Liberalisation of the Accountancy Profession in Europe

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Summary of the Proposals

In this report, the professional accountant is defined as a professional:

- who has completed in a given EU Member State the highest level of training and experience required to work as a professional accountant in that country and, as a minimum, meets the qualification level of the Eighth directive and;

- who, once authorised, can carry out without restriction, the statutory audit of all entities which are subject to an audit.

Presentation of the accountancy profession in Europe

A profession with regulated access and practice

The profession of "accountant", as defined above, is one which is regulated in all Member States of the European Union. To gain access to it, it is necessary to be approved by the competent authorities of the Member State. Approval of a professional is indicated by way of his inclusion on the list of those authorised to exercise the activity or activities reserved for the profession.

A profession with a very extensive and diverse sphere of activity

The accountancy profession has a very wide field of activity, but also one which differs in the various Member States of the European Union. FEE's 1995 study "Survey of the Activities of Accountancy Professionals in Europe" shows this clearly.

Yet, in all Member States, despite historic, economic, legal and cultural differences, a core of activities can be found which are reserved in law or in practice to the accountancy profession which covers the production and legal validation of the company's financial data.

In addition to these activities which are usually reserved exclusively to the accountancy profession, certain activities form part of the traditional sphere of expertise of the profession, even if they are sometimes shared with other professions. Amongst these activities are, for example, tax advice and planning, as well as insolvency work.

In order to maintain the high quality and diversity of the professional services provided, it is essential to ensure that professional firms are able to develop the widest possible range of competencies and to attract and retain the most talented people to serve their clients. It is this situation, and not one of protectionism and anti-competitive environments, which enables the interest of both clients and the public in general to be served. It guarantees a wider choice of professional advisors, encourages innovation and competition and ensures that the aptitudes and experience of the accountancy profession can be fully utilised to provide assistance to European businesses, especially to small and medium sized businesses.

The accountancy profession and the public interest

The reserved regulated activities generally cover those areas in which the profession serves the public interest.

The legislative framework at European level for the statutory audit of accounts

Just one reserved activity, that of statutory auditing, has been the subject of Community directives (the Fourth, Seventh and Eighth directives). It should be noted that the Eighth directive, which deals with the approval of those who can carry out the statutory audit of accounting documents, is not a liberalisation directive.

The existing legislative framework for the liberalisation of the accountancy profession

The accountancy profession is covered by directive 89/48/EEC relating to a general system of mutual recognition of higher education diplomas.

FEE considers that the general system of mutual recognition of diplomas implemented by directive 89/48/EEC, and its application to the accountancy profession, is an example of a measure which combines the process of liberalisation and the protection of the public interest in an appropriate way.

FEE considers that the aptitude test, insofar as it is "in proportion", that is to say that it tests only knowledge of the law of the host country - not the technical knowledge which must be deemed to have been already acquired - and provided the tests are personalised according to the applicant's qualifications and experience, including any experience which may have been acquired in the host country, constitutes the most flexible and sure means of allowing freedom of movement for accountancy professionals whilst guaranteeing the quality of service vital to protection of the public interest.

FEE proposes to examine and evaluate the extent to which existing measures in the Member States do not go beyond the minimum required. In particular, FEE proposes to examine the credit given for relevant experience gained in the host Member State.

Scope of the liberalisation proposals

FEE's proposals are principally aimed at making possible, or at facilitating, the free provision of services across borders for accountancy professionals. The biggest problems are, in fact, with this mode of delivery.

They are also aimed at allowing the free circulation of professional firms in the form of legal entities which, as national legislation currently stands and in the absence of any legal instrument at European level, is not currently possible, as well as permitting the creation of professional firms made up of professionals from different Member States of the European Union.

The principles of liberalisation of the accountancy profession

FEE upholds two essential principles which should constitute the basis of any liberalisation measures for the accountancy profession:

- the obligation to acquire the host country qualification and, flowing from this, respect for the professional rules and regulatory obligations of the host Member State, notably in ethical matters;

- the application of these principles irrespective of the professional's mode of practice: cross border provision of service or via establishment.

The differences in the obligations and requirements of the assignments undertaken by accountants, along with the differences between the legal and taxation systems and the extent of the accountant's responsibility justify and require, with the public interest in mind, the acquisition of the qualification of the host country.

Similarly, the competence requirements - which do not change whether the professional is practising via a local establishment or on a cross border basis - along with the need to ensure fair competition between professionals from different Member States, make it necessary to retain the obligation to acquire the host country title whether the professional is operating via a local establishment or on a cross border basis.

The free movement of individuals

Cross border provision of services

This necessitates, for the reasons developed above, the acquisition of the qualification of the host country and, flowing from this, respect for the professional rules of the host country. This will require the registration of the professional with the host country's competent authorities.

Specific implementation details relating to professional establishment

FEE considers that, in order to make cross border provision of services possible, Member States should not be able to require that the accountancy professional must have a professional establishment on their territory. The accountancy professional should only be required to provide evidence of a professional establishment in any EU Member State.

Specific implementation details for quality control

At present, the different systems of quality control in place in the Member States make provision for those monitoring quality to visit the professional on his premises or to require the professional to come to them, with the necessary documentation. FEE is of the opinion that these two solution are acceptable and that the cross border service provider should be subject to the same procedures in force in the host Member State for locally established professionals.

Exercising disciplinary control

Adherence to the professional regulations of the host country is a basic condition for the liberalisation of the profession. The disciplinary authorities in the host country are best placed to interpret the professional regulations in the host country. For this reason, FEE considers that the professional providing services on a cross border basis should be subject to the disciplinary control of the host country.

