



Professional Law Report Confédération Fiscale Européenne (CFE)

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CFE PROFESSIONAL AFFAIRS CONFERENCE

CROSS-BORDER TAX ADVICE

CFE Professional Affairs Conference “A developing relationship: tax authority – taxpayer – tax adviser”

The CFE has the pleasure to invite you to join the European Conference on Tax Advisers' Professional Affairs which will take place on **1 December 2010** in Düsseldorf/Germany.

The conference will address the recent efforts of tax administrations to increase compliance of taxpayers through various initiatives that do or do not include tax advisers. Tax authorities in different countries have chosen different approaches such as increasing transparency through additional disclosure obligations, enhanced mutual trust, compliance monitoring by tax advisers or risk management by tax authorities. It seems worth asking whether these new forms of cooperation will create to win-win-situations for all parties involved or to what extent they will have the effect of preventing taxpayers from making use of their rights.

The half-day conference will provide views from France, Germany, the United Kingdom and the Netherlands, including both tax administrations and businesses.

For more information and to register, please click on our website: [CFE Website](#)

Commission takes Belgium to court for requiring prior declaration from temporary services providers

On 3 June 2010, the European Commission decided to bring an action for infringement of the freedom to provide services against Belgium before the European Court of Justice. The Commission considers that Belgium may not require self-employed service providers from other member states to make a prior declaration before being able to provide temporary services in Belgium. In Belgium, currently, any self-employed worker from another member state who wishes to provide temporary services in Belgium (except exempted cases) must make a prior 'Limosa' declaration. Failure to comply with this obligation is subject to severe fines. Such additional procedural steps can be justified where the service activity is part of a regulated profession (like tax advisers in Belgium) or for posted workers where specific EU legislation applies (Directive 96/71/EC) but is considered disproportionate where no such exemptions apply.

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Press Release

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Commission consulted stakeholders on obstacles to cross-border services

From 30 June until 13 September 2010, the Commission conducted a public consultation on existing obstacles to the cross-border activity of service providers, concerning both temporary activity and permanent establishment. The consultation is to be seen in the context of the implementation of the Services Directive 2006/123/EC. The EU member states had to screen their legislation for compatibility with EU law and to report restrictions that they intend to maintain to the Commission by 28 December 2009. The contributions from citizens, enterprises and other stakeholders will not only enable the Commission to take into account their views on existing restrictions but also detect possible omissions in the member states' reports. CFE informed about the consultation on its website and through communication to its members.

CROSS-BORDER TAX ADVICE

READ MORE (click to open):

Related Commission website, containing also implementation reports from all EU countries

[EN](#)

Commission goes to Court over Austrian provisions on fiscal representatives

The European Commission referred Austria to the European Court of Justice on 3 June 2010 over a discriminatory tax law provision with implications for tax advisers from other member states. Austrian law request foreign investment funds, real estate funds and credit institutions to appoint a fiscal representative established in Austria when carrying out operations in Austria. The Commission considers that these provisions are incompatible with the freedom to provide services and discriminate foreign investment funds, real estate funds and credit institutions as well as foreign tax professionals which, as a result of this rule, cannot be appointed as fiscal representatives.

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Press Release [EN](#) [FR](#) [DE](#) [PT](#)

EP votes for facilitations for EEA citizens that work in Switzerland

On 7 September 2010, the EP adopted a resolution on a better integration of Switzerland in the Internal Market and on easing the conditions for EU and EEA citizens that intend to work in Switzerland. A requirement considered particularly burdensome is the prior notification and the waiting period of eight days before the beginning of activities. Among other aspects addressed, the EP welcomed the Swiss Parliament's decision to transpose the Professional Qualifications Directive 2005/36/EC.

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Press release EP [EN](#) [FR](#) [DE](#)

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

PROFESSIONAL QUALIFICATIONS

Commission refers Luxembourg back to the ECJ for restricting Romanian and Bulgarian professionals

The European Commission has sent a letter of formal notice on 24 June 2010 to Luxembourg as the country refuses to extend the scope of rules on the recognition of professional qualifications to citizens from Romania and Bulgaria. This concerns a number of medical professions and architects that are dealt with in the Professional Qualifications Directive 2005/36/EC. The Commission had previously referred Luxembourg to the EU Court of Justice and now considers that the country does not respect the ECJ's judgment (C-223/08). The Commission will ask the ECJ to impose financial penalties on Luxembourg of € 4,760 per day from the date of the existing Court ruling, to be tripled after a future second ruling.

