever closer union among the European peoples,
>
> DECIDED to ensure the economic and social progress of their countries by common action in eliminating the barriers which divide Europe,
>
> DIRECTING their efforts to the essential purpose of constantly improving the living and working conditions of their peoples,
>
> RECOGNIZING that the removal of existing obstacles calls for concerted action in order to guarantee a steady expansion, a balanced trade and fair competition,
>
> ANXIOUS to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and by mitigating the backwardness of the less favoured,
>
> DESIRIOUS of contributing by means of a common commercial policy to the progressive abolition of restrictions on international trade,
>
> INTENDING to confirm the solidarity which binds Europe and overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations,

provides for the free movement of workers[76] and grants professionals the right to perform services freely[77] and to settle and establish themselves throughout the Member States.[78] The treaty calls for abolishing "restrictions on freedom to provide services within the Community" when the provider of the service is established in another Member State.[79] Although it authorizes the restriction of cross-border services on the grounds of "public policy, public security or public health,"[80] the treaty states that persons providing services cannot be discriminated against on the basis of nationality when the service provider is temporarily pursuing activities in a host state.[81]

A. *Lawyers' Services Directive*

To further the rights of professionals to provide services freely and to establish themselves throughout the Community, the EEC Treaty calls for the abolition of restrictions based on nationality[82] and for the issuance of directives for "mutual recognition of diplomas, certificates and other qualifications."[83] In 1960, the CCBE was formed "to study, consult, and make representation upon the problems and opportunities for the legal profession arising from the Treaty of Rome."[84] In 1977, the Council of Ministers[85] adopted a

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RESOLVED to strengthen the safeguards of peace and liberty by establishing this combination of resources, and calling upon the other peoples of Europe who share their ideal to join in their efforts,

HAVE DECIDED to create a European Economic Community.

EEC Treaty, *supra* note 1, 298 U.N.T.S. at 14.

76. *Id.* art. 48, at 36.

77. *See id.* art. 59, at 40–41.

78. *See id.* art. 52, at 37–38.

79. *Id.* art. 59, at 40–41.

80. *Id.* art. 66, at 39.

81. *Id.* art. 60, at 41.

82. *Id.* art. 53.

83. *Id.* art. 57, at 39–40. Mutual recognition is a reciprocal arrangement in which a Member State recognizes like qualifications in other Member States. *See* Gregory Siskind, *Freedom of Movement for Lawyers in the New Europe*, 26 INT'L LAW. 889, 899 n.4 (1992) (discussing how the agreement will allow for the free flow of goods, services, capital and people among the member nations).

84. *See* CROSS BORDER PRACTICE COMPENDIUM, Ch. 3–3 (D. M. Donald-Little ed., 1991) [hereinafter CCBE COMPENDIUM].

85. The major bodies of the EU government are the Council of Ministers, the Commission, the European Parliament, the European Court of Justice, and the Court of Auditors. *See* HARTLEY, *supra* note 1, at 11. The Council of Ministers is made up of delegates from each Member State. It coordinates the Member State policies and approves legislation, budgets, and international treaties. *Id.* at 17. Action to further the right of free movement of workers preceded similar rules in the arenas of establishment and free movement of services. Council Regulation 1612/68 on the freedom of movement of workers, adopted by the Council of Ministers on October 15, 1968, delineated a worker's right to move to any Member State to take up employment, to receive the same social benefits as nationals of that Member State, to change

directive on the freedom of lawyers to provide services throughout the Member States.[86] Referred to as the Lawyers' Services Directive, it sets out the legal framework governing the rights of lawyers to provide interstate services on a temporary or occasional basis in the Member States.[87] The Lawyers' Services Directive explains that it concerns only lawyers' activities relating to the provision of services.[88] Specifically excluded are measures concerning rights of establishment and provisions on the mutual recognition of diplomas.[89] Under the Lawyers' Services Directive, lawyers are subject to the rules of professional conduct of both the host Member State and their home Member State.[90] Additionally, Member States may require lawyers

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employment, and to remain in the host Member State after the end of the employment. *See* Council Regulation 1612/68, Freedom of Movement for Workers Within the Community, part I, 1967–1968 O.J. SPEC. ED. 475, 475–78; BASIC COMMUNITY LAWS 139–42 (Bernard Rudden & Derrick Wyatt eds., 1999).

86. Council Directive 77/249, Facilitate the Effective Exercise by Lawyers of Freedom to Provide Services, 1977 O.J. (L 78) 17 (EC) [hereinafter Lawyers' Services Directive]. This directive was originally proposed in 1969 but its adoption was delayed primarily due to questions of treaty interpretation. *See* Nicholas J. Skarlatos, *European Lawyers' Right to Transnational Legal Practice in the European Community*, 1 LEGAL ISSUES EUR. INTEGRATION 49, 52 (1991).

87. *See* Roger J. Goebel, *The Liberalization of Interstate Legal Practice in the European Union: Lessons for the United States?*, 34 INT'L LAW. 307, 312 (2000).

88. *See* Lawyers' Services Directive, *supra* note 86, art.1, at 17. The Lawyers' Services Directive begins by listing the categories of legal professionals to which its provisions apply. A "lawyer" is defined as an individual entitled to practice under the following home titles:

> Belgium: *Avocat* or *Advoccat*
> Denmark: *Advokat*
> Germany: *Rechtsanwalt*
> France: *Avocat*
> Ireland: Barrister or Solicitor
> Italy: *Avvocato*
> Luxembourg: *Avocat-avoué*
> Netherlands: *Advocaat*
> United Kingdom: Advocate, Barrister, or Solicitor

Id. While Member States are permitted to reserve "the preparation of formal documents for obtaining title to administer estates of deceased persons, and the drafting of formal documents creating or transferring interest in land" to domestic practitioners, the Lawyers' Services Directive does not list any restrictions on the services that may be rendered. *See id.*

89. *See id.*; JOSEPHINE STEINER, TEXTBOOK ON EEC LAW 234–36 (4th ed. 1994). Prior to the implementation of the Lawyers' Services Directive, the European Court of Justice held that Articles 52 and 59 of the original EEC Treaty have direct effect, providing basic rights to professionals to provide services and to establish themselves, with or without implementing directives. *See* Case 2/74, Reyners v. Belgian State, 1974 E.C.R. 631, 652, 2 C.M.L.R. 305, 327 (1974); Case 33/74, Van Binsbergen v. Bedrijfsvereniging, 1974 E.C.R. 1299, 1312, 1 C.M.L.R. 298, 314 (1974).

