



## FEE Communication in response to the EU Call for Codes of Conduct on Cross-Border Provision of Services in the EU Internal Market

### Professional Accountants and Cross-border Provision of Services

September 2009

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## INTRODUCTION: PURPOSE AND SCOPE OF THE COMMUNICATION

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This FEE Communication must be read against the background of Article 37 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on Services in the Internal Market<sup>1</sup>. Recital 115 of the Directive states: “Codes of conduct at Community level are intended to set minimum standards of conduct and are complementary to Member States’ legal requirements. They do not preclude Member States, in accordance with Community law, from taking more stringent measures in law or national professional bodies from providing for greater protection in their national codes of conduct”.

FEE recognises the importance of responding to Article 37 to achieve the full implementation of the Directive.

The purpose of this Communication is to provide a basis for FEE Member Bodies guidance specifically regarding practical issues arising from the application of the principle of free provision of services throughout the European Union.

FEE Member Bodies are strongly encouraged to take the necessary steps to ensure consistency between their professional and ethical rules and this Communication.

FEE understands that the free provision of services principle applies when a professional accountant established in an EU Member State intends to provide services on a temporary and occasional basis in another EU Member State where the professional accountant is not established<sup>2</sup>. This is different from the freedom of establishment, which applies when a professional accountant intends to pursue the relevant registration procedures in the Member State or pursue membership of a professional body of accountants in that Member State. This situation falls outside the scope of this Communication.

This Communication applies to the provision of accountancy services and other services provided by members of FEE Member Bodies, excluding statutory audit. The provision of statutory audit services is not addressed in this Communication as it is comprehensively covered by Directive 2006/43/EC of 17 May 2006 on statutory audit of annual accounts and consolidated accounts.

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<sup>1</sup> “Member States shall, in cooperation with the Commission, take accompanying measures to encourage the drawing up at Community level, particularly by professional bodies, organisations and associations, of codes of conduct aimed at facilitating the provision of services or the establishment of a provider in another Member State, in conformity with Community law.” Official Journal L.255 of 30 September 2005; See also the EC Staff Paper “Enhancing the quality of services in the Internal Market – the role of European codes of conduct” summarising responses to an EC consultation in August 2007. [http://ec.europa.eu/internal\\_market/services/services-dir/conduct\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/conduct_en.htm)

<sup>2</sup> The distinction between the regimes of “establishment” and of “provision of services” results from the Treaty establishing the European Community (consolidated text - *Official Journal C 325 of 24 December 2002*) The freedom of establishment, set out in [Article 43](#) of the Treaty and the freedom to provide cross border services, set out in [Article 49](#), are central to the effective functioning of the EU Internal Market. [http://ec.europa.eu/internal\\_market/services/principles\\_en.htm](http://ec.europa.eu/internal_market/services/principles_en.htm)



FEE Member Bodies are members of the International Federation of Accountants (IFAC). They are committed to complying with “Statements of Membership Obligations” imposed on members of IFAC, including SMOs 2 and 4 related to respectively education and ethics.

This Communication does not repeal or amend the decision of the FEE Council in May 2002 to adopt a “Model Code of Conduct Governing On-line Commercial Communications by Member Bodies of the Fédération des Experts Comptables Européens (FEE) and their members”.

## 1. CONDUCT IN CROSS-BORDER PROVISION OF SERVICES: RELEVANT PROVISIONS FOR PROFESSIONAL ACCOUNTANTS

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### 1.1. General principles

FEE considers that the IFAC Code of Ethics for Professional Accountants forms the common set of ethical principles that must be applied by professional accountants providing services in any Member State.

FEE particularly stresses that the IFAC Code of Ethics for Professional Accountants requires professional accountants to agree to provide only those services which the professional is competent to perform. This Communication does not intend to add to IFAC standards on ethics and education.

When the professional accountant provides cross border services, he/she shall be subject to professional rules of a professional, statutory or administrative nature also in this host Member State, which are directly linked to his/her professional qualifications of accountant<sup>3</sup>.

This includes at least the definition of the profession, the use of titles and serious professional malpractice, as well as disciplinary provisions which are applicable to professional accountants in the host Member State.

FEE Member Bodies provide guidance to their members on the application in a cross border provision of services, of ethical rules that are not directly linked to professional qualifications.

### 1.2. Use of professional titles

When the professional accountant provides cross border services, the service shall be provided under the professional title of the Member State of establishment, in so far as such a title exists in that Member State for the professional activity in question<sup>4</sup>.

It is incumbent upon the service provider to express the professional title in the official language or one of the official languages of the service provider's home Member State.

Translations of professional titles or unofficial statements on the equivalence of titles would therefore not be compliant with the free provision of services principle.

