



Professional Law Report Confédération Fiscale Européenne (CFE)

6 August 2007 - 3/2007

NEWS - INTERNAL MARKET

EUROPEAN COMMISSION

Consultation on a code of conduct

The Directive 2006/123/EG on Services contains key provisions relating to improving quality of service and in particular to encouraging professional associations to draw up European codes of conduct. The European Commission is asking professional associations in the EU to provide information on their codes of conduct and to give their opinions on how best to develop codes of conduct at European level. The consultation (in the form of an online questionnaire) is open until 15 August 2007. The Commission encourages professional associations and organisations, whether they are European or national, to take the opportunity which is offered to them to express their opinion on codes of conduct, in place or in preparation.

[Read more \(click to open\):](#)

Quality of Services - Codes of conduct

[EN](#) [FR](#) [DE](#)

Press Release : Commission consults service providers on codes of conduct

[EN](#) [FR](#) [DE](#)

EUROPEAN PARLIAMENT

Lethinen report on cross border services

The Finnish Socialist from the European Parliaments Internal Market and Consumer Protection (IMCO) Committee (Lasse Lehtinen) drafted an initiative

report on the obligations of cross border service providers. It seeks to rebuild the COM's proposal from 1990 to reverse burden of proof in the area of professional liability, which the Commission had to withdraw after controversial discussions in particular in the European Parliament. The draft report follows a study from March 2007 commissioned by the IMCO committee which identifies five areas where the harmonisation of national laws relating to the obligations of service providers would be beneficial- the field of liberal profession is one of those. The rapporteur suggests that the Commission should propose harmonisation "along the lines of the Commission first proposal in 1990". The stated goal is to improve consumer protection and increase consumers' confidence in using cross-border services.

Vote in the EP's plenum in September

The Parliament's IMCO Committee adopted its report on the obligations of service providers in July. MEPs voted to delete the reference to the Commission's controversial proposal of 1990, which sought to harmonise service provider liability by "reversing the burden of proof". This would have meant tax adviser being presumed guilty for unsuccessful tax advice without the client needing to prove an error or negligence. Furthermore, instead of calling for a harmonisation of liability rules across Europe, EP is now calling for a "work program for an appropriate assessment of the need for a harmonising instrument". The Plenum of the EP has to adopt the report; the vote is due to take place in September. The EP will adopt it as a non-legislative Parliamentary resolution. Such resolutions do not have legal force. They do exert political pressure on the COM to follow their demands.

[Read more \(click to open\):](#)

Lethinen Report

[EN](#) [FR](#) [DE](#)

Study of the Policy Department Economic and Scientific Policy on „Obligations of cross border service providers“

[EN](#)

CFE Opinion Statement

[EN](#)

[Read more \(click to open\):](#)

Press Release

[EN](#) [FR](#) [DE](#)

NEWS - COMPETITION

EUROPEAN COMMISSION

Nationality Requirements for Notaries

European Commission takes 7 Member States to the ECJ to ensure compliance with the principle of non-discrimination

The Commission has decided on 27 June 2007 to take Belgium, Germany, Greece, France, Luxembourg and Austria to the Court of Justice on the grounds that these Member States permit only their own nationals to practice as notaries. The Commission has also decided to take Portugal to the Court of Justice for its failure to transpose Directive 89/48 EEC for notaries. According to the Commission, this nationality requirement contravenes the freedom of establishment enshrined in Article 43 of the EC Treaty and cannot be justified by reference to Article 45, which exempts activities related to the exercise of official authority.

Conditions are not met by Notaries

The Court of Justice has ruled that such participation in official authority activities must be direct and specific in order to be justified by reference to Article 45. The Commission considers that these conditions are not met in the case of notaries as these professionals cannot impose a decision against the will of one of the parties they are advising. In other words, notaries do not take decisions with regard to State authority and therefore cannot be deemed to exercise such official authority. In their replies to the Commission's reasoned opinions the Member States in question maintained their position, and therefore the Commission has decided to refer the matter to the ECJ. By contrast, the Netherlands has committed itself to complying with the reasoned opinion. It now joins Spain, Italy and Portugal in abolishing the nationality requirement previously in force for notaries.

