



Professional Law Report Confédération Fiscale Européenne (CFE)

June 2011 / Edition 2

CROSS-BORDER SERVICES

Commission requests Sweden to ensure EU businesses can set up operations and supply services

On 16 February 2011, the European Commission sent a reasoned opinion to Sweden demanding that the country change its legislation to allow businesses from other member states to provide cross-border services and establish themselves in Sweden. According to Swedish legislation on foreign branches, service providers are required to set up a branch in Sweden before they can start supplying their services. When registering a branch, they are obliged to use the commercial name used in their country of establishment, as well as to use a name that may not be confused with that of existing businesses in Sweden. This makes it virtually impossible for businesses whose name risks being confused with that of Swedish businesses to operate in Sweden. Furthermore, service providers whose manager resides outside Sweden have to designate and register a person domiciled in Sweden responsible for the service of documents. Finally, there is a long deadline for processing an application for registering a branch in Sweden, and an obligation for the applicants to systematically provide certified copies and certified translations of a number of documents. These unfavourable conditions may dissuade service providers like tax advisers from providing their services to Swedish clients, especially if the activity is only temporary.

In the Commission's view, Sweden is in breach of the freedom of establishment and the freedom to provide services (Art.49 and 56 TFEU) as well of the provisions of the EU Services Directive 2006/123/EC. If the Swedish authorities fail to take satisfactory measures to remedy the infringement of EU law within two months, the Commission may decide to refer the case to the EU Court of Justice.

[READ MORE \(click to open\):](#)

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

Germany and Austria finally open to workers from new EU countries

On 1 May 2011, Germany and Austria opened their borders to workers from the eight Eastern European countries that joined the EU in 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia). The two countries had been granted the possibility to restrict market access to workers from the eight before-mentioned countries for a seven-year transition period as due to their long land borders with the new member states, they feared that immigration would negatively impact on their labour markets. Such restrictions are still in place in Austria, Belgium, France, Germany, Ireland, Italy, Luxembourg, Malta, the Netherlands and the UK for workers from Romania and Bulgaria and can be upheld until the end of 2013. They do not apply for self-employed and for temporarily posted employees.

[READ MORE \(click to open\):](#)

Press release: [EN](#) [FR](#) [DE](#) [BG](#) [ES](#) [CS](#) [EL](#) [IT](#)
[PL](#) [RO](#) [SK](#) [FI](#)

PROFESSIONAL QUALIFICATIONS

ECJ judgment on required professional experience before establishing in a regulated member state

On 5 April 2011 (case C-424/09, Toki), the European Court of Justice rendered a judgment on the recognition of professional qualifications for permanent activity in another member state. Although, as a "Chartered Engineer" in the UK, Ms Toki was not a member of a profession regulated by law, she was member of a private institute recognised by the UK. When seeking to establish herself in Greece where her profession is regulated, the question arose whether she would have to prove two years of professional experience in the UK as this was required for members of non-regulated professions.

The ECJ found that the fact that she was a member of the UK institute would not exempt her from having to prove these two years of experience.

The judgment relates to the legal situation before the entering into force of the RPQ Directive 2005/36/EC.

PROFESSIONAL QUALIFICATIONS

Today, for *temporary* activity, it is clear from Art.5 (1) b), 2nd sentence of the RPQ Directive that a professional does not have to prove two years of professional experience if s/he comes from a member state where the profession is regulated, irrespective of whether a particular diploma is required by law in that country or not. By contrast, for *permanent* activity in a regulated member state, Art.13 in connection with Art.3 (2) appear unclear as to whether professionals from unregulated countries which are members of recognised professional bodies (listed in Annex I of the RPQ Directive) have to prove two years of experience. In taxation, this concerns members of the CIOT (UK) or the Irish Taxation Institute. The judgment in Toki suggests that also under the RPQ Directive, this would still be the case. The Commission has informed CFE that this question is currently discussed within the Commission.

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#) [ES](#) [EL](#) [IT](#)

Full text: [EN](#) [FR](#) [DE](#)

Commission plans to introduce, CFE expressed that any such system should be optional to avoid unnecessary costs especially for those professions where cross-border activity is low.

- The recognition of qualifications should not be linked to continuing professional development (CPD) requirements of the home country as this would render the recognition procedure more complicated.

On 21 February 2011, the European Commission organised a public hearing on the RPQ Directive review in which the CFE took part.

READ MORE (click to open):

CFE Opinion Statement: [EN](#)

Public hearing on 21/02/2011 - presentations and speeches: [EN](#)

New consolidated version of RPQ Directive

On 24 March 2011, the Commission has published a new consolidated version of the Recognition of Professional Qualifications Directive 2005/36/EC. Please note that this is not an official document but serves to facilitate working with the Directive.