90. Lawyers' Services Directive, *supra* note 86, art. 4, at 17–18.

providing services to work in conjunction with local counsel and to establish their qualifications to practice law.[91]

B. *Declaration of Perugia*

To facilitate the provision of services in the Lawyers' Services Directive, the Declaration of Perugia was adopted in 1977 by a Consultative Committee of the CCBE.[92] The Declaration of Perugia attempted to set forth common principles for all lawyers to observe and posited choice-of-law rules to be applied when applicable provisions conflict.[93] When the Member States sought to institute national measures to implement the Lawyers' Services Directive, however, there was little consideration of the Declaration. Unlike the Lawyers' Services Directive, the bar of each Member State had to adopt the Declaration of Perugia for it to be effective; thus, it failed to provide a common code of professional ethics.[94]

C. *CCBE Code*

Working toward establishment rights for lawyers during the 1980s, the CCBE concluded the Declaration of Perugia provided insufficient guidance for lawyers engaged in cross-border practice.[95] The CCBE eventually adopted the Code of Conduct for Lawyers in the European Community (CCBE Code) in 1988,[96] which serves as a code of conduct for EU lawyers who engage in cross-border practice. [97] Described as "both a 'legal ethics' code and a 'conflict of law' code,"[98] it provides substantive rules regarding legal ethics and dictates what

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91. *Id.* arts. 5, 7, at 18.

92. Originally named *Commission Consultative des Barreaux de la Communaute Europenne* and changed to *Counseil des Barreaux de la Communaute Europenne* in 1987, the CCBE is a representative body for the bar associations of the Member States of the EU, although individual lawyers are not members. CCBE COMPENDIUM, *supra* note 84, at 4–6, Ch.3.

93. *See* Roger J. Goebel, *Lawyers in the European Community: Progress Towards Community-Wide Rights of Practice*, 15 FORDHAM INT'L L.J. 556, 580 (1991–92).

94. Siskind, *supra* note 83, at 918. The EEC Treaty provides for the issuance of directives that "shall bind any Member State to which they are addressed, as to the result to be achieved, while leaving to domestic agencies a competence as to form and means." EEC Treaty, *supra* note 1, art. 189, at 79.

95. *See* Laurel S. Terry, *An Introduction to the European Community's Legal Ethics Code Part I: An Analysis of the CCBE Code of Conduct*, 7 GEO. J. LEGAL ETHICS 1, 9–10 (1993).

96. CCBE CODE OF CONDUCT FOR LAWYERS IN THE EUROPEAN UNION (2002) [hereinafter CCBE CODE OF CONDUCT], *available at* http://www.ccbe.org/doc/En/code2002.pdf.

97. *See* Terry, *supra* note 95, at 9.

98. *Id.* at 18.

law should govern when a conflict-of-law exists.[99] The CCBE Code contains General Principles, five of which are reasserted from those originally set forth in the Declaration of Perugia.[100] Along with a Preamble and the General Principles which begin with lawyer "Independence," the CCBE Code addresses Relations with Clients, Relations with the Courts, and Relations Between Lawyers.[101] Amended in both 1998 and 2002, the CCBE Code is viewed as one of the CCBE's most significant accomplishments.[102] There is hope that it will eventually apply to the cross-border activities of all lawyers from member countries of the WTO.[103] Others want the CCBE Code to be extended to domestic as well as cross-border practice.[104] The CCBE is currently working to see how the CCBE Code can be made to work in other countries "as a prototype at a national level."[105]

D. *Diploma Directive*

In 1988, the Council of Ministers issued a Directive calling for the mutual recognition of diplomas (Diploma Directive),[106] facilitating the ability of professionals to obtain the right to practice throughout the Member States.[107] Considered the "most significant step toward

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99. *Id.* at 18–19.

100. *Id.* at 23. The seven General Principles of the original CCBE Code are as follows: (1) Independence, (2) Trust and Personal Integrity, (3) Confidentiality, (4) Respect for the Rules of Other Bars and Law Societies, (5) Incompatible Occupations, (6) Personal Publicity, and (7) the Client's Interest. *See* CCBE CODE OF CONDUCT, *supra* note 96, Rules 2.1–2.7. During the course of the CCBE Code amendments in 1998 and 2002, an eighth Principle was added, Limitation of Lawyer's Liability Towards his Client. *Id.* Rule 2.8.

101. *See id.*

102. *See* Goebel, *supra* note 93, at 580; John Toulmin, *A Worldwide Common Code of Professional Ethics?*, 15 FORDHAM INT'L L.J. 673, 673 (1991–92).

103. Hill, *supra* note 29, at 398; Toulmin, *supra* note 102, at 674–75. *See* Malini Majumdar, *Ethics in the International Arena: The Need for Clarification*, 8 GEO. J. LEGAL ETHICS 439, 451 (1995).

104. Hans-Jurgen Hellwig, *Challenges to the Legal Profession in Europe*, 22 PENN ST. INT'L L. REV. 655, 668 (2004).

105. *Id.* at 668 n. 66.

106. Council Directive 89/48, General System for Recognition of Higher-Education Diplomas Awarded on Completion of Professional Education and Training of at Least Three Years' Duration, 1989 O.J. (L 19) 16 (EC) [hereinafter Diploma Directive].