Obligations relating to professional insurance

The requirements relating to professional insurance vary from one Member State to another. The professional providing services in a host Member State on a cross border basis must comply with the requirements in force in that host Member State with regard to professional insurance.

Free movement of legal entities

Similar principles for individuals and legal entities

The principles defined for individuals should be transposed to legal entities, as the objective of protecting the public interest is common to both.

FEE proposes that any professional firm approved in one Member State should be able to provide cross border services freely in another Member State (freedom to provide services).

FEE also proposes that any professional firm approved in one Member State should be able to open a branch in another Member State.

To give effect to these two modes of practice, the principal condition which must be met is that the professional responsible for the work and who signs the reports should have acquired the title of the host country, should observe the local professional rules, in particular the code of professional ethics, and should be authorised to act on behalf of the legal entity.

Finally, FEE proposes that all professional firms licensed in one Member State should be able to create a professional subsidiary in another Member State. For this to happen, the conditions outlined above for branches, relating to local authorisation of the individual signing the reports, must be met. In addition, the majority of members of the management body of the subsidiary should be made up of professionals who are locally authorised in the Member State in which the subsidiary is established.

Barriers to the free movement of legal entities

Rules restricting the choice of legal forms which are allowed for collective professional practice

Restricting collective practice to certain national legal forms results in prohibiting the free provision of cross border services and the establishment of branches.

FEE recommends that accountants should be able to carry out their professional activities in the legal form of their choice, that is to say, they should not be prevented from setting up a branch on the grounds that the legal form of the parent is not recognised in the host Member State. As far as subsidiaries are concerned, these should of course adopt a legal form which is authorised in the host Member State.

Rules restricting the choice of names of professional firms

FEE considers that all restrictions relating to names of professional firms should be abolished. Such rules constitute an obstacle to the free circulation of professional accountancy firms in the form of legal entities.

Statutory audit of accounts

The rules on control and management of firms of auditors

In implementing the Eighth directive, the majority of Member States have put in place rules requiring that the majority of capital and/or voting rights in professional firms to be in the hands of locally approved professionals who have the local professional title. FEE considers that requiring local authorisation in this way constitutes an obstacle to the free movement of legal entities in terms of both establishment and freedom to provide cross-border services. Moreover, the Member States have often required more than a simple majority of capital and/or voting rights to be in the hands of professionals (often a qualified majority of 66%, 75% or 100%).

Majority of voting rights in firms of auditors

Simple majority/qualified majority

FEE considers that the requirements relating to the percentage of capital and/or voting rights which should be in the hands of statutory auditors in firms of auditors should be harmonised at European level requiring only a simple majority.

Locally approved professionals/professionals approved in any Member State

FEE considers that the rules which require the majority of capital and/or voting rights in professional firms to be in the hands of locally approved professionals who hold the local title are not in proportion to the aim of protecting the public interest and that it would be appropriate to clarify the provisions of the Eighth directive to permit majority holdings in firms of auditors in one Member State by practising professionals who have been authorised in other Member States.

Control of the management body

As far as the management body in firms of auditors is concerned, FEE considers that the majority of members of this body should be statutory auditors, either individuals or legal entities, who have been locally approved in the host Member State.

FEE would like to see the proposals which have been developed above for firms of auditors being transposed to accountancy firms, where the latter are regulated.
Introduction

Introduction

Since the formation of its European organisation, the accountancy profession has demonstrated its willingness to achieve a Single Market for accounting services. There has been regular dialogue between FEE and the Commission on this point. It was at the time of the discussion launched by the Commission's Green Paper on "The Role, Position and Liability of the Statutory Auditor in the European Union" that FEE, in its January 1996 study and its response to the Green Paper, put forward its most recent proposals to the Commission. In its communication "Statutory audit in the European Union: the way forward ", the Commission expressed its wish, in paragraphs 3.17 and 3.18, to resume dialogue with the profession on the question of liberalisation.

"The Commission will examine, together with the Member States and the Contact Committee on the accounting directives, the problems which, in practice, hinder the exercising of freedoms of establishment and free provision of services in the sphere of auditing. The accountancy profession will be closely associated with this work [....]. The Commission also intends, together with the accountancy profession, to look into the feasibility of a sectoral directive for statutory auditors. This will be envisaged only if it becomes clear that it will provide improvements in comparison with the general directive (EEC directive 89/48), both for auditing practices and for independent professionals, and provided that this initiative is supported by the profession and the Member States".

Similarly, the European Parliament in its report on the Green Paper set out the following motion for a resolution:

15 *"Encourages the Commission, however, to submit legislative proposals with a view to removing legislative obstacles and gradually introducing greater flexibility in the provision of services by, and the arrangements for the free establishment of, individual auditors and auditing companies in other Member States; calls in particular on the Commission to consider the following possibilities:*

a) the implications of ECJ case law as regards the freedom to provide services and also the establishment of an auditor, approved as such in one Member State, in another Member State, and the scope of the effective conditions needed to ensure that professional standards are respected and quality control is applied in the host Member State;

b) the general conditions for the provision, in another Member State, of services by auditors approved in one Member State on the basis of the qualifications obtained in the Member State of origin;

c) the establishment of a system for cooperation and an exchange of information between the Member States' authorities which are responsible for approving auditors and enforcing professional or deontological standards;

d) consideration of the scope for abolishing existing national restrictions which prevent auditing companies from setting up a subsidiary in another Member State under the same legal form;"

The objective of this report is to present the Commission with FEE's proposals relating to liberalisation of the accountancy profession considered as a whole.

