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**Opinion Statement PAC 3/2013 of the CFE  
on cross-border professional indemnity insurance**

**Prepared by the CFE Professional Affairs Committee**

**Submitted to the European Commission**

**In August 2013**

*CFE (Confédération Fiscale Européenne) is the umbrella organisation representing the tax profession in Europe. Our members are 33 professional organisations from 25 European countries (22 EU member states) with 180,000 individual members. Our functions are to safeguard the professional interests of tax advisers, to assure the quality of tax services provided by tax advisers, to exchange information about national tax laws and professional law and to contribute to the coordination of tax law in Europe.*

*CFE is registered in the EU Transparency Register (no. 3543183647-05).*

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In the context of the European Commission's current public consultation on professional indemnity insurance (PII), following up to the Communication COM(2012)261 of 8 June 2012 and further discussions, we would like to take the opportunity to comment on insurance issues as an obstacle for cross-border services.

#### **I- Overview: the PII situation for tax advisers in Europe**

Ten of 19 EU member states surveyed by CFE<sup>1</sup> require PII from tax advisers established in their territory (AT, BE, CZ, DE, FR, LU, PL, PT, RO, SK). All of these except for Belgium also require PII for temporary services from other countries. In three member states, PII is required only for (voluntary) members of the relevant professional bodies (IE, NL, UK). In six member states (FI, GR, IT, LV, MT, ES), there are no PII requirements for tax advisers.

In seven member states (AT, CZ, DE, IE, SK, ES, UK), Europe-wide cross-border PII cover is readily available to tax advisers, due to framework agreements concluded by professional bodies with insurance companies; in some of these, there is a surcharge for tax advisers who opt for cross-border PII.

Tax advice is an activity seldom practiced across borders, for reasons unrelated to regulation: the main reasons for not practicing in another country are the lack of knowledge of foreign tax laws and languages. In practice, most clients in need of cross-border tax advice are served by referring them to a qualified professional in the country for which advice is sought; this may take place within the same network or through a recommendation by the client's home country tax adviser.

#### **II- Should tax advisers be obliged to take out PII?**

CFE considers that tax advisers should arrange for PII cover adequate to the financial risk of their activity, irrespectively of whether they practice in their country of establishment or abroad. Whether or not required by law, this is a part of their professional responsibility towards the client<sup>2</sup>.

As we support cross-border PII, we believe that member states should be allowed to require PII from a person who gives advice in tax to clients, irrespectively of whether the person is established in their

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<sup>1</sup> Information on the tax profession in Europe taken from the CFE European Professional Affairs Handbook for Tax Advisers, 2nd edition 2013.

<sup>2</sup> "Professional Qualifications and Ethics of Tax Advisers in Europe", CFE Guidelines.

territory or another country. However, we do not see a need to introduce a legal insurance requirement where it does not exist. The experience from Ireland, the Netherlands and the UK proves that effective client protection can be achieved without a PII requirement in the law.

***Rather than abolishing PII requirements for tax advisers, we would favour measures to make such insurance better available.***

### III- Should there be a uniform EU PII instrument?

We observe that across countries and professions, there are large differences in

- the potential for cross-border mobility in the professions and interest of professionals and clients; in professions where mobility is low, there is a risk that the benefits of a uniform EU insurance solution will not outweigh the additional administrative efforts and resulting costs of implementing such system.

- the kind of professional activities, their associated risks and the degree to which insurance is needed. Even within one profession, the activities that professionals may carry out and regularly perform can differ greatly across the EU, complicating a uniform EU-wide assessment of risks associated with giving tax advice:

*Examples: In most member states, tax advisers regularly do accounting, social security or pensions, while in some, these services are generally not offered by tax advisers or even restricted to them; legal representation before court in tax matters is allowed to tax advisers in many member states but only in some, this includes criminal tax matters; small company or voluntary audits are reserved to auditors in a majority of member states but open to tax advisers in some.*

- the extent and the way professional qualification, conduct and supervision are regulated; many professions are not regulated in every member state:

*The qualification needed for giving tax advice or using the title tax adviser is regulated by law in at least eleven member states (AT, BE, CZ, FR, DE, GR, HR, PL, PT, RO, SK); in at least five member states (IE, LV, NL, ES, UK), qualification requirements exist only for voluntary members of certain professional bodies; in at least four member states (IT, FI, LU, MT), no specific regulation of qualification for tax advisers exists. The situation for the regulation of professional conduct and the imposition of sanctions for breaches of professional duties is similar.*

Where no regulation by law exists, insurers would find it difficult to assess which professional bodies provide sufficient assurance or indeed, whether a tax adviser who is not a member of any professional body meets the relevant requirements.

***We conclude from this that there cannot be an EU one-size-fits-all solution, neither for all countries in the same sector nor for all sectors within a given country or the EU. Instead, there would have to be tailored solutions on a country-by-country and profession-by-profession basis.***

### IV- The way forward

We believe that professional bodies at national level are best placed to work out solutions with insurance companies in the form of framework contracts, as they can take better account of the particularities of national law and professional practices than European bodies and as they have

more bargaining power towards insurance companies than individual professionals. As set out above, this has produced workable outcomes in seven member states.

***The solutions which have been found in a number of member states should be seen as best practice and not be replaced by any EU solution.***

Such solutions at national level could also be developed for the remaining member states. Contractual freedom implies that insurance companies and national professional bodies should be flexible when negotiating solutions. This may mean that agreements between insurance companies and professional bodies could differ in content and persons covered (i.e. whether an insurance solution will be offered to all professionals or reserved to members of certain professional bodies) and that there could be several contracts with different insurance companies and professional bodies in one country. To provide for the effective exchange of practices and a minimum of coherence, organisations representing the insurance industry and professional bodies at European level should play a coordinating role. As the outcome should not be an EU PII instrument, we do not see that the European Commission should moderate this process.

We do however see a role for the Commission to the extent that it could encourage the development of national, profession-specific solutions, recommend common features of the solutions to be developed, evaluate progress within a given time frame and suggest any follow-up measures.

#### **Cost**

When developing cross-border PII solutions, regard must be paid to the cost of such additional insurance cover. Any solutions that apply to all tax advisers must not substantially increase the cost of insurance for every professional to the actual benefit of very few. This applies particularly to professions with little (potential for) cross-border mobility. Where additional cross-border insurance cover is made available at the request of the professional (opt-in), a surcharge may be more justified but must still remain proportionate.

#### *Contact persons:*

*Dick Barmantlo, Chairman of the CFE Professional Affairs Committee*

*Rudolf Reibel, Fiscal and Professional Affairs Officer, [rreibel@cfe-eutax.org](mailto:rreibel@cfe-eutax.org), phone: +32 (0)2 761 0091*