NEWS - JUSTICE

Money laundering and terrorist financing

On 14 June 2007 the EU announced new rules obliging persons leaving or entering the EU to declare certain sums of cash. As of 15 June 2007, people entering or leaving the EU must declare to the customs authorities if they are carrying €10,000 or more in cash or equivalent. This legislation, which will complement the EU Third Anti-Money Laundering Directive, aims to introduce an EU-wide common approach to controlling cash movements into and out of the EU. The new rules also mean that customs officials are empowered to undertake controls on people and their luggage and detain cash that has not been declared. Moreover, they are required to initiate proceedings against people who fail to declare cash of an amount of €10,000 or more. It is up to Member States to ensure that penalties are proportionate to any offence, but also have a deterrent effect. They must also record information obtained through declaration or control and make it available to the competent authority for preventing money laundering and financing of terrorism. In the event that there is evidence that cash is being carried for the purpose of money laundering or terrorist financing, Member States may exchange information.

[Read more \(click to open\):](#)

Information Leaflet on new rules

[EN](#) [FR](#) [DE](#)

Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community

[EN](#) [FR](#) [DE](#)

Declaration forms

[EN](#) [FR](#) [DE](#)

NEWS - JURISDICTION

Money Laundering and the right to a Fair Trial - ECJ Case C-305/05

On the 26 June 2007 the ECJ handed down its judgment in the case of „Ordre des barreaux francophones and germanophone and Others”, C-305/05. The question referred for a preliminary ruling concerns the legality of Article 2a(5) of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001. Several Belgian bar associations brought a case to the Belgian Constitutional Court arguing against how the Anti-Money Laundering Directive was transposed into national law by the Law of 12 January 2004. The ECJ ruled that the national law did not infringe the right to a fair trial in the way that the applicants argued it did.

Issue

The group of applicants maintained that Articles 4, 25 and 27 of the Law of 12 January 2004, in so far as they apply to lawyers, unjustifiably infringe on professional secrecy and the independence of lawyers by obligating them to both inform the competent authorities if they come across facts which they know or suspect to be linked to money laundering and to transmit to those authorities additional information which those authorities consider useful. They argue

that their clients' basic right to a fair trial depends on this professional confidentiality and the national law requirements relating to money laundering unjustly infringe upon this right.

No obligation for imposing clients' information

According to the ECJ, "Article 6(3) of Directive 91/308 states that the Member States are not obliged to impose the obligations of information and cooperation on lawyers as regards information which they have received from a client, or obtained on one of their clients, in the course of ascertaining the client's legal position or in the course of performing their task of defending or representing that client in, or concerning, judicial proceedings, including the giving of advice on instituting or avoiding such proceedings, whether such information is received or obtained before, during or after such proceedings." The court noted that the professional activities of the applicants extend beyond strict legal services, which are excluded from the money laundering obligations on the basis of professional secrecy and can include "essentially those of a financial nature or concerning real estate". When they are acting in cases such as the latter the money laundering obligations do apply.

ECJ ruling

"The obligations of information and of cooperation with the authorities responsible for combating money laundering, laid down in Article 6(1) of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001, and imposed on lawyers by Article 2a(5) of Directive 91/308, account being taken of the second subparagraph of Article 6(3) thereof, do not infringe the right to a fair trial as guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 6(2) EU."

[Read more \(click to open\):](#)

Judgment of the ECJ (C-305/05)

[EN](#) [FR](#) [DE](#)

NEWS - JURISDICTION

EUROPEAN COMMISSION

Commission's Transparency initiative

As was detailed in the Professional Law Report 1-2/2007, in November 2005 the Commission published a Green Paper launching the „European Transparency Initiative” (ETI). One of the key objectives of the green paper was to launch a broad public consultation on the key components of the ETI including “the need for a more structured framework for the activities of interest representatives (lobbyists)”. Following on from this, on 21 March 2007 the Commission decided to set up a public register for all interest representatives working to influence decisions taken in EU institutions. Commissioner Kallas spoke at the Federation of European and International Associations Established in Belgium (FAIB) in Brussels on 18 June 2007.

