



Professional Law Report Confédération Fiscale Européenne (CFE)

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NEWS - INTERNAL MARKET

EUROPEAN COMMISSION

Implementation of the directive on services

In the context of the national transposition of the Directive 2006/123/EC on services in the internal market, the European Commission published last summer the English version of the "Handbook on implementation of the services directive" (see CFE PLR 4/2007). The purpose is to give Member States technical assistance in the implementation process. It is neither exhaustive nor legally binding and does not prescribe one single way of implementation. It rather tries to describe appropriate ways of implementation and draws attention to important issues in the implementation process. It is based on preliminary discussions with Member States and seeks to reply to questions already raised by them or which can be easily anticipated.

This document is available on the Internet and can now be downloaded in all EU languages.

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[Handbook on the implementation of the Services Directive](#)

Directive on services- Quality of services – the role of European codes of conduct

One of the essential features of the directive on services is the chapter dealing with quality of services. It aims at ensuring the high quality of services by encouraging, among other things, self-regulation, if need be through the elaboration of European codes of conduct.

The Commission held a public on-line consultation between 30 May and 15 August 2007, when professional organisations were asked to provide

information on their codes of conduct, in force or under preparation, and to give their views on the best possible way to establish codes of conduct at European level.

Further to this consultation, DG Internal Market and Services published a document on this subject. It seeks to contribute to the promotion of European codes of conduct. To this end, based on the public consultation, it features an inventory of existing European codes of conduct, with a description of their scope and content and of the relationship with national codes of conduct.

According to the Commission, the purpose of this document is not to lay down a European model code, or to oblige professional organisations to engage in self-regulation, but only to provide a technical overview of existing European codes and to constitute a source of information and of inspiration for those professional organisations wishing to draw up such codes, notably by disseminating information on the form and content of the existing codes.

CFE contributed to the public consultation of the Commission last year and is mentioned in the now published document. Currently, CFE conducts a broad survey on the code of conducts of the CFE Member Organisations. A result will be published end of 2008.

[Read more \(document is only available in FR\):](#)

Results COM-online Consultation

[FR](#)

Single Market Review

The Commission adopted on 20th November 2007 a communication on "A single market for 21st century Europe". The single market is one pillar of the European Union. Free movement of people, goods, services and capital is the core element for the European Citizens and enables Europeans to live, work, study and retire in a different Country. The Single Market Review aims at discover the still

untapped potential. The single market needs to adapt to new realities. This communication is supported by some staff working papers on the review of achievements, instruments for a modernized single market policy or initiatives in the area of retail financial services.

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„Oxera Study” on audit market

The Commission has published a study on the ownership rules that apply to audit firms and their consequences on audit market concentration. The study analyses whether changes to the ownership rules of audit firms might help increase the number of international players in the audit market. At present, the European Statutory Audit directive requires that auditors hold a majority of the voting rights in an audit firm and control the management board.

Some key conclusions of the Oxera study:

- The audit market for major listed companies is dominated by the Big Four audit firms. For the smaller audit firms, important investments might be necessary over years in order to expand and to enter the international audit market.
- Analysis of an investment model developed to assess such potential expansion plans indicates that an audit firm owned by external investors, instead of auditors, might take more easily the decision to expand into the market of large audits. One of the reasons is that existing ownership structures may be estimated to increase audit firms' cost of raising capital by perhaps as much as 10%.
- Nevertheless, restrictions on access to capital appear to represent only one of several potential barriers to entry. There are other barriers which also play an important role: reputation, the need for international coverage, international management structures, and liability risk. The impact of liability risk on the cost of capital can be significant and may lead to capital rationing.
- There may also be good reasons for audit firms to stick to their current structures: for example, to retain their human capital. From the regulatory point of

view, existing ownership structures have been justified by the necessity to protect independence of audit firms. However, the analysis of the decision-making processes in large audit firms indicates that alternative ownership structures are unlikely to impair auditor independence in practice. Specific conflicts of interest could be dealt with through the establishment of appropriate safeguards.

According to the Commission, the results of the study will not have an impact on the profession of tax advisers.