107. *See id.* art. 3, at 19. The Diploma Directive is not applicable to professions with existing directives that establish mutual recognition by Member States. *Id.* art. 2, at 18. It came on the heels of a White Paper that was released by the Commission reporting the results of a study on the integration of the internal market. *Completing the Internal Market: White Paper from the Commission to the European Council*, COM (1985) 310 final (June 14, 1985) [hereinafter White Paper], *available at* http://aei.pitt.edu/1113/01/internal_market_wp_COM_85_310.pdf. The White Paper suggested the adoption of delineated measures to remove legal and economic barriers to aid in the development of a single integrated market. *Id.* at 4. To further the

cross-national legal recognition within the EC,"[108] the Diploma Directive applies to "any national of a Member State wishing to pursue a regulated profession in a host Member State in a self-employed capacity or as an employed person."[109] Applying exclusively to EC nationals, the Diploma Directive's purpose is to promote the freedom of movement for persons and services by providing that holders of formal qualifications issued in one Member State, through mutual recognition, have the right to practice their profession in other Member States.[110]

Recognizing that training and education requirements may differ from Member State to Member State, the Diploma Directive notes instances in which individuals may be required to complete an adaptation period or take an aptitude test.[111] Because proficiency in the law in one state does not ensure proficiency in the law in another state, Member States retain the right to determine whether the requirement of an adaptation period or an aptitude test will be used.[112] With one exception, the Member States chose to pursue the aptitude test option, although the tests of the individual states vary in complexity and length.[113] Germany became the first Member State to implement the Diploma Directive.[114] Considered to have taken a stringent approach, Germany required two written examinations, five hours each, and a one-hour oral examination in German.[115]

E. *Lawyers' Establishment Directive*

To facilitate admission to the practice of law and further free movement of lawyers, the EU implemented the Lawyers'

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internal market goal, the Commission proposed a general approach whereby each Member State would recognize other Member States' diplomas as effectively equal to its own. *Id.* at 25–26.

108. Jonathan Barsade, *The Effect of EC Regulations upon the Ability of U.S. Lawyers to Establish a Pan-European Practice*, 28 INT'L LAW. 313, 318 (1994).

109. Diploma Directive, *supra* note 106, art. 2, at 19.

110. *Id.* art. 3, at 19.

111. *Id.* art. 4(1)(b), at 19. The adaptation period is not to exceed three years and there are no comments regarding the perimeters of any testing criteria. *See id.*

112. *See* Goebel, *supra* note 93, at 597.

113. *Id.* at 598–99; Wayne J. Carroll, *Liberalization of National Legal Admissions Requirements in the European Union: Lessons and Implications*, 22 PENN STATE INT'L L. REV. 563, 573 (2004).

114. *See* Goebel, *supra* note 93, at 599.

115. *Id.* at 599 n.106. Contract law, property law, and related civil procedure are compulsory topics for one written examination. The applicant chooses from the following five topics for the second examination: corporate and commercial law and procedure; criminal law and procedure; family law and procedure; labor law and procedure; and public and administrative law and procedure. The oral examination covers professional rules and substantive law. *Id.*

Establishment Directive in 1998.[116] The Lawyers' Establishment Directive is considered the "boldest step in the liberalization of legal admissions in the EU."[117] The Directive allows EU lawyers to acquire the same status as traditionally qualified lawyers by being sufficiently exposed to local law for a period of at least three years:

> A lawyer practicing under his home-country professional title who has effectively and regularly pursued for a period of at least three years an activity in the host Member State in the law of that State, including Community law shall, with a view to gaining admission to the profession of lawyer in the host Member State, be exempted from the conditions set out in Article 4(1)(b) of Directive 89/48/EEC . . .[118]

Considered by some to be a welcome alternative to the Diploma Directive, EU lawyers pursuing the Lawyers' Establishment Directive route can be admitted in a host jurisdiction without having to take an aptitude test.[119] As to what constitutes pursuing an activity "effectively and regularly," the Directive provides that it means "actual exercise of the activity without any interruption other than that resulting from the events of everyday life."[120] The Directive also provides affirmative verification obligations regarding the sufficient exposure requirement,[121] reservation options,[122] and regulatory and disciplinary requirements.[123]

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116. Council Directive 98/5/EC, To Facilitate the Practice of the Profession of Lawyer on a Permanent Basis in a Member State Other than that in Which the Qualification Was Obtained, 1998 O.J. (L 77) 36.

117. Carroll, *supra* note 113, at 575. It appears that the Lawyers' Establishment Directive may even be used by a Member State national as a shortcut to admission in her own Member State. *Id.* at 587.

118. Lawyers' Establishment Directive, *supra* note 116, art. 10, at 40.

119. *See* Carroll, *supra* note 113, at 575.

120. Lawyers' Establishment Directive, *supra* note 116, art. 10, at 40.

121. *Id.* art. 10, at 41.

122. For instance, Member States are permitted to "reserve access to their highest courts to specialist lawyers, without hindering the integration of Member State lawyers fulfilling the necessary requirements." *Id.* at 37.

123. *Id.* art. 7, at 40. The Lawyers' Services Directive was unsuccessfully challenged by Luxembourg before the European Court of Justice in 2000. In seeking annulment of the Directive, among Luxembourg's claims was that the Directive represented an impermissible discrimination against nationals in favor of migrant lawyers. Luxembourg further claimed that the Directive failed to safeguard the interests of consumers of legal services and the general public in the proper administration of justice. Case C-168/98, Luxenbourg v. European Parliament and Council of the European Union, 2000 E.C.R. I-9131, I-9135.

F. *Proposed Directive on Services in the Internal Market*

In 2004, the Commission released a proposal for a "Directive on Services in the Internal Market."[124] As a horizontal directive designed to cover all economic services in the Internal Market, it is projected that if the Directive is adopted by the European Parliament and Council, it will be comparable in importance to the Lawyers' Services Directive and Lawyers' Establishment Directive for the legal profession.[125]

Comprised of six chapters, the proposed Directive on Services begins with provisions on its objective, scope and definitions.[126] The second chapter, "Freedom of Establishment for Service Providers," attempts to simplify administration for cross-border services. It also gives Member States a time frame in which to justify restrictions that they may have in effect.[127] Minimum and maximum fees in fee scales are specifically earmarked; this emphasis may interest lawyers in particular, since fee scales are implemented by many of the legal professions in European countries.[128]

Chapter III, entitled "Free Movement of Services," concerns temporary cross-border services.[129] It introduces a country of origin principle to address the problem professionals face when they are subject to regulation in both their home and host countries. The proposed Directive provides that "Member States shall ensure that providers are subject only to the national provisions of their Member State of origin which fall within the coordinated field."[130] Because the Lawyers' Services Directive calls for lawyers to be subject to the professional conduct rules of both the home and host Member State, however, the country of origin rule in the proposed Directive is not applicable to the legal profession.[131] Should the legal profession

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124. Proposal for a Directive of the European Parliament and of the Council on services in the internal market, COM (2004) 2 final/3 (May 3, 2004) [hereinafter Commission proposal], *available at* http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0002en03.pdf.