Within this report, the professional accountant is defined as a professional:

- **who has completed in a given EU Member State the highest level of training and experience required to work as a professional accountant in that country and, as a minimum, meets the qualification level of the Eighth directive and;**

- **who, once authorised, can carry out without restriction, the statutory audit of all entities which are subject to an audit.**

I. Presentation of the accountancy profession in Europe

1 A profession with regulated access and practice

The profession of "accountant", as defined in the introduction, is one which is regulated in all Member States of the European Union. To gain access to it, it is necessary to be approved by the competent authorities of the Member State. Approval of a professional is indicated by way of his inclusion on the list of those authorised to exercise the activity or activities reserved for the profession.

To be approved, it is necessary to obtain a professional title, issued by a competent authority in a Member State, designed in accordance with the legislative, regulatory or statutory provisions of that State and to meet any other conditions relating to the approval, such as good standing and absence of bankruptcy, conditions which are usual for this type of profession. In the case of legal entities, conditions relating to the control of capital and of the management body have also to be met, in order to be authorised.

Two approaches to professional qualifications for accountants co-exist at the European level: the educational title system and the functional title system.

Educational titles indicate that the holder has completed a particular course of education and training. Educational titles, which are widely known to the public, give access to a wide range of activities, often without the requirement to hold any additional functional title. Holding the educational title is an essential element in obtaining a functional title, if this is necessary. In all Member States where a functional title exists, this title is generally obtained as a second stage to holding an educational title.

The term functional title denotes a professional title which allows the holder to exercise the specific duties to which only this title gives access. The holder of this title can usually only practise the single function to which the title gives access, and sometimes a few related activities, to the exclusion of any other activities. The close relationship between the function and the title generally means that the function may only be performed by those with the title. Where a functional title exists for a particular activity, it is necessarily unique. However, holding a functional title is not usually incompatible with holding other professional titles which may give the holder access to a more extensive field of activities.

The co-existence of functional and educational titles may present difficulties in terms of mutual recognition where the equivalence between a functional title, giving access to a narrow field of activity, and an educational title, giving access to a wider field of activity, may be difficult to establish. However, the extent of this problem should not be overstated since, as mentioned above, functional titles (with certain rare exceptions), are generally obtained under the prior condition of holding an educational title.

Educational titles, like functional titles, are initially awarded to individual professionals but the majority of Member States also give them, by extension, to professional firms made up of those holding the title in question.

2 A profession with a very extensive and diverse sphere of activity

The accountancy profession has a very wide field of activity, but also one which differs in the various Member States of the European Union. FEE's 1995 study "Survey of the Activities of Accountancy Professionals in Europe" shows this clearly.

The accountant's sphere of activity covers statutory auditing, public sector auditing, accountancy, the audit of mergers and acquisitions, audit of non-cash considerations to companies, corporate recovery, liquidations, insolvency, legal expertise in accountancy matters, tax consultancy, tax representation, investment advice, legal advice and the preparation of legal documents as well as, more generally, numerous other types of advice, including, inter alia, advice on organisation, strategy, management, information technology, etc.

These activities are not, of course, all regulated in all Member States, that is to say, it is not necessary everywhere to hold a specific professional title to practise them. Moreover, even when they are regulated, they do not always form part of the sphere of activities reserved only for the accountancy profession. They are sometimes reserved exclusively to the accountancy profession, sometimes shared with other professions and sometimes the accountancy profession is excluded from offering services in the area concerned.

Yet, in all Member States, despite historic, economic, legal and cultural differences, a core of activities can be found which are reserved, in law or in practice, to the accountancy profession which covers the production and legal validation of the company's financial data and which includes at least:

- statutory audit of accounts
- accountancy
- the audit of mergers and acquisitions
- audit of non-cash consideration in connection with share issues

In addition to these activities which are usually reserved to the accountancy profession, certain activities form part of the traditional sphere of expertise of the profession, even if they are sometimes shared with other professions. Amongst these activities are, for example, tax advice and planning, as well as insolvency work.

If we examine the differences between countries with regard to the activities in which accountancy professionals are permitted to engage, we see that a large number of the restrictions which exist (for example in the field of taxation) do not in any way derive from a lack of the required competence on the part of the accountancy professional or firm, but as a result of the protection and monopolies which have been granted to others. These differences have a direct impact on the Single Market, given that, in certain host Member States, migrant accountancy professionals are prohibited from practising in areas to which they have unlimited access in their Member State of origin. In order to maintain the high quality and diversity of the professional services provided, it is essential to ensure that professional firms are able to develop the widest possible range of

competences and to attract and retain the most talented people to serve their clients. It is this situation, and not one of protectionism and anti-competitive environments, which enables the interest of both clients and the public in general to be served. It guarantees a wider choice of professional advisors, encourages innovation and competition and ensures that the aptitudes and experience of the accountancy profession can be fully utilised to provide assistance to European businesses, especially to small and medium sized businesses.

In consequence, in order to maintain the high quality of work carried out by the profession for businesses in the European Union – and to ensure that the European profession can be competitive and exert an influence at international level, in the light of moves towards greater liberalisation of professional services world-wide – **FEE recommends, above and beyond the liberalisation measures developed below, that all limitations to the scope of professional practice which cannot be objectively justified on grounds of competence, integrity, independence and objectivity, should be eliminated.**

3 The accountancy profession and the public interest

The reserved regulated activities generally cover those areas in which the profession serves the public interest.

For example, statutory audit of accounts provides confidence in business transactions. The opinion of the statutory auditor reinforces the credibility of the accounts of the audited company. Improved credit accorded to audited accounts reinforces the value of the decisions taken on the basis of these accounts and thus contributes to the protection of the public interest. These decisions can relate to obtaining finance (by own capital or by loan), the granting of credit by suppliers, acceptance of employment and calculation of the tax base.

