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DISRUPTIVE INNOVATIONS IN LEGAL SERVICES

--Bulgaria--

13 June 2016

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More documents related to this discussion can be found at www.oecd.org/daf/competition/disruptive-innovations-in-legal-services.htm

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--REPUBLIC OF BULGARIA--

A. Legal profession in Bulgaria

1. The legal profession in Bulgaria is extensively regulated as the national legislation envisages high quality and quantitative entry requirements, regulates the remuneration of the legal professionals, establishes ban on advertising, etc. The main legislative acts, which regulate the provision of services by the attorneys and notaries in Bulgaria, are the Attorneys Act, adopted in 2004 and the Notaries and Notarial Practice Act, adopted in 1996 by the National Assembly.

1. Attorney profession

1.1 Entry requirements

2. Art. 3 of the Attorney Act stipulate that the legal profession may only be exercised by an attorney or an attorney of the European Union, practicing alone or as a member of a partnership. In order to acquire the right to practice the legal profession the individual must hold a master's degree in law; pass an examination (both written and oral), organized by the Supreme Bar Council; have at least 2 years of legal service record as a jurist. Candidates holding an educational and scientific degree of "Doctor of laws", as well as individuals who have a legal service record of more than 5 years may be register with the Supreme Bar Council without passing an examination. In such cases candidates just have to prove the relevant requirement in order to be entered into attorneys' register. Candidates who have passed the examination successfully are registered with the Supreme Bar Council. The Attorney Act envisages that only attorneys who have registered with the Supreme Bar Council have the right to practice. The Supreme Bar Council is the highest self-regulatory body of the Bulgarian Bar with a seat in the city of Sofia. With an amendment of the Attorneys Act after the accession of Bulgaria into the European Union in 2007 attorneys from another Member States of the European Union are given the right to practice in Bulgaria under certain circumstances. For example where under Bulgarian law procedural representation is mandatorily provided by an attorney, the attorney of the European Union may only take action of procedural representation together with a Bulgarian attorney. In the provision of assistance and protection the attorney of the European Union is obliged to use the same name in which he/ she exercises the legal profession in the same where he/ she has acquired competency. According to the Attorneys Act if an attorney of the European Union meets the relevant requirements he/she may have lasting establishment on the territory of the country in order to exercise the attorneys profession after being registered in the Single Register of Foreign Country Attorneys.

3. There is no quantitative restriction on the number of the attorneys in the country.

1.2. Remuneration

4. The right of the attorney to remuneration is envisaged in Art. 36 of the Attorney Act. The amount of the remuneration may not be lower than the one envisaged in the Ordinance of the Supreme Bar Council.

1.3. Ban on Advertising

5. As it was already mentioned, the national legislation establishes advertising restrictions. Art. 42 of the Attorney Act envisages that attorneys do not have the right to advertise their operations or to use means to solicit clients, which are incompatible to the provisions of the law and the rules of the professional attorneys ethics.

1.4. Main responsibilities

6. The main responsibilities of the attorneys in Bulgaria include:

- - oral or written consultations and opinions on legal issues;
- - drafting of all types of papers – petitions, complaints, applications, appeals, etc. in relation to the assignment made by the client;
- - representations of their clients and protection of their rights and legal interests before bodies of the judiciary, administrative authorities and services, as well as before individuals and legal entities.

1.5. Disruptive innovations

7. Besides this extensive regulation of the profession in response to the introduction of the new technologies and the needs of their clients the attorneys in Bulgaria are trying to find new ways for delivery of legal services. As there is an obligation for the attorneys to have an office (Art. 40 of the Attorney Act), the law firms in the country may only offer online services to complement their existing practices. On the internet sites of most of the law firms' information related to different questions of all branches of law can be found. For example some of the sites provide practical information on the procedure in case of an accident at the workplace, on the policy for protection of personal data, the terms of use of websites, etc. A great number of the attorneys in Bulgaria are offering online consultations through their internet sites. In some cases these consultations are free of charge, but usually they are paid. Besides consultations some of these sites provide generation of wide range of legal documents as for example contracts for donation of a motor vehicle, contracts for lease of agriculture land, documents for registration of undertakings, employment contracts, etc. The clients provide the necessary data through a questionnaire. Depending on the specificity of the document, usually it can take 10-15 minutes to answer the questionnaire. There are as well attorneys who are providing dispute resolution services.

