

2 August 2007

Ms. Pamela Brumter
Head of Unit

Mr. Jürgen Tiedje
Head of Auditing Department

DG Internal Market
European Commission
Rue de la Loi 200
1049 BRUXELLES

N/Ref. LIQ/SL

Dear Ms. Brumter,
Dear Mr. Tiedje,

Re: Free Movement of Statutory Auditors

I would like to thank you for the meeting organised with representatives of FEE on 4 July and the comments received on the draft FEE paper on Internal Market for Services and the Accountancy Profession. At the meeting, the EC expressed a number of views which differed from FEE's understanding of the text of the Statutory Audit Directive and the discussions that preceded the adoption of the three Directives reviewed in the paper. We have given careful consideration to these points and would therefore like to seek clarification from the European Commission on two specific matters pertaining to the transposition of the new regime in relation to the free movement of statutory auditors.

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The first issue relates to the compensation mechanism for migrant statutory auditors, which according to Article 14 of the Statutory Audit Directive is an aptitude test organised as per the procedures specified in the Directive on Recognition of Professional Qualifications. The point concerns the scope of the aptitude test and the implications in certain Member States regarding the organisation of the profession. Our understanding is that both texts are interrelated. In both cases, we are in presence of a compensation measure linked to recognition of qualifications. In other words, having passed an aptitude test based on one Directive automatically impacts the recognition of qualifications based on the other. Any other interpretation would cause problems with respect to the proportionality principle. In our view, the main difference between Article 14 of the Statutory Audit Directive and Article 14 (in particular Article 14.2) of the Directive on Recognition of Professional Qualifications is that under the Statutory Audit Directive, the migrant will never have the choice between an aptitude test and an adaptation period. If a compensation measure is necessary, it can only be an aptitude test.

An aptitude test covering only the laws and regulations of the Member State insofar as relevant to statutory audit would interfere with the organisation of the profession in certain Member States. This is because the regulation of the profession in these Member States gives rights not only to undertake statutory audit as defined in the Statutory Audit Directive, but also to undertake other audit activities as required under national legislation. Consequently, an aptitude test limited to statutory audit would mean, where certain Member States are concerned, that the migrant would not be allowed to carry out all the activities of a registered professional in that Member State or that it would be necessary for that Member State to establish a separate list or a partial recognition regime for migrant professionals.

FEE understands that the ECJ case *Colegio de Ingenieros* would not apply, as the ruling noted that partial recognition would be applicable only in the absence of a compensation mechanism (which is not the case here as there is an aptitude test).

FEE also understands that the Statutory Audit Directive does not oblige Member States to organise a specific profession solely dedicated to statutory audit as required by Community Law. A Member State may reserve other activities to statutory auditors registered in accordance with the Statutory Audit Directive.

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The second question relates to the possibility to provide statutory audit services under the title of the country of origin, applying the rules of the country of origin and without any infrastructure in the Member State requiring the audit. FEE's understanding is that the free provision of audit services is an issue since article 3 of the Statutory Audit Directive states that the statutory auditor must be approved and registered in the Member State where the statutory audit is carried out.

The Statutory Audit Directive addresses only approval and registration of statutory auditors and does not refer to the principles of establishment nor to the principles of temporary and occasional provision of services. Recital 42 of the Directive on Recognition of Professional Qualifications indicates that "this Directive applies concerning the right of establishment and the provision of services, without prejudice to other specific legal provisions regarding the recognition of professional qualifications, such as those existing in the field of (...) statutory auditors".

Additionally, the following elements must be taken into consideration:

- Article 3.2. of Directive on Recognition of Profession Qualifications (2005/36/EC) states that "Where, for a given regulated profession, other specific arrangements directly related to the recognition of professional qualifications are established in a separate instrument of Community law, the corresponding provisions of this Directive do not apply.
- Article 17.13 of the Directive on Services (2006/123/EC) explicitly exempts statutory audit from Article 16 relating to the freedom to provide services. This exemption is additional to Article 17.6 exempting more broadly regulated professions falling under the Directive on Recognition of Professional Qualifications. Consequently, it must have another useful purpose.

a) concerning the functional title to be used

FEE maintains that the combination of the above mentioned texts does not permit that statutory audit be provided under the title of the country of origin, applying the rules of the country of origin. For instance, independence rules in the Directive are minimum provisions and it would not be acceptable that the migrant auditor would apply other rules than those of the Member State requiring the audit.

Also, the possibility to deliver statutory audit services under the title used in another Member State would become very confusing and misleading for users, when the statutory auditor is approved and registered in the Member State where the services are delivered.

Consequently, it is not demonstrated that the ECJ decision in the *Ramrath Case* would become obsolete, and in particular paragraph 33 stating:

"A Member State may carry out that task by requiring compliance with rules of professional practice, justified by the public interest, relating to the integrity and independence of auditors and applying to all persons practising as auditors within the territory of that State. In that respect, requirements relating to the existence of infrastructure within the national territory and the auditor's actual presence appear to be justified in order to safeguard that interest."

b) concerning the existence of a stable infrastructure

Is a stable infrastructure in the jurisdiction of the Member State requiring the statutory audit necessary in order to be approved and registered in that Member State? It is recognised that the Statutory Audit Directive addresses only the approval and registration of statutory auditors and does not refer to the principles of establishment nor to the principle of free provision of services as stated above. The Statutory Audit Directive makes no reference to infrastructure and the sole relevant legal reference is the ECJ decision in the above-mentioned Ramrath Case concerning the fact that Member States may justify on public interest grounds the infrastructure requirement.

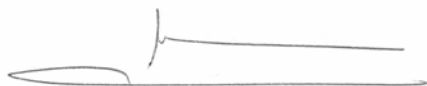
The EC conveyed at the meeting the view that the ECJ decision would no longer be applicable on account of the cooperation and regulatory reliance between Member States' competent authorities as required by the Statutory Audit Directive. As mentioned above, several arguments must be considered in the Ramrath Case and a simple reference to article 33 of the Statutory Audit Directive might not be sufficient.

If this ruling is indeed still applicable, FEE is of the view that it is a Member State decision as to whether stable infrastructure in the Member State where the statutory audit is carried out is required. This decision should be made on public interest grounds and according to the principle of proportionality. FEE fully recognises that the residence of the professional in the Member State where the statutory audit is carried out is not required.

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We believe that these two issues are relevant in the process of transposing the Directive and would merit further consideration. We would be pleased to provide you with more details on our positions if you consider it useful.

Yours sincerely,



Jacques Potdevin
President