125. Hellwig, *supra* note 105, at 663.

126. *See* Commission proposal, *supra* note 124, at 26.

127. *Id.* at 46–55.

128. *See* Hellwig, *supra* note 105, at 663. Fee schedules are common among European legal professions. Minimum fee schedules were also common in the United States until 1975, when the U.S. Supreme Court found publication of mandatory minimum fee schedules by a county bar association was price fixing and violated federal antitrust law. Goldfar v. Virginia State Bar, 421 U.S. 773, 791–92 (1975). *See* Virginia G. Maurer et al., *Attorney Fee Arrangements: The U.S. and Western European Perspectives*, 19 NW. J. INT'L L. & BUS. 272, 322 (1999).

129. *See* Commission Proposal, *supra* note 124, at 55–62.

130. *Id.* at 55.

131. *Id.* at 56.

decide it prefers to be subject to the country of origin principle, an amendment to the Lawyers' Services Directive would be necessary.[132]

Chapter IV of the proposed Directive applies to cross-border services in both temporary and established activities.[133] Entitled "Quality of Services," it contains transparency and disclosure requirements,[134] calling for providers in the regulated professions to make certain information available[135] and provide other information upon request.[136] For lawyers, for example, the particulars on the professional body with which the lawyer is registered must be made available along with the lawyer's professional title.[137] There are provisions addressing coverage by appropriate professional indemnity insurance.[138] Also, Member States are called on to remove "all total prohibitions on commercial communications by the regulated professions."[139] While bans on advertising would be precluded, regulation of commercial communications would be permitted, if not required:

> Member States shall ensure that commercial communications by the regulated professions comply with professional rules, in conformity with Community law, which relate, in particular, to the independence, dignity and integrity of the profession, as well as to professional secrecy, in a manner consonant with the specific nature of each profession.[140]

This position aligns with the 2000 E-Commerce Directive,[141] which permits the use of commercial communications "which are part of, or constitute, an information society service" provided there is "compliance with the professional rules regarding, in particular, the independence, dignity and honour of the profession, professional

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132. Hellwig, *supra* note 105, at 665.

133. *See* Commission Proposal, *supra* note 124, at 63–68.

134. *Id.* at 63–64.

135. *Id.* at 63.

136. *Id.* at 63–64.

137. *Id.* at 63. Upon request, the lawyer must make additional information available about the main features of the lawyer's service, pricing, the status and legal form of the lawyer's law firm, and the professional rules applicable to the lawyer. *Id.* at 63–64.

138. *Id.* at 64–65. With respect to lawyers, provisions relating to indemnity insurance are already in effect in almost all EU Member States. *See* Hellwig, *supra* note 105, at 665. The CCBE has established working groups with members of the legal profession and insurance industry to study the various national coverage systems. The CCBE is also working on the "issue of social insurance for lawyers engaged in cross-border legal work by means of foreign establishment." *Id.* at 666.

139. *See* Commission proposal, *supra* note 124, art. 29.

140. *Id.*

141. Council Directive 2000/31, On Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market, art. 1, 2000 O.J. (L 178) 1 [hereinafter E-commerce Directive].

secrecy and fairness towards clients and other members of the profession."[142]

Multidisciplinary activities are permitted in Chapter IV; however, the regulated professions may be subject to restrictions to guarantee compliance with the various rules of professional ethics or conduct that apply to the different professions.[143] Picking up on the fundamental values of the professions, the Directive requires Member States to ensure the following when multidisciplinary activities are authorized:

> (a) that conflicts of interest and incompatibilities between certain activities are prevented;
>
> (b) that the independence and impartiality required for certain activities is secured;
>
> (c) that the rules governing professional ethics and conduct for different activities are compatible with one another, especially as regards matters of professional secrecy.[144]

The proposed Directive seeks to prevent the professional rules of one profession from being eroded by more lenient rules of another profession. In doing so, the Directive recognizes concerns expressed in recent decisions of the European Court of Justice (ECJ).[145] While

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142. *Id.* art. 8. Responding to the E-commerce Directive, the CCBE Deontology Committee established a Working Group to review the personal publicity provisions of the CCBE Code which remained unchanged in the 1998 Code revisions. *See* Louise L. Hill, *Publicity Rules of the Legal Professions Within the United Kingdom*, 20 ARIZ. J. INT'L & COMP. L. 323, 330–32 (2003). The Working Group determined that to "reflect reality" with limitations, "provisions on publicity should be worded so that the lawyer is *entitled* to inform the public about his services." Report to the Presidency of CCBE Concerning Revision of Certain Articles in CCBE's Code of Conduct, § 2.1 (Sept. 6, 2002), http://www.hadjimichalis.gr/keimena/deontologiaccbe/15_4_01.doc (last visited April 19, 2003). With respect to the E-commerce Directive, however, the Working Group concluded that "[n]o particular changes in the Code seem necessary," except to make "clear that personal publicity or marketing may be made also through electronic commercial communications . . ." *Id.* Sec. 4(2). The CCBE Code provision on personal publicity was amended on December 2, 2002, to provide as follows:

> 2.6.1 A lawyer is entitled to inform the public about his services provided that the information is accurate and not misleading, and respectful of the obligation of confidentiality and other core values of the profession.
>
> 2.6.2 Personal publicity by a lawyer in any form of media such as by press, radio, television, by electronic commercial communications or otherwise is permitted to the extent it complies with the requirements of 2.6.1.

CCBE CODE, *supra* note 96, Rule 2.6.

143. *See* Commission proposal, *supra* note 124, art. 30.