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Oxera Study

[EN](#)

Charlie Mc Creevy presents statutory audit package

The Commissioner announced on 19 December 2007 at the JURI Committee of the European Parliament a series of measures in the area of statutory audit. The Statutory audit directive („8th company law directive”) was adopted in May 2006 and comes into effect on 29th June 2008. The directive sets out a framework of principles which Member States are to implement into their national legislation. Furthermore, it envisages that the Commission will continue to focus on policy areas such as auditor liability, International Standards for Auditing, inspections of audit firms and relations with third countries. In relation to audit liability, the Commissioner announced that the Commission will publish at the first quarter of this year a recommendation to Member States asking them to limit auditor liability. With regard to ownership restrictions, a public consultation will be launched in the first quarter of this year. The Commissioner encourages all those who have a view or experience in this field to share with the Commission.

COM website for regulated professions

On the Commissions website a list of regulated professions in the EU Member States is published. The professions covered by this site are those regulated

under the general system directives. According to European law, a profession is said to be regulated when access to it is subject by legal, regulatory or administrative provisions to the possession of a specific qualification. Some of the lists of regulated professions for the newer Member States and those regulated under Directive 1999/42/CE are still being compiled and will only be completed by the Commission over the coming months.

On this site, one can find:

- The lists available so far of the professions regulated in the EU Member States, Iceland, Norway, Liechtenstein and Switzerland;
- Search buttons to find the list of regulated professions by country and/or by name or part of the name of the profession;
- Information for each regulated profession such as contact points for information or competent authorities;
- Statistics on the regulated professions which show the number of migrants concerned by recognition.

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[EN](#)

Infringement proceedings against France

The Commission has decided to start legal proceedings against France before the Court of Justice of the European Communities for breaches of Articles 39, 43 and 49 of the EC Treaty and of Directive 92/51/EEC on the general recognition of diplomas (consolidated in Directive 2005/36/EC) on account of its refusal to allow snowboard instructors from other Member States, especially Germany, to teach this discipline on its own in France on the grounds that it may only be taught by ski instructors.

As a result, snowboard instructors from other Member States who have not been trained as ski instructors are currently unable to engage in their occupation in France. The Commission believes this ban might be justified on consumer protection grounds in that the presence of ski instructors teaching different disciplines at French ski resorts might mislead consumers with regard to the extent of the snowboard instructors' abilities. However, the Commission considers that consumers would be better protected by less restrictive measures such as requiring snowboard instructors to display the vocational or training qualification of their Member State of origin.

Free movement of services: infringement proceedings against Sweden

The Commission has decided to send a reasoned opinion to Sweden as it believes that restricting the choice of legal adviser for persons receiving legal aid to lawyers whose services will not lead to claims for additional costs is contrary to Article 49 of the EC Treaty. While Swedish legislation in theory allows any person capable of providing legal aid to be appointed as legal aid adviser regardless of where that person is established, the legislation is applied and interpreted in such manner that only persons established in Sweden may be appointed. The Commission takes the view that this rule means that Swedish nationals are unable to seek legal advice from persons not based in Sweden and that it restricts the opportunities for such legal advisers to provide services in Sweden. In the Commission's view, there are means to guarantee access to justice which are less restrictive, e.g. capping the amounts which may be paid for legal aid given by legal advisers so that the state is not obliged to bear any additional costs, especially travel expenses, which may arise if advice is sought from a legal adviser based in another Member State.

EUROPEAN PARLIAMENT

European Qualification Framework EQF

The European Parliament voted last year in favour of adopting the Recommendation on the establishment of the European Qualifications Framework for lifelong learning (EQF), proposed by the Commission in September 2006. The EQF will act as a translation device between Member States' qualifications systems in order to help employers and individuals compare and better understand citizens' qualifications and thus support mobility and lifelong learning. The European Qualifications Framework (EQF) is a non binding instrument, a translation grid for qualifications around Europe. It has two principal purposes: (1) to promote mobility between countries, and (2) to facilitate lifelong learning. At the core of the EQF are its eight reference levels, covering basic to most advanced qualifications. These describe what a learner knows, understands and is able to do, regardless of the system in which the learner's qualification was acquired. As an instrument for promoting lifelong learning, the EQF encompasses general and adult education, vocational education and training,

as well as higher education. The eight EQF levels cover the entire span of qualifications from those achieved at the end of compulsory education, up to those awarded at the highest level of academic and professional or vocational education and training.

Its objective is to enable individuals and employers to use the EQF as a reference tool to compare the qualifications levels of different countries and different education and training systems. The EQF will be formally adopted by the Council in the coming weeks.