READ MORE (click to open):

Consolidated version: [EN](#) [FR](#) [DE](#)

RPQ Directive: Green paper expected in June 2011 - CFE comments to Commission

In the course of the revision of the Recognition of Professional Qualifications (RPQ) Directive 2005/36/EC (see also **CFE European Professional Law Report 1/2011**, p.2), the European Commission plans to issue a green paper on 22 June 2011 indicating changes to the current Directive. The paper will be out for public comments and will be accompanied by a summary of the responses received on the public consultation which the Commission held early this year and on which CFE has commented. The main points contained in the CFE response were:

- the "splitting" of professions into single economic activities which is currently not provided for by the RPQ Directive but which the ECJ had asked for in the case C-330/03, Colegio de Ingenieros de Caminos, should remain an exception as otherwise it would, in the tax profession, run contrary to the clients' expectations to receive one-stop tax advice. On another occasion, the Commission has indicated to CFE that it considers that tax advice is one proper economic activity and therefore the profession would not be among those that should be „split“.
- Regarding professional cards which the

PROFESSIONAL LAW

ECJ: French prohibition of canvassing for accountants contrary to EU Services Directive

In the case Société Fiduciare Nationale d'Expertise Comptable (C-119/09), the European Court of Justice decided on 5 April 2011 that a total ban on canvassing (démarchage) in the French code of ethics of accountants (experts-comptables) was contrary to EU law. The ECJ had to decide whether such ban was equivalent to a total prohibition of commercial communications or of particular forms thereof. Any total prohibitions are contrary to Art.24 (1) of the Ser-

PROFESSIONAL LAW

vices Directive. The Court considered that the ban on canvassing excludes certain forms of commercial communications completely. Advocate-General Jan Mazák had come to the conclusion that such a restriction was justified (see **CFE European Professional Law Report 2/2010**, p.3).

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#) [BG](#) [ES](#) [EL](#) [IT](#) [RO](#)

Full text: [EN](#) [FR](#) [DE](#)

ECJ: Member states may not reserve access to the profession of notary to their own nationals

The judgment rendered on 24 May 2011 is the final word in six infringement procedures of the European Commission against Austria, Belgium, France, Germany, Greece, Luxembourg and Portugal (cases C-47, 50 until 54 and 61/08). The Court found that the fact that the activities exercised by notaries serve the public interest does not mean they are connected with the exercise of official authority in the meaning of Art.45 EC Treaty (Art.51 TFEU), which would exempt these activities from the freedom of establishment rules. The Court requires that a “direct and specific” connection to the exercise of official authority would be needed which is not the case where the notary merely authenticates the declared will of the parties with no power to change their declarations. Advocate-General Pedro Cruz Villalón, in his opinion delivered in September 2010, had already found the nationality requirement contrary to EU law (see **CFE European Professional Law Report 2/2010**, p.3). The Court however rejected the objection that the countries had failed to implement the RPQ Directive 2005/36/EC, due to unclarity in the legislative procedure.

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#) [BG](#) [ES](#) [CS](#) [EL](#) [IT](#) [HU](#) [NL](#) [PL](#) [PT](#) [RO](#) [SK](#) [SL](#)

ECJ accepts Italian rules on maximum fees for lawyers

In its judgment on case C-565/08, rendered on 29 March 2011, the ECJ has dismissed a European Commission’s infringement procedure against Italy for not having abolished maximum fees for lawyers in Italy. Unlike in the famous Cipolla case of 2006 on minimum fees (C-94 and 202/04), the Court did not even address the justification of fee regulation as it found that the maximum fees at issue were not even a restriction to the freedom of establishment and the free provision of services. The Italian fee regulation leaves a number of derogations, allowing lawyers to increase fees up to twice the maximum tariff in “particularly important cases” and four times the maximum fee in “exceptionally important cases” and, where proportionate, even beyond. This would give foreign lawyers sufficient flexibility to be able to operate in Italy on a profitable basis. The decision will come as a surprise for many and may be seen as a positive sign for defendants of flexible fee regulations like they exist for tax advisers in Germany.

READ MORE (click to open):

Text of the judgment: [EN](#) [FR](#) [DE](#) [IT](#)

Commission is planning to have service standards developed

The European Commission has issued a proposal for a regulation on 1 June 2011 which would give the Commission a mandate to ask for the development of European services standards. This is likely to be done by the European standardisation body CEN (www.cen.eu) which has already been exploring the possibility of “horizontal” services standards in the past years. Reportedly, such standards should also include liberal professions like legal and tax advice. So far, it is not planned to make these standards mandatory but there may be a factual obligation for professionals to adapt.