The audit of mergers and non-cash contributions to companies in connection with a share issue ensures equality of treatment for shareholders and thus contributes to the protection of the public interest.

Similarly, this also applies to the accountant's numerous other activities such as, preparing the accounts of entities not subject to statutory audit, contractual audit, etc.

The public interest aspect of the various activities undertaken by the accountancy profession may be perceived as more or less significant according to the activity in question. As far as statutory audit is concerned, the very fact that the accountant is subject to European-level regulation is an indication of the role played by the auditor with regard to the reliability of financial information. However, the existence of different audit thresholds in the Member States (depending on the size of the company or the number of its transactions or workforce) leads us to believe that the national authorities have interpreted differently the role which the professional has to play in lending credibility to financial information.

In implementing the Fourth and Seventh directives, the Member States set different audit thresholds, within the limits allowed by the directives, for companies which have to

undergo a statutory audit of their accounts. For historical reasons, linked to the economic structure of the country and to the way the accountancy profession was organised, some Member States maintained the requirement for a statutory audit for companies and groups whose thresholds were well below those stated in the Fourth and Seventh directives. Other Member States, however, exempted all companies and groups they could possibly exempt from the need to undergo a statutory audit within the limits of the thresholds in the directives.

Establishing a statutory audit threshold which governs the number of companies which are subject to audit and which have also been interpreted differently by the Member States gives rise de facto to another field of accounting activity which also has a public interest dimension.

Thus, those Member States which impose the requirement for an audit on a large number of companies (by virtue of applying lower thresholds than those required by the Fourth and Seventh directives) do not usually regulate general accountancy services. However, they do permit auditors, under certain conditions, to assist in the preparation of the clients' accounts.

With the same objective in mind, other Member States (which impose an audit on a smaller number of companies by imposing higher audit thresholds) may regulate accountancy services and do not allow the auditor to assist in the preparation of accounts. These two examples demonstrate that the degree of importance which Member States' authorities attach to the production of reliable financial information by professional accountants.

The role which the professional accountant has to play in protecting the public interest is also apparent in the area of taxation, where he assists in establishing the appropriate level of taxation, even if this only arises from his work in determining the tax liability.

Within each national context, therefore, the public interest aspect of the professional accountant's activities is recognised both by the demands of the public and of the authorities through the nature of the activities he is undertaking as well as by the professionalism and responsibility in carrying out his work.

One of the consequences of the role that the profession has to play in the public interest - notably when carrying out statutory audit work - is that, in certain Member States, the professional accountant's responsibility goes beyond the client firm (contractual liability) to interested third parties and, more generally, to anyone who may have an interest in the company. This should help to understand the need for quality which the profession as a whole pursues and which justifies the legal and regulatory requirements which are imposed in terms of licensing, authorisation and the education and training of accountancy professionals. These must take precedence over the imperatives of the market.

4 The legislative framework at European level for the statutory audit of accounts

Just one reserved activity, that of statutory auditing, has been the subject of Community directives:

The Fourth and Seventh directives stipulate that the annual and consolidated accounts of companies meeting certain conditions must be audited by a professional who has been authorised. The obligation placed on companies to have an independent external audit of their accounts, as laid down by articles 51 of the Fourth directive and 37 of the Seventh directive, stems from the wish of the Member States, in application of article 54.3g) of the Treaty of Rome, to protect the interests of members and others (creditors, personnel, public authorities and so forth). Particular importance has been attached to establishing common principles and legal requirements with regard to the financial information which must be made available to the public by companies which are competing in the Single Market.

Moreover, since public information is provided via the audited accounts of companies and groups which meet the conditions stipulated in the Fourth and Seventh directives, it was necessary for a common base to exist at European level to govern the conditions of approval, authorisation and training of statutory auditors. This common base has been achieved through implementation of the Eighth directive which defines the conditions which both individuals and legal entities must meet in order to carry out statutory auditing in each country in the European Union. It will be noted that the Eighth directive is not a liberalisation directive, as is clearly stipulated in the penultimate paragraph of the preamble. It does not aim to bring about freedom of establishment nor freedom to provide cross-border services for the persons responsible for carrying out the statutory audit of accounts.

5 The existing legislative framework for the liberalisation of the accountancy profession

The accountancy profession is covered by directive 89/48/EEC relating to a general system of mutual recognition of higher education diplomas.

FEE considers that the general system of mutual recognition of diplomas implemented by directive 89/48/EEC, and its application to the accountancy profession, is an example of a measure which combines the process of liberalisation and the protection of the public interest in an appropriate way. Its recent implementation, combined with various other factors independent from the directive itself, no doubt explains why a limited number of persons have made use of it1. The directive constitutes only a first step towards a wider liberalisation of the accountancy profession. EC directive 89/48 does not, moreover, cover legal entities, whose role is important in the practice of the profession.

Pursuant to Articles 4.1 b and 10, the profession recommended the use of an aptitude test in order to acquire the qualification of the host country in the least onerous way possible. This solution has been chosen by almost all the Member States.

Article 4.1 b) of EEC directive 89/48 lays down that the host Member State must allow the applicant to choose between the adaptation period and the aptitude test, except for those professions where practising demands precise knowledge of national law and where

a major and continuing part of activity is the provision of advice and/or assistance with national law. The host Member State can in this case, by varying the principle of choice left to the applicant, stipulate either an adaptation period or an aptitude test.

