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**Opinion Statement of the CFE
on the review of the Recognition of Professional Qualifications
Directive 2005/36/EC**

Submitted to the European Commission in March 2011

CFE (Confédération Fiscale Européenne) is the umbrella organisation representing the tax profession in Europe. Our members are 33 professional organisations from 24 European countries (21 EU member states) with 180,000 individual members. Our functions are to safeguard the professional interests of tax advisers, to assure the quality of tax services provided by tax advisers, to exchange information about national tax laws and professional law and to contribute to the coordination of tax law in Europe.

Dear Mr Tiedje,

CFE would like to thank you for your interest in the opinion of the professional organisations. We appreciate that we have been given the opportunity to exchange views on various occasions since the start of the evaluation process in March 2010.

The tax profession is regulated in 11 EU member states:

- AT, CZ, DE, FR, GR, PL, RO and SK require a minimum qualification for the activity of tax advice.
- BE requires a minimum qualification (only) for the use of the title tax adviser.
- IE and the UK are regulated in the sense of Art.3 (2) RPQ Directive, without reserved activities in tax advice.

The number of individuals that practice tax as a regulated profession in the EU is 143,000¹. In the other member states, professional qualification of tax advisers is not regulated in the sense of the RPQ Directive. In the Netherlands and Spain, regulation exists by private associations for their voluntary members.

Question 1: How to improve information of citizens on the recognition process

Strengthen points of single contact

Instead of creating new contact points at national or EU level, we recommend that the “points of single contact” from the Services Directive should take over the functions of the national contact points in Art.57 RPQ Directive. For citizens and businesses, having several contact points for different purposes creates confusion. Also citizens tend to prefer to have a contact point within their country.

Maintain dialogue with professional associations

Information of business and citizens does not take place solely through contact points. Professional associations are important multipliers of EU law and policies. They have a more direct access to

¹ numbers taken from the CFE European Professional Affairs Handbook, 2010.

their members than the European institutions have and can translate EU law and policies specifically for them. Therefore a close dialogue with professional associations should be maintained.

Question 3: Should the Code of Conduct for national competent authorities become enforceable?

As a general principle, we are in favour of it remaining good practice rather than mandatory as it offers greater flexibility and can better take into account the developing case-law of the ECJ. As the Code of Conduct is only 1 ½ years old, it is too early to draw conclusions on its functioning. We recommend to leave the Code more time to be applied smoothly. Where a code is mandatory, greater bureaucracy follows as records have to be kept evidencing compliance etc.

Question 4: Experience of compensation measures?

As tax advice always requires knowledge of the national law (Art.14 (3) RPQ Directive), to our information, all our member states that regulate the profession have opted for an aptitude test instead of an adaptation period.

Recognition cases for tax advisers in the meaning of the RPQ Directive have remained very limited in numbers. The following regulated countries have reported the following numbers since the entering into force of the Directive 2005/36/EC:

	notifications / free registrations	aptitude tests (number of applications)
Belgium	n/a (no duty to notify)	2007: 3 2008: 0 2009: 4 2010: 1
Czech Republic	no numbers available	2007-2010: 1
Germany	2009: 56 (42 from Austria)	2007: 0 2008: 4 2009: 0
Ireland	n/a (no duty to notify)	2009-2010: 3
Poland	no numbers available	2007-2010: 1
United Kingdom	n/a (no duty to notify)	2007-2010: 28

The low numbers are mainly due to the fact that

- knowledge of the tax law in one country is of little use in another country as tax laws are very diverse;
- rendering tax advice usually requires profound knowledge of the local language (as the above figures show, 75% of temporary activity cases in Germany came from Austria);

Furthermore, cases of cross-border tax advice given by lawyers and auditors usually escape these statistics as for these professions, EU law provides for specific rules on recognition in Directives 1977/249/EEC, 1998/5/EC and 2006/43/EC.

Question 5: European-wide codes of conduct on aptitude tests or adaptation periods?

Speaking for our profession, the content of aptitude tests cannot be set out in European guidelines as taxes are barely harmonised across the EU. Even for professional law and ethics, remaining differences in detail are considerable.

There should not be fixed rules on the frequency of aptitude tests for a profession because the demand for such courses varies over time and from country to country and the resources of the countries' professional bodies to organise such tests differ greatly. This being said, effective access of persons from other member states to the profession must be possible.

Question 6: Partial access to the profession

Partial access to a profession should not be included in the Directive. It should remain limited to very exceptional cases.

For reasons of legal certainty and client expectations, professions typically group a bundle of activities and competences. If partial access to professions became a general rule and was practiced extensively, descriptions of professions would in the long term be replaced by descriptions of single activities and competences.

From our practitioners' experience, we know that clients often ask a tax adviser for a number of different services and thus expect a broader knowledge of the matter. For a client, it would be very confusing not to know whether a person who is allowed to advise him on personal income tax would also be allowed to file VAT statements for his business, or to defend him in a criminal tax case before court. Clients may end up with having to appoint a number of partial experts instead of receiving one-stop solutions.

Question 7: Should there be a recognition regime also for graduates who are not yet professionals?

We consider that this issue should not be regulated as it is not relevant in practice.

Graduates who are still trainees are working under the supervision of a qualified professional and do not have the decisive contact with clients. Therefore, for our profession and probably for the vast

majority of professions, their activity is not regulated. Where there is no regulation by the state, there is no need for recognition rules for trainees' qualifications.