8. Both the clients and the law firms enjoy the advantages of the online delivery of legal services. The clients receive legal services without having to spend time for meetings and consultations. There is no need for the clients to pre-record the date and time for a meeting or wondering how to go out of the office, trying to insert in their busy schedule another appointment. On the other hand this is an opportunity for the law firms to work with a larger number of clients as they are able to provide consultation in a convenient time, when they have no other meetings. However, there are attorneys who consider that the provision of online legal consultations have negative aspects. The main is that there is no opportunity for thorough examination of the case. Often there are small details, which are of a significant importance for the case, but which may be omitted in online consultations. There is an opinion that the free online consultations determine even lower quality of the service. Some cases are time consuming and the lack of payment may discourage the attorney. On the other hand the free of charge provision of legal services contradicts the Attorneys Act as it provides that the attorney may provide free of charge legal services and cooperation only to individuals who are entitled to alimony; persons in financial difficulty; parents, friends or other attorneys. The law stipulates that the negotiation of remuneration below the minimum threshold of the Ordinance, adopted by the Supreme Bar Council, shall be qualified as a disciplinary offence.

9. Online platforms, which provide ranking and reviews of the law firms in Bulgaria, are rare. The ranking is based on the clients' reviews, but they do not provide information of the caseload or financial performance of the attorneys. Probably one of the reasons for this situation is the ban on advertising, introduced by the Attorneys Act. The Bulgarian Commission on Protection of Competition (CPC) has adopted an advocacy opinion with regard to this provision of the law. With its Decision No. 353/22.04.2015 the CPC proposes the repeal of this provision. The removal of the ban on advertising would significantly favor the consumers and their awareness, it would contribute to greater transparency and more opportunities for gathering information.

2. Notary profession

2.1. Entry requirements

10. The Notaries and Notarial Practice Act states that admission to notarial practice shall be limited to capable natural persons who have not attained the age of sixty years, who are Bulgarian citizens or citizens of a Member State of the European Union, and who possess the following qualifications: master's degree in law; attainment of licensed competence to practise law under the Judicial System Act; completion of three years' length of service. The candidates notaries have to hold an examination, scheduled by an order of the Minister of Justice. A competitive examination shall be conducted by a commission composed of a chairperson, representing the Ministry of Justice, designated by the Minister of Justice, and four members: a Supreme Court of Cassation judge, designated by the President of the Supreme Court of Cassation, two notaries, designated by the Board of Notaries, and an academic degree holder teaching civil law sciences, designated by the Minister of Justice. Solely persons who have been entered in the Registry of the Notary Chamber of Bulgaria may practise as notaries.

11. A notary area of practice shall be coextensive with the geographical jurisdiction of the competent regional court. Art. 10 of the Notaries and Notarial Practice Act provides for that there may not be fewer than two notary vacancies in a particular geographical jurisdictions. One notary vacancy shall be created per 10,000 population in each particular geographical jurisdiction.

2.2. Remuneration

12. According to Art. 85 (3) of the Notaries and Notarial Practice Act the notary fees are determined by a tariff, adopted by the Council of Ministers Ministry of Justice after being consulted with the Notary Chamber.

2.3. Ban on Advertising

13. Art. 19 of the Ethical Code of the Notaries in Bulgaria imposes an obligation on notaries to refrain from unfair competition and provides non-exhaustive list of hypotheses it covers. One of them is any form of advertising.