READ MORE (click to open):

Proposal for a Regulation on European standardisation - COM(2011)315: [EN](#) [FR](#) [DE](#)

Press release: [EN](#) [FR](#) [DE](#) [ES](#) [NL](#) [IT](#) [PT](#) [FI](#) [EL](#) [CS](#) [LV](#) [MT](#) [PL](#) [SK](#) [SL](#) [BG](#) [RO](#)

Communication on a strategic vision for european standards - COM(2011)311: [EN](#)

PROFESSIONAL LAW

ctd: [READ MORE \(click to open\):](#)

Executive summary of the impact assessment - SEC(2011)672 : [EN](#)

Impact assessment - SEC(2011)671: [EN](#)

Citizens' summary: [EN](#)

Press memo: [EN](#)

CONTRACT LAW

EP supports optional European Contract Law

On 8 June 2011, the plenary of the European Parliament has voted in favour of a non-legislative resolution drafted by Liberal UK MEP Diana Wallis, supporting the creation of a European contract law by an EU regulation. This regime should be established as a "28th regime" for which parties in cross-border situations could opt (member states could decide whether to offer this choice also for domestic situations). To the regime should be complemented by a "toolbox" containing definitions that future EU acts on contract law would refer to. The MEPs favour the development of European standard contracts with alternative online dispute resolution. Another core element would be a provision protecting SMEs from abusive clauses, a concept known from consumer protection. The Commission who is a strong proponent of the idea is reportedly planning to present a legislative proposal already in October 2011.

[READ MORE \(click to open\):](#)

Plenary vote 8 June: [EN](#) [FR](#) [DE](#) (other language versions available)

EP Press release, 8 June: [EN](#) [FR](#)

Legal affairs Committee vote on 12 April 2011, Press release: [EN](#) [FR](#)

Feasibility study presented by the Commission (3 May 2011): [EN](#)

Adoption of Consumer Rights Directive imminent

An agreement on the draft Consumer Rights Directive (see [CFE European Professional Law Report 1/2011](#), p.4) negotiated by the Hungarian Council presidency with the EP IMCO Committee was endorsed by the Council's Committee of Permanent Representatives (Coreper) on 15 June 2011. The text which is supported also by the Commission will be voted in the EP plenary on 23 June 2011 in first reading. The EP had postponed its first reading originally scheduled for 24 March 2011 in order to seek agreement with the Council to avoid a second reading.

For tax advisers, where they have consumer clients, the main issues are the set of information they have to provide to the client before the latter is bound by a contract and the 14-day withdrawal right of the client for contracts concluded outside the tax adviser's office (off-premises contract) or by means of distance communication. The compromise text contains a number of relevant changes in these areas:

The recent compromise makes it clear that a contract following a (solicited or unsolicited) visit of the tax adviser at the consumer's home or working place would not be considered an off-premises contract where the visit is clearly not binding, the contract is concluded only afterwards in the tax adviser's office or by means of distance communication and the consumer has had a reasonable time to reconsider the offer.

Distance contracts would only be contracts concluded under an organised distance service-provision scheme; hence, the mere fact that consumer client and tax adviser have communicated by e-mail would not make the contract a distance contract.

Regarding information to be provided to the client, the compromise allows additional information duties at national level for on-premises and (to the extent allowed by the Services Directive and e-Commerce Directive) for off-premises contracts.

On-premises contracts would have to be signed; for contracts concluded over the telephone, member states may require that consumers sign or confirm in writing before they become valid.

Regarding the right of withdrawal for off-premises and distance contracts, the new compromise puts the tax adviser in a less advantageous situation than before: Previously, the right of withdrawal should not apply to clearly individualised services (which is typically the case for tax advice); this has been deleted.

Another amendment is that the client can now withdraw from the contract until the service is fully performed and even if he has waived his right of withdrawal but in the latter case he would have to pay parts

CONTRACT LAW

of the service.

As now all main actors have agreed, the adoption of the compromise version is very likely. The Directive would have to be implemented two years after publication in the EU Official Journal, meaning it could become effective for tax advisers as of October 2013 approximately. Rapporteur in the EP is German delegate Andreas Schwab (EPP).

READ MORE (click to open):

Compromise version, 16 June 2011: [EN](#)

Council press release, 16 June 2011: [EN](#)

Hungarian presidency statement on the compromise: [EN](#)

EP plenary version, 24 March 2011: [EN](#) (other language versions available)

EVENTS

CFE presents the tax profession at European Economic and Social Committee

On 6 June 2011, CFE Vice President Herbert Becherer spoke at the European Economic and Social Committee on the occasion of the “European Day of Liberal Professions”, organised by that EU body. Along with representatives of the European organisations of lawyers, dentists and consulting engineers, Mr Becherer explained how CFE and tax advisers in Europe put the concepts of transparency, independence and qualification as core values of the liberal professions into reality.