For lawyers, the situation is specific as countries have a mandatory training period in which the trainee lawyers are employed by the state. There could be a specific provision in the lawyers directive 98/5/EC but a general rule in the RPQ Directive would make the scope of the Directive more unclear.

Question 8: should there be a recognition regime for returning graduate trainees?

We do not see a real need for a formalised recognition procedure for practical training obtained abroad.

Any practical experience should be obtained in the areas required by the country where the professional qualification is sought. The body that awards the professional qualification should however accept that this training does not necessarily have to be obtained on its territory.

Questions 11-14: Professional cards

We acknowledge that for some professions, professional cards can be a valuable tool to increase cross-border mobility. However, demand and conditions of cross-border mobility differ greatly in different professions. There can be no one-size-fits-all approach. Therefore the Directive should not oblige member states to offer European professional cards for a given profession or to use a particular system.

For our profession where cross-border mobility is low for reasons unrelated to the recognition procedure (see our introductory remarks), the benefits of a mandatory card would not outweigh the costs. Furthermore, a professional card issued by competent authorities, connected to the IMI system and containing data (or enabling access to data) on professional sanctions would only work for tax advisers in countries where mandatory membership in professional bodies that can administer such data exists. These are only 9 EU member states (AT, BE, CZ, DE, FR, GR, PL, RO, SK).

However, we take the opportunity to discuss the feasibility of professional cards with our national member organisations. A future "European professional card for tax advisers" may or may not follow the model suggested by the Commission.

Question 15: European curriculum as 28th regime

A 28th regime that covers the whole of tax adviser education is an interesting long-term idea but would require a much greater degree of harmonisation or approximation of member states' tax laws.

Question 16: Fragmentation of regulated markets through required minimum qualifications?

To our knowledge, in 9 EU member states (AT, BE, CZ, DE, FR, GR, PL, RO, SK), the activity of tax advice or the use of the title tax adviser require a minimum qualification.

A reason for the differences is the greater complexity of some member states' tax laws and different competences that tax advisers have under national law². In some regulated countries, tax advisers have rights and obligations very similar to lawyers. In France, the tax profession is a part of the legal profession.

Examples:

- Only in AT, CZ, DE and FR, tax advisers may represent a client before court in criminal tax matters.
- In CZ, DE and FR, tax advisers by legislation have the right not to disclose client data requested by the state, be it fiscal authorities, public prosecutors, tax and criminal courts³. Also RO and SK have – to a limited extent- a non-disclosure right in their law.

The need for minimum qualifications for legal professionals is widely recognised and the prerequisite for a recognition regime as contained in the lawyers directives 1977/249/EEC and 98/5/EC.

Question 18: Simplification of the prior declaration regime for temporary cross-border services

Given that the transposition of the Directive was completed late in all member states, it is clear that so far, competent authorities have had little possibility to gain experience and as a result of this, the relevant provisions are not yet applied smoothly. We consider it is too early to change the regime substantially before member states have developed routine in applying it. Proper application of the existing system should be monitored by the Commission.

Declaration if the essential part of the service is provided on-line?

In tax advice, it is difficult to determine which part of the service is considered essential. The current regime based on physical movement provides for more clarity and is therefore preferable.

Clarification on the definition of temporary or occasional services?

As the Commission and the ECJ have rightly pointed out on many occasions, there can be no fixed definition of temporary services as this depends on the nature of the services provided in the individual case. We believe that case-law needs time to develop and legal uncertainty will eventually diminish.

² the common ground being that all tax professionals represented by CFE are allowed to provide the full range of tax advisory services as main professional activity in their country.

³ subject to exceptions like e.g. money laundering

Question 27: Continuing professional development (CPD) in the RPQ Directive

We consider that CPD should not be relevant in the context of recognition of professional qualifications. Wherever a professional practices, it is understood that s/he keeps him/herself updated.

Any regime that would require professionals to prove that they have been meeting the CPD obligations in their home member state would be very burdensome in practice:

CPD can take the most different forms: Conferences, on-line courses, private study, teaching, publishing articles etc. Also the areas in which CPD should take place may vary considerably within the same profession: A VAT expert in a multinational company will have to choose a very different CPD focus than the owner of a one-man tax firm whose clients are mainly individuals. Some member states which require CPD have therefore opted for a very flexible CPD obligation leaving the amount and subjects of CPD to the responsibility of the professional (AT, BE, DE, RO) while others have more detailed rules on minimum hours and particular CPD measures (FR, IE, SK, UK). When seeking recognition in another member state, professionals from the last-mentioned group of countries would find any proof of their CPD much more burdensome.

Furthermore, the host member state is generally not familiar with the CPD rules of another member state. This would require another exchange of information between authorities and/or professional organisations delaying the recognition procedure.

Finally, if there is mandatory CPD in the home member state, this member state will ensure that the professional actually takes part in CPD relevant to their activities. If s/he fails to do so in a serious way, s/he can be excluded from the profession and consequently cannot rely on the RPQ Directive any longer.

Question 30: Language skills

We agree to the current language regime based on the idea that the language of the host country must be mastered to the extent required by the activity in the individual case (proportionality test). We cannot report any difficulties in practice.

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