FEE has considered and continues to consider that, for practical reasons, the aptitude test enables the qualification to be obtained in the least onerous way possible. The mutual recognition of diplomas deals with professionals who are already qualified in their Member States of origin, in other words, professionals who, bearing in mind the duration of their studies and practical training, are already involved in active practice. To subject these professionals to an adaptation period in a host country will require some form of training, without the individual being able to assume full and entire responsibility for his work, as he does in his country of origin.

An adaptation period would only be acceptable insofar as there was satisfaction about the conditions of the individual's progress and training, which presupposes the implementation of appropriate structures and procedures.

In view of this, FEE considers that the aptitude test, insofar as it is "in proportion", that is to say that it tests only knowledge of the law of the host country - not the technical knowledge which must be deemed to have been already acquired - and provided the tests are personalised according to the applicant's qualification and experience, including any which may have been acquired in the host country, constitutes the most flexible and sure means of allowing freedom of movement for accountancy professionals whilst guaranteeing the quality of service vital to protection of the public interest.

However, in order to ensure the effective functioning of the aptitude tests in the light of the objectives stated above and any necessary improvements, FEE proposes to examine and evaluate the extent to which existing measures in the Member States do not go beyond the minimum required. In particular, FEE proposes to examine the credit given for relevant experience gained in the host Member State.

The possibility of setting up a system of delegation has often been raised. The Commission's Green Paper refers to this option:

"As the study carried out for the Commission in 1996 points out, in those Member States where there is no restriction on the delegation of audit work, the foreign auditor can work under the responsibility of a national auditor in the host country."

FEE has already commented on this point in its response to the Green Paper in October 1996 where it made the following points:

"Furthermore, support for the notion of delegation reflects a misunderstanding of the problem. How could an auditor work under the responsibility of a national auditor without clear provision governing issues such as which of the professionals involved should hold the appointment and the allocation of liability for any problems which arise? The Commission's text is unacceptable in this regard. It ignores the realities of statutory audit by believing it possible to divorce the work performed from the responsibilities to which it gives rise under national law."

FEE today maintains this position, first expressed in 1996.

6 Protection of titles

With a very few exceptions, all the professional titles used for practising by the profession in Europe are protected by law (or by equivalent provisions: regulations, orders, case law, etc.) in each of the countries concerned. This protection however, has, in principle, only national scope, and does not extend over the borders of the country from which the title is derived (cf. Study on professional titles, FEE, December 1994). Their protection within the Community must be ensured.

7 Scope of the liberalisation proposals

Professional practice of activities which are reserved in law or in fact, the public interest dimension and the extent of the accountant's responsibility mean, as we have stated above, that the accountancy profession forms a whole and that the proposals described below are aimed at covering a wide sphere of activities which are regulated and reserved to the accountancy profession.

In particular, statutory audit merits special consideration because it is the only activity undertaken by the accountancy profession which is already the subject of regulation at Community level, making it compulsory in all the Member States of the European Union.

For the reasons set out in this first section, because of the public interest but also due to the diversity of the field of activity and the regimes of responsibility, as well as the relationship between systems of educational and functional titles, the liberalisation of the profession can only be founded on strong principles, which may not always enable new solutions to be introduced. Thus, in certain areas - for example establishment for individuals - FEE can at present only recommend the existing approach, as is set out in directive 89/48/EEC.

FEE's proposals are principally aimed at making possible, or at facilitating, the free provision of services across borders for accountancy professionals. The biggest problems in fact are with this mode of delivery.

They are also aimed at allowing the free circulation of professional firms in the form of legal entities which, as national legislation currently stands and in the absence of any legal instrument at European level, is not currently possible, as well as permitting the creation of professional firms made up of professionals from different Member States of the European Union. At this stage in the debate, these proposals do not include specific provision for holding companies.

The free circulation of professional accountants requires the adoption of guiding principles at European level. The aim of those proposed by FEE is to give effect to the principles of free movement envisaged by the Treaty of Rome, whilst protecting the quality of the services provided by professional accountants and allowing the latter to assume their responsibilities vis-à-vis their clients and the public in general.

II. The principles of liberalisation of the accountancy profession

It is useful to recall that the Treaty of Rome, reinforced by ECJ case law, stipulates that individuals and legal entities should benefit from freedom of establishment and the freedom to provide services. For legal entities, freedom of establishment can be exercised in the form of a branch or subsidiary. These provisions apply to the professions in general and the accountancy profession in particular. Neither the Treaty of Rome nor ECJ case law impedes the setting up of regulated professions.

1 The principles of liberalisation of the accountancy profession

FEE upholds two essential principles which should constitute the basis of any liberalisation measures for the accountancy profession:

- the obligation to acquire the host country qualification, directly or via equivalence (aptitude test) and, flowing from this, respect for the professional rules and regulatory obligations of the host Member State, notably in ethical matters;

- the application of these principles irrespective of the professional's mode of practice: cross-border provision of service or via establishment.

These two essential principles have been upheld for the reasons outlined below.

Acquisition of the host country qualification and respect for the professional rules and regulatory obligations of the host country

The differences in the obligations and requirements of the assignments undertaken by accountants, along with the differences between the legal and taxation systems and the extent of the accountant's responsibility, justify and require, with the public interest in mind, the acquisition of the qualification of the host country. It is not thought that, within one Member State, work with a public interest dimension and for which the professional has a direct responsibility, could be carried out under different professional titles, as this could only be a source of confusion and uncertainty for the third parties concerned, the public in general and the professionals themselves.

In the absence of sufficient harmonisation of professional practices and national laws in Europe, the use, under identical conditions, of one professional title, provides the public of a country with a single guarantee.