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ECJ Advocate General Trstenjak delivers opinion on recognition of qualifications in Austrian lawyer's case

In the case Robert Koller (C-118/09), Advocate-General Verica Trstenjak considered on 2 June 2010 that an Austrian lawyer who had obtained an additional qualification in Spain where he was licensed as a lawyer, does not have to complete the legal training period (Referendariat) required in Austria but would need to take an aptitude test. Mr Koller, after successfully completing his Austrian law studies, took Spanish law courses in Spain, followed by an exam and his license as abogado with the Madrid bar. Recognition of his qualification in Austria was refused because Mr Koller had not completed a five-year training period mandatory under Austrian law to which (at that time) there was no equivalent in Spain. Austria claims that the use of the Directive by Mr Koller was a circumvention of the Austrian rules on lawyers' qualifications. The opinions of the Advocates-General are not binding for the ECJ.

READ MORE (click to open):

Opinion of Advocate-General Trstenjak

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PROFESSIONAL LAW

ECJ Advocate-General Jan Mazák gives opinion on advertising restrictions in the light of the EU Services Directive

In the case *Société fiduciaire d'expertise comptable* (C-119/09), the European Court of Justice will have to decide whether France may continue to apply the prohibition on doorstep selling for accountants (experts-comptables) or whether this prohibition is incompatible with the EU Services Directive. A similar prohibition exists for lawyers. Advocate-General Mazák explains that the French rule was no total prohibitions of commercial communications or of a particular form thereof in the sense of Art.24 (1) Service Directive (2006/123/EC) and could therefore be justified as it protected the independence of the accountant. Advocate-General opinions are not binding for the ECJ.

READ MORE (click to open):

Opinion of Advocate-General Mazák

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[RO](#) [SK](#) [SL](#) [FI](#)

Proposed Consumer Rights Directive could affect tax advisers' activity

Where clients are private persons, the Directive on Consumer rights proposed in October 2008 could, once adopted, affect the activity of tax advisers. Among various new information duties, the Commission proposal contains a right of withdrawal which clients could exercise during 14 days. In the EP, Rapporteur Andreas Schwab (EPP, Germany) from the IMCO (Internal Market and Consumer Protection) Committee presented an amended version on 31 May 2010 which would affect the mandates of tax advisers to a lesser extent. The EP plenary is expected to vote for the proposal in first reading in January 2011.

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Commission proposal, 8/10/08 [EN](#) [FR](#) [DE](#)

Proposed IMCO amendments, 25/06/10

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

Advocate-General Villalón pleads that foreigners should be able to become notaries

In his opinion published on 14 September 2010, Advocate-General Pedro Cruz Villalón considered that by allowing only their nationals to become notaries, AT, BE, DE, FR and GR are infringing EU law. The fact that notaries participate in the exercise of official authority did not justify direct discrimination on grounds of nationality. This applies notwithstanding the exclusion of the exercise of official authority from the freedom of establishment. The case also concerns the application of the Professional Qualifications Directive 2005/36/EC on notaries. In this regard, Villalón considers that Portugal has failed to implement the recognition system of the Directive as required. The numbers of the respective cases are C-47/08, C-50/08, C-51/08, C-52/08, C-53/08, C-54/08 and C-61/08.

READ MORE (click to open):

ECJ Press Release [EN](#) [FR](#) [DE](#)

ECJ Case Search [EN](#) (all languages)

ECJ: In-house lawyers enjoy no professional secrecy in EU competition cases

On 14 September 2010, the European Court of Justice upheld a judgment from the European Court of First Instance saying that internal communication between in-house lawyers and the enterprise is not protected by the lawyer's legal privilege (C-550/07, *Akzo Akcros*). Although an in-house lawyer might be subject to the same professional duties as an independent lawyer, the fact that an in-house lawyer was employed by a client prevented him/her from being completely independent. In the laws of the member states, there was no clear tendency that the communication with in-house lawyers was protected by legal privilege. The case concerned investigations by the European Commission in a competition law case in the UK. This outcome of the case has been expected after Advocate-General Juliane Kokott too confirmed the view of the Court of First Instance in her opinion of 29 April 2010 (see CFE Professional Law Report 1/2010).