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NEWS - COMPETITION

EUROPEAN COMMISSION

Conveyancing study published

The European Commission has published a study on the EU markets for legal services associated with house and land sales (conveyancing services). According to the study, consumers have greater choice and are on average paying less for conveyancing services under deregulated systems, with no loss in quality.

The study, surveying 21 EU countries, integrates a legal and economic approach. The different regulatory systems under which conveyancing services are provided were categorised into several regulatory models for analysis.

The methodology of the study is disputable. The link between the three categories “level of regulation”, “price” and “quality” is insufficient to measure the quality of the service rendered by a liberal professional.

The Commission will present the study to Member States and asking for their reactions while encouraging them, when necessary, to consider reforms.

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NEWS - JUSTICE

EUROPEAN COMMISSION

Communication on the creation of a Forum for discussing EU justice policies

On February 4th 2008 the European Commission published a communication on the creation of a Forum for discussion EU justice policies and practice. The Vice-President of the European Commission, Franco Frattini, announced in this respect the launch of a unique and innovative new ‘Justice Forum’. As of 15 April 2008 a multi-disciplinary, collaborative forum of practitioners involved in judicial and legal processes will come into being. The Justice Forum, in addition to existing processes, should inform the Commission’s work on justice policies and practice. The added-value of targeted and multi-disciplinary consultation involving practitioners should have, in particular, the following impact:

- more focused and effective legislation;
- the permanence and regularity of meetings will ensure a ready made experts group to clarify the true needs of practitioners and problems they face in using EU justice instruments;
- better researched Impact Assessments in the specific justice areas with its direct links with the judiciary and other actors in the justice systems of the Member States;
- contribute to the standard evaluation model process set up by the Commission’s June 2006 Communication on Evaluation of EU policies on Freedom, Security and Justice;
- provide concrete expertise needed for the stakeholder consultation and for the in-depth evaluation phase;
- bring together existing European networks specialising in justice matters and facilitate more co-ordination;

ted discussion and knowledge sharing; and

- suggest areas where studies should be carried out and to supervise and manage such studies.

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[Discussing EU justice policies](#)

NEWS - JURISDICTION

Akzo Nobel Chemicals Ltd v Commission of the European communities (T-25/03) and T-253-03); exclusion of in-house lawyers from legal privilege

The Court of First Instance on 17 September 2007 published its judgment on two joint cases, Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd v Commission of the European Communities (T-25/03) and T-253-03) (see PLR 4/2007). At the center of both cases was the exclusion of in-house lawyers from legal privilege in the Community Competition law. The European Court of Justice has now to judge if the judgment of the Court of First Instance from 17 September 2007 must be repealed. The decision will be in particular important for those 9 EU Member States with a legal professional privilege for in-house lawyers.

Doulamis (C-446/05) on advertising (dentists in Belgium)

The European Court of Justice published its judgment on 13 March 2008 in case C-446/05, reference for a preliminary ruling under Article 234 EC from the Tribunal de Première Instance de Bruxelles (Belgium), adjudicating on a criminal matter, made by decision of 7 December 2005, in the criminal proceedings against Ioannis Doulamis, intervening

parties: Union des Dentistes et Stomatologistes de Belgique (UPR), Jean Totolidis.

The reference was made in criminal proceedings brought against Mr Doulamis, a dental technician, for infringement of 1. legislation governing the exercise of the dental profession and the medical profession and 2. legislation governing advertising in dental care matters. Article 3 of the Law of 15 April 1958 on advertising in dental care matters (Moniteur belge of 5 May 1958, p. 3542) imposes penalties on those who infringe Article 1 of that law, which is worded as follows:

‘No person may, whether directly or indirectly, engage in advertising of any kind with a view to treating or providing treatment, whether or not by a qualified person, in Belgium or abroad, for dental or oral ailments, lesions or abnormalities, by means, inter alia, of displays or signs, inscriptions or plaques liable to be misleading as to the lawful nature of the activity advertised, leaflets, circulars, handouts and brochures, via the media of the press, radio or the cinema, by conferring or promising to confer benefits of any kind such as discounts or the provision of free transport for patients, or through the intermediary of canvassers or other such intermediaries’.