In order to ensure that all users of accountancy services may enjoy a clear consistent understanding of the conditions in which these services are provided in a given Member State, it is necessary that the professional operating in a Member State other than the one in which he obtained his original qualification, complies with the professional rules and regulatory obligations of the host country.

In fact, as mentioned above, different Member States impose different obligations on accountancy professionals in conducting their work. For example, in some States, there is, beyond the usual role of the professional accountant to produce and verify financial information, a specific obligation to report to the supervisory authorities in certain sectors or to the legal authorities. These obligations do not exist in other States.

Similarly, although a process of harmonisation of professional ethical rules is underway as mentioned below in paragraph II.3, some differences still exist between Member States, for example relating to conflicts of interest or whether there are restrictions on advertising.

It is differences of these kinds which render necessary and obligatory the acquisition of the qualification of the host country and with it adherence to its regulations.

Similar requirements in terms of competence and quality irrespective of the professional's mode of practice: cross border provision of services or via establishment

The competence requirements - which do not change whether the professional is practising via a local establishment or on a cross-border basis - along with the need to ensure fair competition between professionals from different Member States, make it necessary to retain the obligation to acquire the host country title whether the professional is operating via a local establishment or on a cross border basis. The public would not moreover understand that for the same assignment, the professional could use different professional titles, depending on whether he was operating from his country of origin or whether he had an establishment in the host country.

2 Transposition of these principles to legal entities

It should be possible to transpose these principles – which are straightforward to apply to individuals – to legal entities. **FEE proposes in these conditions that the individual professional who provides services on behalf of a professional firm should, firstly, have the qualification of the host country and, secondly, be fully authorised to act on behalf of the legal entity (company director or authorised representative).**

3 Prospects for and limitations from the harmonisation process

The requirement to acquire the qualification of the host country could be reviewed at a later date, depending on the level of harmonisation achieved in the regulation, education and training of professional accountants and professional practices.

In this respect, it is appropriate to reiterate that FEE has adopted a clear stance in favour of international harmonisation of standards and practices in the area of accounting and auditing.

The constant harmonisation efforts made by the profession, both at an international and European level, have brought convergence to the audit working methods of accountancy professionals. FEE has recently published a study on the implementation of the IAPC's

international standards of auditing in Europe. This study highlights the extent of convergence of national audit standards with international standards.

Audit techniques and standards of auditing are therefore largely harmonised and known by all professionals worldwide. So substantial differences do not exist on this point but rather, as mentioned above, on the special requirements of the audit assignment and on the professional ethical rules and national legal systems.

In the field of ethics also, the development of a European ethical code will certainly provide an element of harmonisation by furthering the convergence of rules on ethics and independence, which will facilitate the free movement of professionals. FEE has recently proposed a common body of principles deemed essential in the area of independence and these codes could constitute the central part of a European ethical code.

Finally, the objective of harmonisation which is enhanced by professional rules, is reinforced by quality control systems. These systems which have been or are currently being put into place in the majority of Member States contribute to maintaining the quality of services provided by professional accountants and the process of harmonisation of working methods and professional rules by bringing together in dialogue - at the European and international levels - those who are responsible for these systems.

Nevertheless, international harmonisation does not represent a solution to all questions relating to free movement. Currently accounting harmonisation principally concerns the largest corporations, listed on the Stock Exchanges of the world. But the free movement of accountants is also concerned with the services which are provided to companies which are not “global players”. Migrants should also be able to provide accountancy services using national standards.

Given the current state of harmonisation of national laws, the growing trend towards training accountants in international accounting and auditing standards, however desirable this may be, does not in itself constitute a total solution. In particular, it cannot take the place of obtaining the host country title either directly or via the aptitude test.

As mentioned above, these principles are not set in stone and could be reviewed at a later date depending on the degree of harmonisation of laws which is achieved in the Member States.

Sections III and IV below propose looking at the practical application of the principles set forth above.

III. The free movement of individuals

1 Cross-border provision of services

As a fundamental right, the Treaty of Rome stipulates that individuals and legal entities should benefit from freedom of establishment and the freedom to provide cross-border services (EC Articles 52-58 and 59-66). This right cannot be prevented or prescribed.

Under these conditions, freedom to provide cross-border services should be made possible whilst adhering to certain requirements.

1.1 Principles

This necessitates, for the reasons developed above, the acquisition of the qualification of the host country, either directly, or by equivalence (aptitude test) and, flowing from this, respect for the professional rules of the host country. This will require the registration of the professional with the host country's competent authorities.

In order to be able to guarantee a consistent quality of service within each country, the cross-border service provider should be subject to any monitoring which may be carried out in the host country by the relevant professional body. Nevertheless, some flexibility needs to be found for the registration process, principally relating to the rules governing professional establishment, as well as to quality control procedures which will take into account the occasional nature of the service being provided.

1.2 Specific implementation details

The requirement to be registered with the competent authorities in the host Member State: professional establishment requirements

The first consequence of the principles set out above is the registration of the cross-border professional service provider with the relevant institute in the host country. The registered professional will be authorised to use the professional title of the host country. This registration will be on the same list as locally established professionals and the professional will have the same rights as a professional who is established locally. To obtain registration, the professional providing cross border services must prove that he has passed the aptitude test, provide evidence of his home country approval2, and supply the address of his professional establishment.

As regards this last requirement, it would be advisable to recall that at present, some Member States have no specific requirements in terms of professional establishment or are content with a professional establishment in any Member State. Others require a professional establishment on their territory. Case law at national level is insufficient with regard to the definition of professional establishment, but the term is widely understood as a place where clients

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IV. The free movement of legal entities

Legal entities, like individuals, should benefit from freedom of establishment and the freedom to provide cross-border services. Moreover, as regards legal entities, freedom of establishment can take place in the form of a branch or a subsidiary. All these provisions apply directly but have not taken effect because of the various legal measures in force in Member States relating to the regulation of the profession.