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

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

PROFESSIONAL LAW

ECJ tolerates demographic and geographic criteria for establishment of pharmacies in Spain

The European Court of Justice has decided on 1 June 2010 (joint cases C-570 and 571/07) that Spanish regional authorities may in principle continue to apply rules that require that no second pharmacy may be established in areas with a maximum of 2,800 inhabitants (any increase of 2,000 inhabitants would allow the establishment of another pharmacy) and that a distance of 250 meters to the next pharmacy must be kept. The Court found that such restrictions to the freedom of establishment could be justified by the reason of granting reliable and high quality access to pharmaceuticals but stressed that in particularly densely and little populated areas, exceptions to these rules must be possible.

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

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

ANTI-MONEY LAUNDERING

Commission asks France to respect ECJ judgment

On 3 June 2010, the Commission has sent a letter of formal notice in order to push France to comply with an ECJ judgment from 2009 in a case (C-170/09) on late implementation of the 3rd Anti Money Laundering Directive (2005/60/EC).

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INTERNAL MARKET POLICY

Commission seeks to speed up Services Directive implementation by sending notice to slow member states

According to a report published on 24 June 2010, the majority of member states have already adopted "horizontal" implementing legislation and in most countries a number of changes to specific regulations have also been made. The European Commission however uttered dissatisfaction with the progress in implementing the Services Directive in 12 member states. On the same day, the Commission sent a reasoned opinion to those member states who have not yet notified to the Commission the adoption of all the regulatory changes required by the Directive – namely AT, BE, CY, FR, DE, GR, IE, LU, PT, RO, SI and UK. Information about the contested regulations in the abovementioned member states has not been made public.

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Commission report to the Council on the implementation, 18/05/10 [EN](#) [FR](#) [DE](#)

Commission curious why e-commerce remains limited

The European Commission is currently carrying out a public consultation on e-commerce because it considers that on-line services, in particular cross-border, develop slower than they could and –according to the Commission– should. To a large extent, the consultation is aimed at obtaining consumers' experience but enterprises and public administration are also addressed. The consultation document also mentions the regulated professions where the Commission would like codes of conduct for on-line services to be developed. The consultation will be open until 15 October 2010.

READ MORE (click to open):

Consultation document [EN](#) [FR](#)

INTERNAL MARKET POLICY

Barnier's 'Single Market Act' expected in early October

EU Internal Market Commissioner Michel Barnier is currently finalising the "Single Market Act", a package of legislative and other measures designed to complete the single market by 31 December 2012, 20 years after its introduction. The Single Market Act which, according to press information, would be presented on 6 October 2010, has been inspired by the ideas presented by Mario Monti in his report "A new strategy for the single market" presented in May 2010 (see CFE Professional Law Report 1/2010). The overhaul of the single market would contain approximately 30 proposals, some legislative, in areas that include like taxation. Tax Commissioner Algirdas Šemeta is reported to be part of the Task Force of Commissioners that has elaborated the new package.

IMI network comprises 5,000+ authorities already

On 3 August 2010, the Commission proudly announced that 5,000 authorities so far had been included in the IMI (Internal Market Information System) network. The IMI is an on-line communication tool for public authorities to find and address the competent authority in another member state, allowing communication through pre-translated sets of standard questions and answers. It is essential for the functioning of the Union's system on recognition of professional qualifications for which it has been introduced in 2008, serving as an example for subsequent pieces of EU legislation which require close cooperation of Member States' authorities at all levels, in particular the Services Directive. According to the Commission, in the first half of 2010, IMI was used in almost 1,000 cases. The 5,000th authority to join has been a municipality on the Spanish island Mallorca.

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OTHER EU POLICY

Eurostat publishes Yearbook 2010

On 9 September 2010, Eurostat announced the publication of its 2010 yearbook, containing 664 pages of facts and figures about the EU and its member states and in some cases EU candidates and other countries. The information is divided into the following chapters: national accounts, economy, population, health, education, labour market, living conditions and welfare, industry and services, agriculture, forestry and fisheries, trade, transport, environment and energy, science and technology and Europe's regions.

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Complete Yearbook (15 MB download) [EN](#)

IMPRESSUM



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