144. *Id.*

145. *See* Hellwig, *supra* note 105, at 667. In the *Wouters* case the ECJ upheld a Netherlands Bar Association rule prohibiting lawyers from forming partnerships with accountants to protect the lawyer's professional secrecy obligation. Case C-309/99, Wouters v. Algemene Raad van de Nederlandse Orde van Advocaten, 2002 E.C.R. I-1577 (2001). In the *Arduino* case, the ECJ upheld the Italian fee scale for lawyers because it had been approved by the Italian government. Case C-35/99 Arduino, 2002

multidisciplinary practice exists in the legal professions of some EU Member States,[146] the CCBE has voiced opposition to it.[147] The CCBE's opposition to multidisciplinary practice primarily centers on concerns about "lawyer independence and the relevance of the core values that support lawyer independence, including the principle of confidentiality and the rule against conflicts of interest."[148] The International Bar Association adopted a Resolution on Multidisciplinary Practices that does not take a position on multidisciplinary practice itself, but instead asserts principles to be followed should a jurisdiction permit multidisciplinary practice.[149]

Chapter V of the proposed Directive asserts that Member States must exercise their supervisory powers, mutually assisting other Member States in the supervision of the provision of cross-border services.[150] Chapter VI's Convergency Program calls for the creation

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E.C.R. I-1529 (1999). Similarly, in *Conte v. Rossi*, the ECJ held the EC Treaty does not preclude national legislation allowing professionals (architects in this case) to set discretionary fees. Case C-221/99, Conte v. Rossi, 2001 E.C.R. I-9359 (2001).

146. MDPs have received legal recognition in Germany, France and Spain. *See* George C. Nnona, *Multidisciplinary Practice in the International Context: Realizing the Perspective on the European Union's Regulatory Regime*, 37 CORNELL INT'L L.J. 115, 153 (2004).

147. *Id.* at 150; Mary C. Daly, *Choosing Wise Men Wisely: The Risks and Rewards of Purchasing Legal Services from Lawyers in a Multidisciplinary Partnership*, 13 GEO. J. LEGAL ETHICS 217, 238 (2000).

148. Nnona, *supra* note 146, at 153.

149. *See* Council of the International Bar Association, *Resolution on Multidisciplinary Practices* (Sept. 13, 1998). Those principles are as follows:

> (a) a requirement to clearly disclose to regulatory and disciplinary authorities and to the public the manner in which integrated co-operation with non lawyers is affected, and the interests represented in the organization concerned;
>
> (b) a requirement for submission of the entire organization in question, including its nonlawyers, to the regulatory and disciplinary authorities of the legal profession;
>
> (c) a requirement for giving of clear notice to clients as to the limitations inherent in forms of integrated co-operation and the risk attaching thereto;
>
> (d) precise requirements on the avoidance of conflicting interests which exclude the possibility of combining auditing services with consulting services or legal representation;
>
> (e) precise rules on restriction of access to confidential information;
>
> (f) provisions setting out the minimum degree of ownership and/or voting control which lawyers must hold in MDPs and the maximum degree of ownership and/or voting control which nonlawyers may hold in MDPs.

ABA Center for Professional Responsibility, *Background Paper on Multidisciplinary Practice: Issues and Developments* n. 26 (Jan. 1999) *available at* http://www.abanet.org/cpr/multicomreport0199.html.

150. *See* Commission proposal, *supra* note 124, arts. 34–38.

of codes of conduct at the community level for commercial communications and professional ethics. With respect to the latter:

> Member States shall, in cooperation with the Commission, take accompanying measures to encourage the drawing up of codes of conduct at Community level, in conformity with Community law, in particular in the following areas: . . . (b) the rules of professional ethics and conduct of the regulated professions which aim in particular at ensuring, as appropriate to the specific nature of each profession, independence, impartiality and professional secrecy.[151]

The model for the codes of conduct to be implemented is the CCBE Code. The "Community level" codes of conduct "may be limited to general statements and principles, leaving sufficient 'room to breathe' for detailed implementation at the national level."[152] This has been referred to as "almost sensational"; less than full harmonization is envisioned.[153]

IV. GLOBALIZATION OF THE LEGAL PROFESSION

In the past thirty years, business and financial markets have expanded beyond national borders.[154] Lawyers are advising their clients on foreign law and law firms are opening foreign offices; as "economic changes draw clients to new locations, lawyers follow."[155] For instance, in the United States, cross-border exports of legal services more than doubled in the last decade, climbing to $3.4 billion in 2003.[156] Next to Europe, the United States is the major exporter of legal services.[157] As cross-border practice escalates, lawyers face

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151. *Id.* art. 39.

152. Hellwig, *supra* note 105, at 668.

153. *Id.*

154. *See* Mark I. Harrison & Mary Gary Davidson, *The Ethical Implications of Partnerships and Other Associations Involving American and Foreign Lawyers*, 22 PENN ST. INT'L L. REV. 639, 641 (2004). Regarding the phenomenon of globalization, its occurrence was occasioned by "unprecedented advances in telecommunications, transportation, and information retrieval systems as well as the political upheavals that replaced communist and social regimes with democratic systems of government and capitalist economic policies," all within a relatively short time. *Id.* at 641 n.9 (citing Mary C. Daly, *The Cultural, Ethical, and Legal Challenges in Lawyering for a Global Organization: The Role of General Counsel*, 46 EMORY L.J. 1057, 1064 n.2 (1997)).

155. *Id.* at 642 (citing Carol Silver, *Globalization and the U.S. Market in Legal Services-Shifting Identities*, 31 LAW & POL'Y INT'L BUS. 1093, 1108 n.24 (2000)).

156. *See* Letter to Allgeier, *supra* note 73.

157. *See* Goldsmith, *supra* note 21, at 631. New York City is a key center for international legal services, in terms of both exporting and importing. *Id.* "New York was the first jurisdiction in the United States to create an official status for non-U.S. licensed lawyers." Carol A. Needham, *The Licensing of Foreign Legal Consultants in the United States*, *in* RIGHTS, LIABILITY, AND ETHICS IN INTERNATIONAL LEGAL PRACTICE 83, 96 (Mary C. Daly & Roger J. Goebel eds., 2004).

recurring problems relating to affiliations with foreign lawyers and unauthorized practice of law.[158] There is a consensus among members of the legal professions in the EU that some regulation is necessary to protect core professional values related to lawyer independence, such as integrity, professional secrecy, and avoidance of conflicts of interest. However, there seems to be considerable disagreement among members of the legal professions on the level of regulation that is necessary.[159]

By and large, any lawyer from an EU Member State can work temporarily or permanently in another EU Member State by complying with the provisions in the Lawyers' Services Directive[160] or the Lawyers' Establishment Directive.[161] This cross-border activity has been initiated and supported by the legal professions and is regulated in part by the CCBE Code. It has been said that there is "no other liberal profession in Europe with comparable liberalization achievements."[162] While trade in services is not new to the EU as an entity, it is something that is novel to many of the legal professions in the WTO Member Nations.

A. *Foreign Legal Consultants*

Many countries handle cross-border practice by recognizing foreign legal consultants (FLCs). FLCs are foreign lawyers who are permitted to practice in a host country for limited purposes, such as giving advice on the law of the jurisdiction where they are licensed to practice.[163] Typically, the regulatory body of the host state decides whether the visiting lawyer "may advise only on his or her Home State law, on international law, on the Host State's law, or some combination thereof."[164] The regulatory body of the host state also typically decides whether a visiting lawyer can work alone, or whether the visiting lawyer must work along with a lawyer from the

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158. *See* Harrison & Davidson, *supra* note 154, at 643–45. In many European countries lawyers do not have a monopoly on rendering legal advice. Typically, these countries do not have unauthorized practice of law statutes. *See* Nnona, *supra* note 146, at 158.

159. *See* Hellwig, *supra* note 105, at 660. These positions were reflected in responses to a questionnaire released by the European Commission, Directorate General Competition in 2003. *Id.*

160. *See supra* notes 82–91 and accompanying text.

161. *See supra* notes 116–23 and accompanying text.

162. Hellwig, *supra* note 105, at 659.

163. *See* Needham, *supra* note 157, at 83–85.

164. Laurel S. Terry, *A Case Study of the Hybrid Model for Facilitating Cross-Border Legal Practice: The Agreement Between the American Bar Association and the Brussels Bars* in RIGHTS, LIABILITY, AND ETHICS IN INTERNATIONAL LEGAL PRACTICE 105, 138 (Mary C. Daly & Roger J. Goebel, eds. 2004).

host state.[165] Just as there is significant variation in the scope of permitted work by FLCs, there is significant variation in the requirement of necessary experience and the types of associations allowed.[166]

The FLC situation becomes even more complicated in countries where the legal profession is regulated by regional entities.[167] In countries like the United States, where the legal profession is regulated on a state-by-state basis, standards for FLCs vary considerably, if they exist at all.[168] Mindful of this situation and the increase of cross-border practice, the American Bar Association (ABA) formulated a Model Rule for the Licensing of Foreign Legal Consultants.[169] The ABA Model Rule would enable an FLC to render legal services in a state, but not to render professional legal advice on the state's law or the law of the United States, "except on the basis of advice from a person duly qualified and entitled (other than by virtue of having been licensed under this Rule) to render professional legal advice in this State."[170] The Model Rule calls for the FLC to (1) have

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165. *Id.*

166. *See* Steven C. Nelson, *Law Practice of U.S. Attorneys in Mexico and Mexican Attorneys in the United States: A Status Report, in* RIGHTS, LIABILITY, AND ETHICS IN INTERNATIONAL LEGAL PRACTICE 207, 208–09 (Mary C. Daly & Roger J. Goebel, eds. 2004).

167. *See supra* note 23.

168. Only about half of the states in the United States have provisions that address FLCs. *See* Needham, *supra* note 157, at 85–96.

169. MODEL RULE FOR THE LICENSING OF FOREIGN LEGAL CONSULTANTS (2003) [hereinafter MODEL RULE ON FLCs].

170. *Id.* § 3(e). Section 3 of the Model Rule also prohibits the FLC to do the following:

> (a) appear as an attorney on behalf of another person in any court, or before any magistrate or other judicial officer, in this State (except when admitted *pro hac vice*...);
>
> (b) prepare any instrument effecting the transfer or registration of title to real estate located in the United States of America;
>
> (c) prepare:
>
> (i) any will or trust instrument effecting the disposition on death of any property located in and owned by a resident of the United States of America, or
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> (ii) any instrument relating to the administration of a decedent's estate in the United States of America;
>
> (d) prepare any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident;

Id. § 3(a)–(d). Section 3 also addresses how the FLC may be designated. The FLC may not hold himself or herself out as a member of the State's bar, and is limited to the following designations at subsection (g):

> (i) the foreign legal consultant's own name;

been a member in good standing of a recognized legal profession in a foreign country for at least five years, [171] (2) be of good moral character, and (3) have received a post-secondary degree in law.[172] The FLC must also intend to practice as a legal consultant in the State and maintain an office to effectuate this intent.[173] The FLC is permitted to affiliate with a law firm in the state and to obtain partnership status.[174] FLCs are also subject to professional discipline in the same manner as members of the state's bar.[175] Addressing the issue of confidentiality and privilege, an issue at variance globally, the Model Rule calls for the FLC to be accorded "the rights and obligations of a member of the bar of this State with respect to attorney-client privilege, work-product privilege, and similar

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(ii) the name of the law firm with which the foreign legal consultant is affiliated;

(iii) the foreign legal consultant's authorized title in the foreign country of his or her admission to practice, which may be used in conjunction with the name of that country; and

(iv) the title "foreign legal consultant," which may be used in conjunction with the words "admitted to practice of law in [name of the foreign country of his or her admission to practice]."

Id. § 3(g).

171. *Id.* § 1(a). The members of the legal profession must be "admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or public authority." *Id.* In many countries the legal profession is divided into segments, with individual segments having delineated rights and duties. In fact, the legal profession in the United States has been described as "unique in that lawyers, once meeting requirements for admission to the bar, can practice in any area or arena they choose; specialization is due to knowledge as opposed to function." Karen L.K. Miller, *Zip to Nil? A Comparison of American and English Lawyers' Standards of Professional Conduct*, *in* RIGHTS, LIABILITY, AND ETHICS IN INTERNATIONAL PRACTICE 355, 359 (Mary C. Daly & Roger J. Goebel eds., 2004). Interestingly, the Model Rule does not require that the foreign lawyer have rights of audience to the courts.