It is incumbent upon the service provider to provide transparent information to consumers regarding the origin of professional titles in such a way as to avoid confusion with the professional title of the host Member State<sup>5</sup>.

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<sup>3</sup> See Article 5.3 of the Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications.

<sup>4</sup> Article 7.3 of the Directive 2005/36/EC of 7 September 2005 on the Recognition of Professional Qualifications. In the Member State of establishment, the accountant uses the professional title of the professional body with which he is registered, or the acronym which is usually substituted to this title. If applicable, in the exercise of a specific engagement organised by law, the accountant may also be required to use the title attached to the function (functional title).

<sup>5</sup> Where a profession is regulated in the host Member State by a professional body, nationals of other Member States shall not be authorized to use the professional title issued by that professional body, or its abbreviated form, unless they furnish proof that they are members of that professional body- Article 53.2 of the Directive 2005/36/EC of 7 September 2005 on the Recognition of Professional Qualifications;

Professional accountants providing cross border services may use academic or educational titles conferred on them in the home Member State<sup>6</sup>.

### **1.3. Provisions relating to rules applicable in the host Member State**

It is incumbent upon the service provider to gather information about the particular market entry rules given that these can differ across the Member States and to submit a pro-forma declaration<sup>7</sup> or other documents that may be required by the host Member State before the service is provided under the free provision of services.

The service provider should be especially careful about the laws of the host Member State reserving services to professionals of another profession or to holders of specific authorisations.

It is incumbent upon the service provider to be aware of and respect any laws, regulations and professional rules of the host Member State that are applicable under the free provision of services. These laws and regulations are applicable in areas such as commercial communication, information to be provided to consumers, data protection, etc.

It is incumbent upon the service provider to have an adequate level of competence and knowledge of the national laws and regulations of the respective service field in the host Member State in order to competently deliver the service.

### **1.4. Provisions relating to professional liability insurance**

It is incumbent upon the service provider to ensure that professional indemnity insurance cover meets the legal requirements of the host Member State.

Professional indemnity insurance cover must be valid in the host Member State and not solely in the Member State of establishment.

It is incumbent upon the service provider to provide details of professional indemnity insurance coverage to competent authorities and consumers where this is required in the host Member State.

### **1.5. Provisions relating to knowledge of languages**

It is incumbent upon the service provider to have relevant language skills for providing the services in the host Member State.

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<sup>6</sup> Article 54 of the Directive 2005/36/EC of 7 September 2005 on the Recognition of Professional Qualifications;  
<sup>7</sup> In accordance with Article 7 of the Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications, Member States have the possibility to require those who provide cross border services to make a pro forma declaration to the competent authorities of the host Member State. When the professional accountant decides to provide cross border services under the professional title of the Member State of establishment, he/she will enquire whether the regulations in the host Member State require to make a pro forma declaration. If applicable, he/she informs the competent authority in the host Member State in a written declaration to be made in advance when he first moves from one Member State to another in order to provide services. Such declaration shall be renewed once a year if the service provider intends to provide temporary or occasional services in that Member State during that year. Paragraph 1 of Article 7; Paragraph 2 provides further details on documents that may be required by the competent authorities jointly with the declaration.

## 2. COOPERATION BETWEEN FEE MEMBER BODIES AND COMPETENT AUTHORITIES IN THE MEMBER STATES

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When requested by a competent authority or a FEE Member Body in another Member State, a FEE Member Body will provide assurance on membership<sup>8</sup>.

If the requesting competent authority is subject to Article 56 of the EC Directive on the Recognition of Professional Qualifications concerning confidentiality of exchange of information, the Professional Body will exchange information regarding disciplinary action or criminal sanctions taken or any other serious, specific circumstances which are likely to have consequences for the pursuit of activities under this Directive.

FEE Member Bodies should give each other mutual assistance to provide for effective cooperation with one another, in order to ensure the supervision of providers and the services they provide. In the event of receiving a request for assistance from Member Bodies in another Member State, they should supply other Member Bodies with all the information necessary for supervising their members' activities in compliance with their national laws<sup>9</sup>.

They should ensure the exchange of all information necessary for complaints by a recipient of a service against a member to be correctly pursued. Recipients should be informed of the outcome of the complaint<sup>10</sup>.

The Member Body in the Member State of establishment should not refrain from taking supervisory or enforcement measures in its territory on the grounds that the service has been provided or caused damage in another Member State<sup>11</sup>.

On its own initiative a Member Body in the Member State where the service is provided on a temporary or occasional basis may conduct checks, inspections and investigations on the spot, provided that those checks, inspections or investigations are not discriminatory, are not motivated by the fact that the provider is established in another Member State and are proportionate<sup>12</sup>.

Where it becomes aware of specific acts or circumstances relating to a service activity that could be considered as serious malpractice, insofar it is entitled to do it, the Member Body should inform the Member Body in the Member State of establishment<sup>13</sup>.