It is apparent from the order for reference that Mr Doulamis is charged, inter alia, with having placed advertisements in a telephone directory for the ‘John Doulamis Dental Laboratory’ and the ‘John Doulamis Dental Clinic’, which is prohibited under the Law of 15 April 1958. The first advertising insert was published in the dental laboratories section and the second in the dental clinics section. Those inserts contained factual information, such as the services provided, the address, telephone number and opening hours of the two establishments. Before the national court, Mr Doulamis submitted that advertising is an indispensable instrument for free economic competition. Thus, having invoked the combined provisions of Articles 10 EC and 81 EC, he relied on the judgment in Case 267/86 Van Eycke [1988] ECR 4769 to assert that, in view of the obligation upon the Member States not to introduce or maintain in force measures which may render ineffective the competition rules applicable to undertakings, that part of the criminal proceedings brought against him which relate to advertising in health care matters are unfounded.

(According to Article 81 EC, all agreements between undertakings, decisions by associations of undertakings and concerted practices which may

affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market shall be prohibited as incompatible with the common market).

The Court has held that Articles 10 EC and 81 EC are infringed where a Member State requires or encourages the adoption of agreements, decisions or concerted practices contrary to Article 81 EC or reinforces their effects, or where it divests its own rules of the character of legislation by delegating to private economic operators responsibility for taking decisions affecting the economic sphere (Cipolla and Others, paragraph 47, see CFE PLR 1/2/2007). It must be noted that a law such as the Law of 15 April 1958, in so far as it prohibits dental care providers from advertising, does not fall within any of the situations for the combined application of Articles 10 EC and 81 EC.

Therefore, Article 81 EC, read in conjunction with Article 3(1)(g) EC and the second paragraph of Article 10 EC, does not preclude a national law, such as the Law of 15 April 1958, which prohibits any person or dental care providers, in the context of professional services or a dental surgery, from engaging in advertising of any kind in the dental care sector.

Read more:

Judgement C-446/05

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NEWS - OTHER

OECD Study on tax intermediaries

Tax Commissioners from OECD and non-OECD countries met in January to discuss how to enhance the relationship between revenue bodies, taxpayers and tax intermediaries. The closing press conference of the 4th OECD Forum on Tax Administration took place in Cape Town, South Africa. Participants: OECD's Pier Carlo Padoan and Jeffrey Owens, Pravin Gordhan, Commissioner, South African Revenue

Service (SARS) and Dave Hartnett, Acting Chairman of HM Revenue & Customs. Dave Harnett mentioned the enhanced relationship as the core element of the study. He underlined that OECD focused on large corporate tax payers rather than on small business. The results of the meeting are published in the Cape Town Communique, see page 6 (appendix), the recommendations made in the Study Team's report.

The report is now published on the OECD website.

Read more:

OECD-Study on tax intermediaries

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EUROPEAN COMMISSION

Transparency initiative

Three years ago, the European Commission embarked on its transparency initiative about a launch of lobbying transparency register and a code of conduct. The Commission will come up with the register and the code this spring.

Small Business Act: public consultation

On 31st of January, the European Commission launched a public consultation on the content of a European „Small Business Act“. Its objective is to put small and medium sized enterprises at the forefront of decision-making in the EU and to introduce concrete measures to unlock the SMEs' growth potential. It intends to include new initiatives to reduce regulatory burden on SMEs, facilitate access to Single Market/public procurement, help provide necessary financial/human resources for SME development and help SMEs face the challenge of globalization and climate change. The preparation of a "Small Business Act" for Europe is one of the key measures announced in the Commission's package for the next cycle of the Growth and Jobs

Strategy. The consultation will be open until the end of March.

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Annual Policy strategy for 2009

On 13th February 2008, the Commission published the Communication on annual policy strategy for 2009. The next year will be an important year for the EU with huge institutional changes. A new European Parliament will be elected. It will bring furthermore a new European Commission. Depending on the national ratification processes, the Treaty of Lisbon will enter into force. The work on communication will therefore be the priority for the Commission.

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Personalia

Nomination of Mrs Androula Vassiliou as successor to Mr Markos Kyprianou

The President of the European Commission, José Manuel Barroso, has written to the President of the Council and to the President of the European Parliament, transmitting the resignation of Mr Markos Kyprianou as a member of the European Commission, and President Barroso's agreement with the nomination by the Republic of Cyprus of Mrs Androula Vassiliou as a member of the Commission. Mrs Vassiliou will take over the „Health“ responsibility.

COUNCIL

Treaty of Lisbon

The Treaty of Lisbon, officially signed by the Heads of the Member States on 13 December 2007, will have to be ratified by each Member State in order for it to come into force. The procedure by which this is done varies from country to country, depending on each Member State's constitutional system.

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IMPRESSUM

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