172. MODEL RULE ON FLCS, *supra* note 169, §§ 1(b),(c). The education requirements for the legal professions vary greatly from country to country, thus the Model Rule requires a post-secondary degree.

173. *Id.* § 1(d).

174. *Id.* § 4(b)(i)(C). With respect to affiliation, the Model Rule allows an FLC to affiliate in the same law firm with members of the state's bar, including the following:

(A) employing one or more members of the bar of this State;

(B) being employed by one or more members of the bar of this State or by any partnership [or professional corporation] that includes members of the bar of this State or that maintains an office in this State; and

(C) being a partner in any partnership [or shareholder in any professional corporation] that includes members of the bar of this State or that maintains an office in this State;

Id. § 4(b)(i).

175. *Id.* § 4(a).

professional privileges."[176] While jurisdictions seem to be leaning toward using the FLC concept to facilitate cross-border legal practice, "FLC rules merely facilitate the practice of home country law in a host country."[177] While the implementation of FLC rules may constitute a step toward globalization of the legal profession, FLC rules do not represent "encroachment on the turf" of host state lawyers.[178]

B. *CCBE and the GATS*

The GATS negotiations for the EU are handled at the European level, not by the individual Member States.[179] Regarding the legal profession, home country law and international public law are included in the EU Schedule of Specific Commitments of GATS 1994.[180] At the time these commitments were made, however, it was without the support of the CCBE. In 1994, the CCBE was unable to come up with a common view to recommend to the European Commission.[181] Different views were held by the Member States on the opening of their markets and how to treat foreign lawyers within their borders.[182] A primary dispute concerned whether to integrate foreign lawyers within the host title or designate them to practice under the title of their home jurisdiction.[183]

Since the EU Schedule of Specific Commitments of GATS 1994, the CCBE has come up with a common position on the delivery of legal services in the EU by a lawyer from a non-EU Member State.[184] Addressing establishment rather than temporary practice, the CCBE member organizations agree that the "foreign legal practitioner" (FLP) concept should be applied to lawyers from non-EU Member States desiring to establish themselves in EU Member States.[185] The CCBE's position on FLPs has been summarized as follows:

> 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, has obtained sufficient education and experience comparable to those required

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176. *Id.* § 4(b)(ii).
177. Carroll, *supra* note 113, at 618.
178. *Id.*
179. *See* Goldsmith, *supra* note 21, at 629.
180. *See* An Introduction to the GATS, *supra* note 9; Goldsmith, *supra* note 21, at 637.
181. Goldsmith, *supra* note 21, at 631.
182. *Id.* While many Member States export and import legal services, countries typically see themselves as one or the other. What normally follows is either an offensive or defensive position on the opening of markets. *Id.*
183. *Id.* at 631–32.
184. *Id.* at 631, 635.
185. *Id.* at 636.

in the host country, and has met the requirements of his home country or obtained the licenses or certifications required in his home country.

b) The FLP must register as such with the bar and/or competent authorities of the host country, and is subject to its/their disciplinary powers. He must produce evidence that his activity as an FLP in the host country is covered by a professional liability insurance policy.

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, not withstanding 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, and for the necessary information of the public, must mention that he is not admitted to advise on host country law.

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 permitted by host country law.

g) The FLP may associate with host country lawyers and may be employed by host country lawyers, to the extent permitted by host country law, for the joint exercise of the profession.[186]

The CCBE's position on FLPs contains a number of general provisions. There is a general requirement that a foreign lawyer be a member of an independently regulated bar and have the required licenses or certification from his or her home country.[187] A foreign lawyer is required to register with a host state and be covered by professional liability insurance.[188] FLPs must practice under their home titles and are restricted to giving legal advice on home country law and international public law.[189] However, the CCBE's position on FLPs also contains provisions that defer to the standards and laws of the host state.[190]

With respect to licensing criteria, the CCBE's position on FLPs defers to the host state; the foreign lawyer's education and experience must align with that which is required in the host country. The host country's code of conduct governs the FLP and the foreign lawyer is subject to the disciplinary powers of the host country. Host country law governs the types of professional associations in which the foreign

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186. *Id.* at 636–37. Hans-Jurgen Hellwig, Chairman of the CCBE GATS Committee, relayed the CCBE's position to the European Commission by letter to Carlos Gimeno-Verdejo, dated April 28, 2003. *Id.* at 635–38.

187. *Id.* at 636–37.

188. *Id.*

189. *Id.*

190. *Id.*

lawyer may engage. Host country law also dictates the foreign lawyer's ability to appear in court or before administrative authorities.[191] Thus, while some general provisions are applicable across the EU, varied standards will prevail with other provisions for FLPs, depending on the individual host states.

C. *Legal Services as Objects of International Trade*

As the Doha Round of the GATS negotiations winds down, the liberalization of the legal profession will continue to be negotiated and evaluated. It is significant that the CCBE, which represents all of the bars and law societies of the EU,[192] has reached a consensus on an offer to be submitted to other WTO Member States.[193] While specific FLP requirements for licensing, allowable professional associations, and rights of appearance may differ among the EU Member States, the CCBE has proposed a general framework for established cross-border practice with non-EU lawyers. Although the CCBE offer calls for FLPs to be subject to the codes of conduct of the individual Member States, this may not be a distinction for long. The CCBE is hoping to harmonize the national rules of conduct of the EU Member States, eliminating disparate national rules as a differentiating factor. The CCBE is currently working with its national member organizations to broaden the CCBE Code to cover domestic work as well as cross-border practice.[194] The core values of the profession presently in the CCBE Code, including those that relate to lawyer independence,[195] confidentiality,[196] and conflicts of

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191. *Id.*

192. *Id.* at 629. The bars and law societies that the CCBE represents have over 700,000 lawyers, collectively. *Id.*

193. *Id.* at 635.

194. *See* Hellwig, *supra* note 105, at 668.

195. *See* CCBE CODE, *supra* note 96, Rule 2.1. The General Principle on Independence provides as follows:

> 2.1.1 The many duties to which a lawyer is subject require his absolute independence, free from all other influence, especially such as may arise from his personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his independence and be careful not to compromise his professional standards in order to please his client, the court or third parties.
>
> 2.1.2 This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to his client has no value if it is given only to ingratiate himself, to serve his personal interests or in response to outside pressure.