1 Similar principles for individuals and legal entities

The principles defined for individuals should be transposed to legal entities, as the objective of protecting the public interest is common to both.

FEE proposes that any professional firm approved in one Member State should be able freely to provide cross-border services in another Member State (freedom to provide services).

FEE also proposes that any professional firm approved in one Member State should be able to open a branch in another Member State.

To give effect to these two modes of practice (cross-border provision of services and establishment of branches), the principal condition which must be met is that the professional responsible for work and who signs the reports3 should have acquired the title of the host country, should observe the professional rules, in particular the code of professional ethics, and should be authorised to act on behalf of the legal entity. It is also necessary, if insurance obligations exist in the host country, for this professional to be personally insured in relation to these obligations or that the firm for whom he is acting can prove that it is covered for cross border activities.

Finally, FEE proposes that all professional firms licensed in one Member State should be able to create a professional subsidiary in another Member State, providing the following conditions are met.

- the majority of the members of the board of administration or management4 of the subsidiary should be made up of professionals approved locally in the subsidiary's Member State

- the professional authorised to act on behalf of the legal entity, who is conducting the work and who signs the reports, should have acquired the qualification of the host country and should be subject to all professional obligations of host country professionals.

- where insurance obligations exist in the host country, the professional must be personally insured in relation to these obligations unless the firm for whom he is acting can prove that it is covered for its activities in the host Member State.

2 Barriers to the free movement of legal entities

2.1 Choice of legal form

National regulations prohibiting collective practice

The rules prohibiting collective professional practice prevent de facto the free circulation of professional firms in those Member States which have such rules. Today, within the European Union, only one Member State still does not permit professional practice in collective form. Reforms in progress in that Member State should address this problem.

Regulations restricting the choice of legal form permitted for collective practice

Restricting collective practice to certain national legal forms results in prohibiting the free provision of cross-border services and the establishment of branches, and even subsidiaries. The right to open up a branch is already given by the decisions of the Court.

FEE recommends that professional accountants should be able to carry on their professional activities in the legal form of their choice, that is to say, they should not be prevented from setting up a branch on the grounds that the legal form of the parent is not recognised in the host Member State. In the case of a subsidiary, it should, of course, adopt a legal form authorised in the host Member State, but it should not be possible to prevent its setting up on the grounds that the legal form of the parent company is not recognised in the host country.

For the most part, the great majority of Member States of the European Union allow legal forms with limited liability. We know that in these cases, the restriction of legal liability does not exclude the personal liability of the signatory professional. Consequently, permitting freedom of choice of legal form does not endanger the public interest and could promote the policy of liberalisation and mutual recognition within the European Union. In countries where restrictions in choice of legal form exist, these national requirements must be abolished for foreign practices wishing to open a branch or subsidiary, or to acquire an interest in a local practice.

Rules restricting the choice of names of professional firms

In some Member States, restrictions exist as regards the name of professional firms. FEE considers that all restrictions relating to names of professional firms should be abolished. Such rules constitute an obstacle to the free circulation of professional accountancy firms in the form of legal entities.

2.2 The rules on control and management of professional accountancy firms

As mentioned above in section I, no definition of the accountancy profession exists at Community level. In all Member States, however, the accountancy profession is the subject of regulation and rules usually exist which govern professional accountancy firms. These rules are similar to those for firms of statutory auditors and relate to control of capital and the management body. It should be noted, moreover, that in practice in most Member States, there is generally just one firm and, therefore, one legal entity, owned by the same partners, for statutory audit activities and for other activities.

FEE would like the proposals set out below for firms of statutory auditors to be applied to accountancy firms, where the latter are regulated.

V. Statutory audit of accounts

1 Statutory audit of accounts benefits from a legislative framework at European level

As stated in chapter I.4, statutory auditing is the profession's only activity which benefits from a legislative framework at European level, making it compulsory in all Member States. This should certainly facilitate the implementation of liberalisation measures relating to this activity.

2 Application of the general principles to statutory audit

The principles developed above within the framework of cross border liberalisation and freedom of establishment for regulated accountancy services are even more relevant to statutory auditing, the only activity regulated in all the Member States.

3 Free provision of cross-border services and professional establishment

As mentioned above in paragraph III.1.2., in order to register a statutory auditor5 on the list of those approved to carry out this function, some Member States have no special requirements as regards professional establishment. Others require a professional establishment on their territory where working documents are retained. Case law, at national level, is inadequate concerning the definition of a professional establishment, but the term is usually understood as a place where clients may be received.

FEE is of the view that, in order to make cross-border provision of services a possibility, Member States should not be able to require the statutory auditor to be established within their territory. The statutory auditor should only be required to provide evidence of an establishment within the European Union.

4 Free movement of firms of auditors

As indicated earlier in paragraph IV.2.1., the barriers to the free movement of firms of auditors stem first of all from the restrictions relating to practising in collective form and the restrictions relating to choice of legal form permitted for collective practice. They stem even more from the way in which the rules on ownership and control of firms have been implemented, even although the Eighth directive constitutes a common base which should facilitate liberalisation measures.