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<sup>8</sup> Article 56.1 of the EC Directive on the Recognition of Professional Qualifications; Paragraph 2 of this Article relates to the confidential treatment of information exchanged when relating to disciplinary matters

<sup>9</sup> Article 28.1 and 4 of the Directive 2006/123/EC of 12 December 2006 on Services

<sup>10</sup> Article 8.2 of the Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications

<sup>11</sup> Article 30.2 of the Directive 2006/123/EC of 12 December 2006 on Services

<sup>12</sup> Article 31.4 of the Directive 2006/123/EC of 12 December 2006 on Services

<sup>13</sup> Article 32.1 of the Directive 2006/123/EC of 12 December 2006 on Services

## APPENDIX 1: IMPACT OF EU DIRECTIVES ON NATIONAL CODES

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FEE draws the attention of its Member Bodies to Articles 14 and 15 of the Directive 2006/123/EC of 12 December 2006 on Services in the Internal Market, which are relevant when preparing their national codes. According to Article 14 of the Directive 2006/123/EC, the provision of professional services shall not be made subject to compliance with any of the following<sup>14</sup>:

- a) Discriminatory requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office);
- b) Prohibition on having an establishment in more than one Member State or on being entered in the registers or enrolled with professional bodies or associations of more than one Member State;
- c) Restrictions on the freedom of a provider to choose between a principal or a secondary establishment, in particular an obligation on the provider to have its principal establishment in their territory, or restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary;
- d) Obligation to have been pre-registered, for a given period, in the registers held in their territory or to have previously exercised the activity for a given period in their territory.

Except when explicitly required by local laws or regulation, FEE Member Bodies are advised not to introduce additional requirements which could be interpreted as a barrier to free provision of professional services in the internal market prohibited by Article 15 of the of the Directive 2006/123/EC. This relates in particular<sup>15</sup> to:

- a) The legal form of a professional firm or to the shareholding of a company
- b) Ban on having more than one establishment in the territory of the same State
- c) Requirements fixing a minimum number of employees;
- d) Fixed minimum and/or maximum tariffs with which the provider must comply;
- e) An obligation on the provider to supply other specific services jointly with his service.

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<sup>14</sup> Article 14 of the Directive 2006/123/EC of 12 December 2006 on Services in the Internal Market

<sup>15</sup> Article 15 of the Directive 2006/123/EC of 12 December 2006 on Services in the Internal Market

## APPENDIX 2: ILLUSTRATIVE GUIDANCE ON INFORMATION TO BE PROVIDED TO RECIPIENTS OF SERVICES

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Based on EU Directives, it could be advisable to have a provision in national professional code on information to be given to the recipients of the service to ensure that personal details on the professional accountant and/or accounting firm and their services are clear and unambiguous, and are easily, directly and permanently accessible by the recipient of the service<sup>16</sup>. Appendix 2 provides illustrative guidance on information that recipients could expect to be available in compliance with Article 22 of the Directive 2006/123/EC of 12 December 2006 on Services in the Internal Market and Article 7 of the Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications one can conclude that recipients could expect following information to be available:

- a) The name of the professional accountant (i.e., firm name or individual name if not a member of a firm);
- b) The geographic address or addresses at which the professional accountant is established;
- c) Other details (e.g., e-mail address) which enable the professional accountant to be contacted rapidly and communicated with in a direct and effective manner;
- d) Where the professional accountant is a member of, or registered with, a professional body, he should disclose details of such membership or registration. He should also disclose his professional title and identify the Member State in which it was granted;
- e) Where the provider is registered in a public register, the name of that register and the provider's registration number, or equivalent means of identification in that register;
- f) Where the activity is subject to an authorisation scheme, the particulars of the relevant competent authority or the single point of contact;
- g) Where the provider exercises an activity which is subject to VAT, the identification number;
- h) Details of any insurance cover or other means of personal or collective protection with regard to professional liability;
- i) The main features of the services, if not already apparent from the context.

To the extent that a professional accountant includes details about fees, charges or other price-related information in a Commercial Communication (e.g., on a Web site):

- a) Any stated price should be clear and should relate to the services advertised. Professional accountants should ensure that the prices match the services illustrated;
- b) Prices quoted in on-line Commercial Communications addressed to the public should include VAT and other taxes and duties imposed on all buyers. The professional accountant should consider the extent to which these taxes and duties should be separately disclosed;
- c) If the price of one service is dependent on the purchase of another, the extent of any commitment by consumers should be made clear;
- d) Where additional charges (for example on-line charges) are payable this should be stated;
- e) The currency should be clearly indicated.

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<sup>16</sup> Article 22 of the Directive 2006/123/EC of 12 December 2006 on Services in the Internal Market and Article 7 of the Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications.