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November 19, 2014

Mr. Aldo Bulgarelli
President
Council of Bars and Law Societies of Europe
Rue Joseph II, 40/8
B 1000 Brussels
Belgium

Dear Aldo:

On behalf of Immediate Past President James Silkenat and myself, I would like to express our appreciation for the CCBE's engagement with the ABA on an ongoing basis regarding issues impacting legal services in the pending Transatlantic Trade and Investment Partnership (TTIP) negotiations.

I understand that representatives of our organizations had a productive discussion at the ABA Annual Meeting in Boston and that you have graciously extended an invitation for several ABA members to join in the November 27th meeting with Chief Judge Jonathan Lippman to be held in conjunction with the CCBE Plenary Session in Brussels. Continuing and enhancing the dialogue among the CCBE, the ABA, the Conference of Chief Justices, and other U.S. organizations such as the National Conference of Bar Presidents is important to advance our shared goal of facilitating the ability of our respective lawyers to effectively serve their clients through cross-border practice in a way that also adequately protects those clients and the public.

Because the U.S. system is grounded on state-based judicial regulation of the legal profession, progress in the United States must be made on a state-to-state basis. Trade negotiations such as the TTIP are useful mechanisms to facilitate dialogue on liberalization, and the ABA welcomes the opportunity to work closely with the CCBE to ensure that clients have the legal services access they need in both the U.S. and the EU. As was discussed in Boston, we believe that the more constituencies that speak to regulators here and in the EU about these important issues, the more effective we are likely to be in reducing unnecessary barriers.

We have carefully studied the CCBE's requests to the United States and look forward to further discussion regarding how best to implement cross-border practice. It is important to emphasize that, unlike the CCBE, the ABA does not have the authority to speak for or make commitments on behalf of the lawyer regulatory authorities or state bar associations

in the United States, so we cannot provide a response or a similar request that would represent the “U.S.” position. However, we can provide information to the CCBE (and to state regulators) on policies adopted by the ABA (and implemented in a number of U.S. jurisdictions) that address many of the relevant issues, and we can work with the CCBE to stimulate a dialogue in the U.S. and the EU about these issues.

The ABA has adopted policies designed to allow lawyers to effectively serve their clients, at home and abroad, through cross-border practice. To facilitate this goal, the ABA has adopted a number of Model Rules and policies that seek to facilitate access by foreign lawyers in the United States, including: (1) the Model Rule for the Licensing and Practice of Foreign Legal Consultants; (2) the Model Rule for Temporary Practice by Foreign Lawyers; (3) the Model Rule on Pro Hac Vice Admission; and (4) Model Rule of Professional Conduct 5.5(d) and (e), along with the Model Rule for Registration of In-House Counsel; and (5) the ABA Model Rule on Practice Pending Admission that applies to foreign legal consultants. Section a(3) of the Model Rule for Temporary Practice includes lawyers who represent clients in mediation and international arbitration.

The only topic addressed in the CCBE “requests” for which the ABA does not have a policy position is the issue of lawyers who serve as neutrals in international arbitration and mediation, as opposed to representing clients. The ABA has adopted a policy, however, that favors recognition of freedom of parties to international commercial arbitration proceedings to choose as their representatives in those proceedings lawyers who need not be admitted to practice law in the jurisdiction where the arbitration proceeding takes place. All of these policies are available on the webpage of the ABA Task Force on International Trade in Legal Services: <http://www.ambar.org/itils>.

As the ABA urges adoption of these Model Rules by all U.S. jurisdictions, we would also encourage that similar access to those found in the CCBE “requests” be afforded to U.S. lawyers and law firms in foreign jurisdictions. We note that the CCBE request indicates that issues relating to pro hac vice admission, in-house counsel registration, full admission, and the Services and Establishment Directives are considered “off the table.” These issues represent serious impediments to the ability of some U.S. lawyers and law firms to engage in providing legal services in the EU, and the latter two are of particular concern because they are based solely on the question of nationality rather than competence. We hesitate to foreclose further discussion on these issues and propose that they remain on the agenda for consideration. Because of the leadership role held by both of our organizations, we believe that all issues related to cross-border legal practice should be available for discussion, even if some of these issues are not ultimately included in our respective government’s TTIP “requests.” We believe that both organizations share the goal of reducing unnecessary trade barriers and promoting a dialogue regarding which barriers might – or might not – be considered unnecessary in light of the goals of lawyer regulation.

In sum, the ABA welcomes the opportunity to work closely with the CCBE to ensure that clients have the legal services access they need in both the U.S. and the EU. We welcome the CCBE’s letter and believe that it provides a useful basis for ongoing discussions in

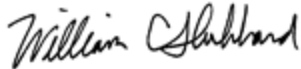
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the U.S. and in Europe. As our combined letters reveal, the ABA and the CCBE agree on a number of policy issues with respect to cross-border practice. We believe that our organizations can serve an effective role in gathering data about the barriers that lawyers face and working with a variety of stakeholders, including regulators, to help them understand the issues and remove any unnecessary barriers.

We look forward to working with the CCBE as the trade negotiations progress, as well as in other efforts to ensure that the interests of our respective lawyers are addressed.

Sincerely,

A handwritten signature in cursive script, reading "William C. Hubbard".

William C. Hubbard