4.1 The rules on control and management of firms of auditors

Article 2.1 b) of the Eighth directive lays down that the Member States can authorise to carry out the statutory audit of accounts, those legal entities which satisfy the following conditions as a minimum:

- The individuals carrying out statutory audits on behalf of the firm must satisfy at least the conditions imposed on statutory auditors;

- The majority of the voting rights must be held by natural persons or firms of auditors who satisfy at least the conditions imposed on statutory auditors [...]; and

- The majority of members of the administrative or management body of a firm of auditors must be natural persons or firms of auditors who satisfy at least the conditions imposed on statutory auditors. When such a body does not consist of more than two members, one of them at least must fulfil these conditions.

In implementing the Eighth directive, the majority of Member States have put in place rules requiring the majority of the capital and/or the voting rights6 of professional firms to be in the hands of locally approved professionals who have the local professional title. FEE considers that requiring local authorisation in this way constitutes an obstacle to the free movement of legal entities in terms both of establishment and freedom to provide cross-border services. Moreover, the Member States have often required more than a simple majority of capital and/or voting rights to be in the hands of professionals (often a qualified majority of 66%, 75% or 100%).

4.2 Majority of voting rights in firms of auditors

Simple majority / qualified majority

The Eighth directive requirements referred to above providing for the majority of voting rights in firms of auditors to be in the hands of statutory auditors are justified from the public interest point of view. They aim to safeguard the professional integrity and independence of statutory auditors. The question arises as to whether the requirements imposed by most of the Member States for qualified majorities rather than simple majorities (50.01%) are in proportion to achieving this objective.

FEE considers that the real barriers inherent in the questions relating to majority of capital and/or voting rights in professional firms reside in:

- the absence of a harmonised threshold for the control of capital and/or voting rights at a simple majority

- the requirement that the share of capital and/or voting rights which must be in the hands of professionals is reserved only to locally approved professionals (this point is developed below).

The lack of harmonisation of levels of control of capital in firms is a particularly significant barrier with regard to the provision of cross-border services and the establishment of branches. In fact, a host Member State may currently oppose the establishment, on its own territory, of a subsidiary of a firm from another Member State on account of the firm not being in the hands of statutory auditors at the percentage required by the host Member State. Harmonisation at the European level of the requirements in terms of the percentage of capital and/or voting rights in firms of auditors would help facilitate the free circulation of auditors.

FEE considers that this harmonisation should only require that a simple majority of capital and/or voting rights in firms of auditors must be in the hands of statutory auditors.

Locally approved professionals / professionals approved in any Member State

As stated above, in implementing the Eighth directive, most Member States have put in place rules requiring that at least the majority of the capital and/or voting rights in professional firms must be in the hands of locally approved professionals holding the local professional qualification.

Such rules prohibit majority investments in a practice in a Member State by professionals from another Member State. De facto they prevent the cross border provision of services by firms from other Member States, as well as establishment by means of branches and subsidiaries. They also prevent the creation of firms owned jointly by professionals from several Member States.

FEE considers that such rules are not in proportion to their objective and that it would be appropriate to clarify the clauses of the Eighth directive, in order to permit majority holdings in firms of auditors in one Member State by statutory auditors approved in other Member States.

However, in accordance with what is stated above, the professional responsible for the work and who signs the reports, and who is fully authorised to act on behalf of the company (company director or authorised representative), must have obtained the qualification of the host country and must adhere to its professional rules and, in particular, its code of ethics. It is also appropriate, if there are insurance obligations in the host country, for the professional to be personally insured in relation to these obligations or that the firm he represents and acts on behalf of can prove that it is covered for cross border activity.

4.3 Control of the administration or management body

In addition to the rules relating to the holding of capital and/or voting rights in firms of auditors, the Eighth directive imposes that the majority of the members of the administration or management body in a firm of auditors, must be individuals or firms of auditors who comply, as a minimum, with the conditions imposed on statutory auditors. When this does not count more than two members, at least one of them must satisfy these conditions.

Although FEE considers that, as far as the rules relating to the holding of capital and/or voting rights in firms of auditors is concerned, all statutory auditors approved in any Member State should be considered as satisfying the Eighth directive conditions, conversely, when we are dealing with the rules pertaining to the administration or management body of firms of auditors, it considers that the majority of the members of the administration or management bodies should be statutory auditors, natural persons or firms of auditors, who have been approved locally in the host Member State.

In fact, for some clients, technical decisions are taken relating to the audit opinion within the administration or management bodies of firms of auditors. This requires, as regards the public interest, that the professionals who take these decisions to be in possession of the qualification of the host country.

Justification of this measure is based on the same principles as the obligation for individual professionals to possess the qualification of the host country.

FOOTNOTES

1 Preliminary discussions on the implementation of EEC directive 89/48 for the accountancy profession have already taken place between the Member States, the profession and the Commission at the meeting organised for the purpose by the Commission, on 18th July 1997.

2 In some countries, professional accountants can only be registered and licensed with their professional institute if they are in public practice. For those professional accountants seeking to become members of an Institute in another Member State who are unable to demonstrate membership of their home Institute (due to the fact they are not in public practice), once they have acquired the host state title, they should register in the host Member State as if it is their first registration. This will require some additional administrative steps such as providing evidence of good standing and the absence of bankruptcy. This approach is valid regardless of whether the professional is practising on a cross border basis or via a local establishment.

3 By "signs the reports" we mean the signing of audit reports, statements or certifications within the framework of regulated activities.

4 By board of administration or management we mean the board of directors or management, according to the different systems of corporate governance in operation in the Member States.

5 Within this report the term "statutory auditor" means a natural person or a firm of auditors approved to carry out the statutory audit of accounting documents pursuant to the Eighth Council directive, as implemented into national legislation.

6 Depending on the regulations in force in the Member States, rules on control of professional firms are based on the control of capital and/or the control of voting rights. The objective, however, is always to ensure that decision-making lies in the hands of the profession.