Id.

196. *Id.* Rule 2.3. The General Principle on Confidentiality provides as follows:

interest,[197] would be standardized throughout the EU. Thus, the FLP configuration proposed by the CCBE may ultimately provide a uniform standard in the EU to facilitate trade in services.

Just as Europe took the lead on services as components of international trade with the EEC Treaty,[198] it continues to serve as a model for other countries. While the GATS offer proffered by the CCBE is neither as liberal nor as conservative as some other FLC legislation,[199] it is significant in that it represents a uniform standard by which twenty-five countries are willing to allow foreign lawyers to establish themselves within their borders and give legal advice. Although a remarkable achievement in and of itself, one cannot help but question if the EU has gone far enough. Approaching trade in

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2.3.1 It is of the essence of a lawyer's function that he should be told by his client things which the client would not tell to others, and that he should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer.

The lawyer's obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State.

2.3.2 A lawyer shall respect the confidentiality of all information that becomes known to him in the course of his professional activity.

2.3.3 The obligation of confidentiality is not limited in time.

2.3.4 A lawyer shall require his associates and staff and anyone engaged by him in the course of providing professional services to observe the same obligation of confidentiality.

Id.

197. *Id.* Rule 3.2. The Section on Conflict of Interest provides as follows:

3.2.1 A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.

3.2.2 A lawyer must cease to act for both client [sic] when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where his independence may be impaired.

3.2.3 A lawyer must also refrain from acting for a new client if there is a risk of a breach of confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client.

Id.

198. *See supra* note 1 and accompanying text.

199. For instance, the CCBE proposal limits the advice an FLP can give on home country law and international public law. Specifically excluded is European Community Law. While the ABA Model Rule for the Licensing of Foreign Legal Consultants precludes an FLC from rendering advice on host state law or U.S. federal law, the FLC may render such advice if it is based on the advice of a lawyer duly licensed within the host state jurisdiction. MODEL RULE ON FLCS, *supra* note 157, § 3(e).

services from the FLP concept primarily facilitates the practice of home country law in a host state. Perhaps the CCBE should consider expanding some aspects of its proposition and move treatment of non-EU lawyers closer to that which they accord lawyers from EU Member States. Arguably, permitting lawyers to give advice on the law of the jurisdictions where they are already permitted to practice, along with international law, does not do enough to facilitate trade in legal services.

A number of routes could be taken by the EU to liberalize trade in legal services. Having chosen to implement the FLP concept, the EU could enlarge the scope of practice that an FLP is accorded. Concerns about protecting core values of the profession and the public could be effectuated in less restrictive ways than a total prohibition on giving advice on European Community Law.[200] Rather than prohibiting FLPs to advise on European Community Law, such advice could be given in association with an EU lawyer in a fashion similar to that envisioned by the Lawyers' Services Directive[201] and the ABA Model Rule.[202]

Perhaps the mandate could be even broader, moving a step beyond the FLP concept and closer to how EU lawyers are treated within the EU Member States. Borrowing on concepts from the Lawyers' Establishment Directive and the Proposed Directive on Services in the Internal Market, lawyers from WTO Member States could be more fully integrated into the legal professions. If trade in legal services is actually going to be recognized—and not merely theoretically recognized—more equality of status is called for. The Lawyers' Establishment Directive permits admission after a period of exposure that is effective and regular,[203] a similar approach could be taken by the EU for WTO Member Nations.

Provisions brought forward in the Proposed Directive on Services in the Internal Market could also be extended to lawyers in WTO Member Nations. With its transparency and disclosure requirements and safeguards of fundamental values of the profession,[204] the Directive can achieve greater cross-border facilitation of practice. Even if the CCBE does not embrace the multidisciplinary practice concept posited in the Proposed Directive,[205] perhaps recognition should be given to the fact that multidisciplinary practice is a significant aspect of the long-term strategy of many law firms.[206] This

200. *See supra* note 186 and accompanying text.
201. *See supra* note 91 and accompanying text.
202. *See supra* note 170 and accompanying text.
203. *See supra* note 118 and accompanying text.
204. *See supra* notes 137–42 and accompanying text.
205. *See supra* notes 143–48 and accompanying text.
206. *See* Nnona, *supra* note 146, at 123.

could be accomplished while retaining the predominance of host country professional rules and disciplinary authority.[207]

Implementing GATS obligations or obligations of other agreements in which countries have entered, standards must be developed for the legal profession to facilitate cross-border legal practice. The core values of the legal profession must be guarded in this process as cross-border practice escalates. The EU has always been a leader in this regard and is likely to be so in the future. As legal services continue to be exported and imported, the formulations in the EU will continue to be looked to as an example. Given this significant influence, the EU may want to consider expanding the formulation in which legal services are rendered and move toward treating non-EU lawyers in a manner that is similar to how EU lawyers are treated within the EU Member States. As countries continue to negotiate matters relating to trade in services, the legal professions must tread with purpose. The legal professions of the world are likely to follow the lead of the EU, so perhaps the EU should expand the parameters of their cross-border mandates.

V. CONCLUSION

Services as components of international trade is a concept that is being addressed around the world. As WTO Member States consider how to best implement cross-border legal practice within the confines of GATS and other obligations, there is significant concern that the core values of the profession be preserved. Mindful of these core values, Europe has been a leader in the facilitation of cross-border services—particularly legal services—through governing EU law. With a rich history of treaties, directives, and court cases that have considered the cross-border provision of services, the EU serves as an example for other countries that are opening their borders to trade in services. As the mobility of lawyers increases, the EU has an opportunity to move toward eliminating barriers that discriminate against foreign service providers while safeguarding both the profession and the public. By taking advantage of this opportunity, the EU is in a position to shape the globalization of the legal profession. Mindful of this predominant position, the EU should continue to serve as an example for the rest of the world and further liberalize the cross-border practice of law. The internationalization of legal practice will be well-served by normative standards that liberalize this major component of globalization in the legal services sector.

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207. *See supra* note 186 and accompanying text.