

“Serbia’s Accession to the EU – A difficult but winnable process for the country, for real estate and for valuation”

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This talk isn't about the *benefits* of EU membership; it's about the *consequences of "ever closer union"*

"You can save yourself a lot of time and trouble by taking people at their word."

Janan Ganesh

"Determined to lay the foundations of an ever-closer union among the peoples of Europe,"

Opening phrase of the Treaty of Rome (now the Treaty on the Functioning of the European Union) → Van Gend & Loos/*Direct Effect* → Costa-ENEL/*Primacy of EU Law*)

If you think you're joining a trading bloc with benefits, think again.

Beyond real estate – The macro picture

“Europe will be built through crisis. It will be the sum of the solutions to those crises.” Jean Monnet

- No opt outs from Schengen (*Bonnie and Clyde*), foreign affairs (*Russia*), migration and asylum, borders and security (*mobile EU border police*), the euro and Banking Union (*they can walk in and close down a Serbian bank*)
- They might make you wait until after accession before allowing you to be part of that, but once you qualify, there is no choice! ... almost ... but:
- “There is no sustainable biosphere inside the EU and outside the Eurozone” (Wolfgang Münchau)

The Four Freedoms from a real estate and valuation focus

The Four Freedoms – free movement of capital, services, goods and persons – are the bedrock of the EU Internal Market, and all impact real estate. Serbia has to have adopted all Internal Market law by Day 1 of its membership of the EU.

- ***Free movement of capital*** guarantees the freedom to buy and sell real estate without obstacle anywhere in the Union
- ***Free movement of services*** enables valuers and all other property professionals to practice anywhere in the EU, with or without establishment, and with their home country qualifications and opens up public procurement
- ***Free movement of goods*** enables the free circulation of construction products and
- ***Free movement of persons*** creates an open construction market framed by EU workers' rights

Are those freedoms acceptable to the Serbian people, given that they work both ways?

Free movement of capital:

Are you happy to allow Europeans to buy your land under all circumstances without any obstacle?

- One Danish beach (Treaty Protocol n° 32)
- Alfredo Albore and Italian traitors
- The accession wave of 2004, *the Maltese exception* and the last Polish spasm
- Romanian farming land

The most important reason for ensuring the freedom to buy property goes to the heart of the Internal Market

Restrictions on property purchase are part of a classic cocktail of obstructions to foreign business investment. They fit nicely with:

- Requiring local qualifications
- Requiring a licence to operate
- Requiring a joint venture with a local party
- Restrictions on the legal form of the company
- Putting a percentage cap on foreign presence in an economic sector
- Imposing economic necessity tests

All of which took decades of EU law and case law to overcome. There will be no way to protect Serbian businesses from competition.

Freedom to provide real estate and valuation services with or without establishment

Housing (Scotland) Act – Obligation for valuation surveyors to be registered with or authorised to practice by the RICS

Scottish government commitment to modify the law to give equal status to REVs and TRVs

Freedom to provide valuation services (2)

Irish Valuation Office open competition for a position as a civil servant Valuer Grade III in the Valuation Office. It was open to candidates who

“1. Have attained, at a minimum, a level 8 qualification or equivalent on the National Framework of Qualifications, preferably in a property or economics related discipline,

or

2. Have attained the professional qualification of Chartered Surveyor (i.e. be a professional member of, or be entitled to apply to become a professional member of, the Society of Chartered Surveyors Ireland)”

“Successful appointees from this competition will be expected to become Chartered Surveyors within 5 years of appointment and the Valuation Office has a programme in place to support its Valuer staff in attaining this professional qualification.”

... and here's what EU law enabled us to get

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2. Have attained the professional qualification of Chartered Surveyor (i.e. be a professional member of, or be entitled to apply to become a professional member of, the Society of Chartered Surveyors Ireland)

or

3. Have attained a professional valuation qualification awarded by a body such as TEGoVA"

*"Successful appointees from this competition will be expected to become Chartered Surveyors within 5 years of appointment **or to attain a high level European qualification recognised by TEGoVA.**"*

That's the greatness of Europe – it shakes things up; it's a great weapon against vested interests and routine bureaucratic practices

In both the Scottish and the Irish cases, the government never actually meant to protect any vested interest or exclude TEGoVA. They were just bureaucratically accustomed to doing so because in the past it seemed like the only recognizable badge of excellence.

The proof is that the Irish could have protected themselves and stayed within EU law because the EU freedoms to provide services don't extend to public service jobs, yet they specifically opened the competition to all EU citizens.

Freedom to provide goods and services: *public procurement*

Under EU law, national and local administrations must have pan-European tendering procedures. These projects often concern contractors, developers, architects, engineers and town planning consultants.

All across the Union, tendering administrations will have to consider offers from Serbian companies, and Serbian administrations will have to open their tenders to all Europeans.

'English Partnerships' brownfield redevelopment schemes. UK government defence: "real estate doesn't move across borders, so EU law doesn't apply."

ECJ: No, buildings don't move across borders, but developers do.

Free advice

In the end ...

Despite all this, the vast majority of the laws regulating the lives of Serbians will remain Serbian, for real estate and valuation as for everything else.

In the future, there will still be lots of ambiguity, compromise and lack of transparency concerning the making of EU law, *but that's precisely because nobody wants a standard federal solution with a federal government and legislature.*

Even in the Eurozone, it is hard to imagine a federal EU budget of more than 5% of EU GDP. Spending it will still depend on the will of the member states acting collectively.

... trust your gut.