Referring to these values, he touched on current developments in European law: Concerning the draft Consumer Rights Directive, he warned that transparency could not be reached through flooding consumer clients with standard information many of which is not relevant for them. Requirements on ownership of tax firms should be considered a tool to safeguard professional independence and not solely be viewed as a restriction to the freedom of capital or establishment. Finally, he stressed that CFE members ensure a high level of qualification irrespective of whether

their countries regulate the tax profession by law or not.

READ MORE (click to open):

Speeches: [EN](#)

AUDIT AND ACCOUNTING

EU Commission auditing and accounting conference / summary of public consultation published

On 9 and 10 February 2011, the European Commission held a conference on accounting and auditing issues in Brussels. The first day focused on accounting. The speakers addressed questions related to governance of the standard setting process in an international context and held a debate on the objectives of financial reporting. Issues linked to the use of IFRS as the world-wide accounting standards such as convergence and the practical challenges of consistent application globally were also discussed.

The second day was dedicated to the European audit market. Discussions with stakeholders considered the need to further improve the European audit market and explore the best possible ways forward. Issued debated were the role of statutory audit, the system and environment within which audits are conducted, and the accumulation of systemic risk in the audit market and any related “too-big-to-fail” phenomena.

Just before the conference, the European Commission published a summary of the 688 responses received to the public consultation on the auditing green paper (see [CFE European Professional Law Report 1/2011](#), p.6f).

READ MORE (click to open):

Summary in “Single Market News”: [EN](#)

All speeches and presentations: mostly in [EN](#)

Public audit consultation summary: [EN](#)

INTERNAL MARKET POLICY

Commission names priorities of “Single Market Act”

On 13 April 2011, the European Commission has named its 12 priority areas, selected from 50 measures listed in October 2010 (see [CFE European Professional Law Report 1/2011](#), p.7). Through a public consultation carried out between October 2010 and February 2011, the Commission has asked interested parties to select from that list the most relevant issues. The choice of the Commission includes the review of the RPQ Directive 2005/36/EC, the development of services standards (see separate article in this European Professional Law Report), taxation (revision of the VAT system, energy taxation, tax obstacles for citizens (a solution for the latter could be a binding dispute resolution mechanism for double taxation) and company law.

The branding “Single Market Act” is misleading as it does not refer to one legislative initiative but to a bundle of very different measures aimed at bringing forward the internal market. Contributing to the confusion is the fact that the communication also refers to legislative measures already proposed (CCCTB, exemption of micro-entities from accounting directive, European Private Company) or adopted (implementation of the Services Directive).

On 30/31 May 2010, the EU Competitiveness Council welcomed the Commission communication, urging the Commission to present proposals in these priority areas this year and demanding the European Parliament and the EU member states to adopt a first package of measures until 2012.

On 8 February 2011, the Commission organised a conference in Brussels on the Single Market Act.

[READ MORE \(click to open\):](#)

Commission Communication COM(2011)206:
[All languages](#)

Council conclusions: [EN](#) [FR](#) [DE](#)

Single Market Act conference, 8 February 2011:

- Report in “Single Market News”: [EN](#)
- Speeches: [EN](#)

European Commission pleased with member states’ improvements in implementing internal market rules

In the latest edition of its Internal Market Scoreboard published on 21 March 2011, the European Commission has expressed satisfaction with the low degree of delay in transposition of internal market directives. Presently, 0.9% of these internal market rules are delayed, a figure that has remained stable since September 2010. Over the last 12 months, member states have also managed to reduce the average extra time they need to transpose an EU Directive into national law from 9 to 5.8 months. Greece, Portugal and Luxembourg have notably reduced their backlog, while Malta continues to be the overall best performer. Italy has now the highest transposition deficit of all EU countries with 2.1%.

The summary also shows that taxation, together with environment, remains the biggest area of infringements. Belgium continues to account for the highest number of infringement proceedings, followed by Greece and Italy. The number of infringements has decreased from an average of 46 to 40 per member state compared to six months ago. Member states still take considerable time – on average more than 18 months – to comply with rulings of the EU Court of Justice, Ireland accounting for the longest delay (25 months in average).

[READ MORE \(click to open\):](#)

Press release: [EN](#) [FR](#) [DE](#) [ES](#) [NL](#) [IT](#) [PT](#) [FI](#)
[EL](#) [CS](#) [LV](#) [MT](#) [PL](#) [SK](#) [SL](#) [BG](#) [RO](#)

Internal Market Scoreboard No.22: [EN](#)

IMPRESSUM

CONFEDERATION
FISCALE
EUROPEENNE

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

Editor: Rudolf Reibel, LL.M., CFE Fiscal and Professional Affairs Officer

If you have any suggestions or questions, please feel free to contact the editor:
brusseloffice@cfe-eutax.org

Layout: Laëtitia Bois, Administrative Assistant

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.