2.4. Main responsibilities

14. Within the notarial procedures some of the main responsibilities of the notaries include:

- - legal transactions with deeds;
- - certifying the ownership of real estate, authentication date, content or signatures on private documents and the accuracy of the transcripts and copies of documents and papers;

- - notarial invitations, protests, certificates for appearance or non-appearance of persons before the notary to perform actions in front of him;
- - acceptance and return of deposited for safekeeping documents and papers;
- - entries, notes and their removal in cases provided by law;
- - issuance of certificates for the presence or absence of encumbrances.

2.5. Disruptive innovations

15. Due to the nature of the notarial procedures, which usually require face-to-face meetings between the notary and his / her client the provision of online services by the notaries in the country, is very limited. In general the notaries post on their internet sites information with regard to the different notarial procedures; example of documents (proxies, declarations, etc); calculator of the notary fees, which have to be paid by their clients for a particular service.

B. Advocacy initiatives of the Bulgarian Commission on Protection of Competition

16. In order to protect the free entrepreneurship in the country and to prevent restrictions or distortions of the competition the CPC is empowered to conduct assessment of the conformity with the provisions of the Law on Protection of Competition of drafts of legislative or regulatory administrative acts and general administrative acts and of legislative or regulatory administrative acts and general administrative acts, which have entered into force. Some of the provisions of the Attorney Act and the Notaries and Notarial Practice Act have been assessed by the competition authority with regard to their conformity with the competition rules.

1.1. Quantitative entry restrictions in the notarial profession

17. As it was already mentioned Art. 10 of the Notaries and Notarial Practice Act provides for that there may not be fewer than two notary vacancies in a particular geographical jurisdictions. One notary vacancy shall be created per 10,000 population in each particular geographical jurisdiction.

18. With its Decision No. 236/26.10.2006 the competition authority found that the objectives of this limitation of the number of notaries in a geographical jurisdictions are to ensure that all citizens have access to notarial services, especially in remote and not very populated areas and to ensure high quality of the services by providing adequate remuneration for the notaries, who practice the profession. On the other hand the limited number of notaries allows easy and effective control over their work throughout the country. With its decision the CPC expressed its opinion that the objective to guarantee adequate remuneration of the notaries contradicts the competition rules. The economic welfare of the notaries should be determined by the quality of the services he/ she offers.

19. In the assessment whether this quantitative restriction of the number of notaries in the country is justified the CPC took into account that at the moment of the proceedings there were 250 unfilled vacancies for notaries. The CPC found that this number is a significant part of the total number of the notaries in the country, so the increase of the number of the notaries or the removal of this limitation would not automatically improve the competitive environment on the market. One of the reasons for the large number of unfilled vacancies for notaries is the lack of motivation to practice in remote and rarely populated areas. The other reason stems from Art. 11 of the Notaries and Notarial Practice Act, which establishes an obligation for the candidates for notaries to point out a maximum of 3 judicial regions, where they would like to practice. The CPC found that this provision of the law contradicts the competition rules and proposed its repeal. According to the CPC the repeal of Art. 11 of the law would reduce the restrictive effect of the quantitative restriction of the number of the notaries in the country and would fill all vacancies. This would increase the number of the notaries and would improve the competitive environment on the market.

1.2. Exclusive rights of attorneys

20. With its Decision No. 353/22.04.2015 the CPC proposed amendment of the Draft Law for Amendment of the Attorney Act, which introduced non-exhaustive list of services to be provided exclusively by attorneys. This list includes services like giving oral and written consultations and statements on issues of law, preparation of complaints, drafting of notary acts, testaments, proxy, etc. The CPC established that this provision of the draft law may restrict the effective competition on the market as professionals with the appropriate knowledge and experience will no longer be allowed to carry out the reserved tasks. For example consultations in the field of tax law may be prepared both by an attorney or an auditor or any other qualified legal professional. So, the adoption of the provision of the draft law would have negative impact on other markets, where professionals may compete.

21. The CPC as well found that the provision of the draft law, which proposed the penalties for provision of services by professionals, who are not attorneys to be imposed by the relevant bar association to be as well very problematic. The proposed provision would lead to unacceptable empowerment of some undertakings to punish their direct competitors. This may restrict the effective competition on the market as it may lead to market closure.