[Read more \(click to open\):](#)

Green Paper on European Transparency Initiative

[EN](#) [FR](#) [DE](#)

Speech by Siim Kallas (Vice-President of the European Commission responsible for Administrative Affairs, Audit and Anti-Fraud European Transparency Initiative)

[EN](#)

Consultation on the Transparency Initiative

[EN](#) [FR](#) [DE](#)

European Parliament: Working Document on the European Transparency Initiative (COM(2006))194 final (green paper) Committee on Budgetary Control

[EN](#)

NEWS - OTHER

Communication on a stronger partnership to improve access to foreign markets for EU business

The European Commission adopted the Communication „Global Europe: A Stronger Partnership to deliver Market Access for European exporters” on 18 April 2007. This strategy for breaking down trade barriers abroad and creating new export opportunities is part of the Commission's new Global Europe trade policy framework. The focal point of this new approach is the development of a new decentralised partnership between the Commission, Member States and business in third countries with a view to using local expertise to make trade barriers easier to identify and tackle. These collaborative groupings would be known as “Market Access Teams”. The newly-proposed Market Access Partnership will aim to benefit the interests of both larger and smaller EU businesses and Member States.

[Read more \(click to open\):](#)

„Global Europe: A stronger partnership to deliver market access for European exporters“ published by the European Commission

[EN](#)

Innovation in Services

A report of the Commission's expert working group on Innovation in Services has been published. To read “Fostering Innovation in Services”.

[Read more \(click to open\):](#)

[EN](#)

European Business Test Panel (EBTP)

CFE was contacted by DG Internal Market and Services with regard to the EBTP.

The EBTP is a consultation tool and consists of individual companies that are willing to reply to internet based questionnaires on a regular basis. While this is not directly relevant for CFE members, they may wish to pass on the option of joining the panel to tax advisers (for their clients). Filling out such a questionnaire normally takes 15-20 minutes. The Commission is aiming to run three to eight consultations a year, taking into account the time companies invest in a consultation. The panel is used in various forms of policy preparation at Commission level. The results of a consultation can be used in the so-called impact assessment procedure and evaluations. In other cases the results are used, for example, to set up communication strategies.

The driving factor behind the EBTP is that within the Commission's consultation strategy individual companies can provide input into the policy processes at European level. The next consultations planned are on SEPA (Single Euro Payments Area) and the European Private Company Statute (EPC). Consultations on Solvit and Green Industrial Policy are under discussion at the moment.

Participation in the EBTP is voluntary in all stages. Once a company has signed up, it will be invited to fill out questionnaires for upcoming consultations. There is however no obligation to do so. Based upon the description for the consultation, companies can decide if the consultation is worth participating in.

[Read more \(click to open\):](#)

European Business Test Panel

[EN](#) [FR](#) [DE](#)

Commentary on the Services Directive

The Council of Bars and Law Societies of Europe (CCBE) have prepared an internal commentary on the Services Directive. For more information contact ccbe@ccbe.org.

OECD study on tax intermediaries

New working papers

The study on the role of tax intermediaries, set up by the Forum on Tax Administration (FTA) under the **Seoul Declaration (see also the terms of reference)**, has made three additional draft working papers available. These are (click to open):

- **Working paper 4: Placing risk management and the enhanced relationship in context**
- **Working paper 5: Risk management**
- **Working paper 6: The enhanced relationship**

These papers build on the draft working papers that were published in April 2007:

- **Working Paper 1: How the study team is working**
- **Working Paper 2: A draft framework for the study team's report**
- **Working Paper 3: Overview - the emerging direction of the study**

The draft working papers have been written by the study team for the purpose of the study. They have not been endorsed in advance by the FTA which established the study. The study team has made them available to facilitate full consultation with tax intermediaries and to provide an update on the progress being made.

The CFE submitted the position paper on 26 June 2007 to OECD. In the recently published working paper on the risk management (working paper 5), page 7 under item 23, OECD made reference to the CFE and the CFE guidelines, acknowledging the positive value of the professional standards.

OECD will seek further views – both through their discussions and by encouraging countries to hold their own domestic consultations. OECD would like all these discussions to be completed by 14th September 2007.

[Read more \(click to open\):](#)

CFE Position Paper on the OECD study on the role of tax intermediaries June 2007

[EN](#)

IMPRESSUM

Confédération Fiscale Européenne
188A, Av. de Tervuren
B-1150 Brussels

Editors: Una Maguire (ITI), RA Susanne Metzler

If you have any suggestions or questions, please
feel free to contact the editors:

brusselsoffice@cfe-eutax.org

Layout: Stella Willborn

Disclaimer: The Confédération Fiscale Européenne (CFE) distributes this report to enhance public access to information about European policies in general. The CFE accepts no responsibility or liability whatsoever with regard to the material. The links will connect you to sites which are in no way controlled by the CFE, and CFE is not responsible for their content, or indeed for any further links which they may support. All rights reserved.