



Professional Law Report Confédération Fiscale Européenne (CFE)

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NEWS - INTERNAL MARKET

EUROPEAN COMMISSION

Directive 2006/123/EC on Services in the Internal Market: Points of Single contact: Implementing measures

With the view to facilitating its implementation, the Services Directive empowers the Commission to take certain implementing measures in accordance with the comitology procedure. The Commission adopts measures that have been the object of a positive opinion by the Services Directive Committee (a Committee in which all Member States are represented). On 16 October, 2009 the European Commission adopted a Decision in the context of the Services Directive facilitating the cross-border use of **Points of Single Contact** by businesses. It requires Member States to carry out an appropriate risk assessment before imposing on service providers the use of e-signatures with a high level of security. When this is nevertheless justified, the Decision establishes concrete obligations on the acceptance of e-signatures and enhances trust in e-signatures from other Member States.

This Decision aims to have a positive impact for businesses that fall under the Services Directive and more widely for the cross-border use of e-signatures and access to public e-services.

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

Commission Decision:

[EN](#)

Directive 2006/123/EC on Services in the Internal Market: IMI Implementing measures

On 2nd October 2009 the European Commission adopted an implementing measure in support of the Services Directive. The Decision of the Commission confirms the use of the **Internal Market Information System IMI** for the purposes of administrative co-operation between Member States. It also sets out

some practical arrangements related to how Member States will exchange information through IMI for the specific purposes set out in the Services Directive.

On 19 January 2009 the Commission, together with all EU Member States, launched a pilot project in support of the Services Directive. The pilot will be running until 28 December 2009, at which date the Services Directive must be fully implemented by Member States. Its aim is to pave the way towards a fully operational IMI system, applying to all service activities, by the end of this year. Tax advisers are in some Member States part of the pilot project.

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Internal Market Information System (IMI):

[EN](#)

COM Decision:

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Directive 2006/123/EC on Services in the Internal Market: Transposition

The European Commission took stock of transposition of the services directive in member states (deadline: 28 December 2009). A document forwarded on 24 September to the delegations of European ministers responsible for competitiveness policy focuses on two provisions: the compulsory review of national rules, mainly concerning the cross border provision of services and the creation of one stop shops where companies are able to accomplish all their administrative business.

Review of national legislation is complete "in a large majority of member states", the Commission welcomes, while expressing earnest concern about the lack of results from a smaller group of countries. Concerning the setting up of one-stop shops, France and Portugal are currently testing their structure in certain sectors, the profession of architect and the real-estate sector for Paris and the tourism sector for Lisbon. The Netherlands, the United Kingdom and Estonia are cooperating in order to ensure that their respective national desks operate on a cross border basis. According to the Commission, in a minority of Member States, the practical work of setting

the one stop shop in place seems not to have started yet. It underlines the importance of the Internal Market Information (IMI) system which, after a first running-in stage, seems to have made “significant progress”, with 1,209 local authorities registered with major differences according to the country, 60% of these authorities being located in the member states (Netherlands, Germany and Czech Republic). Austrians, Czechs and Dutch, at this stage, have sent the largest number of requests to the IMI.

Infringement Procedures

1. Nationality requirement for notaries: EC brings a case before the European Court of Justice to ensure non-discrimination in Portugal

The Commission has decided to take Portugal to the European Court of Justice as it allows only Portuguese nationals to take up and practise the profession of notary. In the Commission’s view, this nationality requirement runs contrary to the freedom of establishment provided for in Article 43 of the EC Treaty and cannot be justified by reference to Article 45, also of the EC Treaty, which exempts activities involving the exercise of official authority. The ECJ has ruled that such involvement must be direct and specific. The Commission considers that this does not apply in the case of notaries as they cannot impose a decision against the will of one of the parties they are advising. Notaries do not take decisions with regard to state authority and therefore cannot be deemed to exercise such authority. Although Portugal adopted legislation in 1997 which repealed the nationality requirement, it has recently become clear that the authorities are interpreting the Portuguese constitution in such a way as to restrict access to the profession of notary to Portuguese nationals. Given that Portugal maintained its position in its response to the reasoned opinion, the Commission has decided to refer the case to the Court of Justice, the third stage in the infringement proceedings. Belgium, Germany, Greece, France, Luxembourg and Austria have already been referred to the Court for similar reasons.

2. Anti-money laundering: Commission takes action to ensure that Ireland and Poland implement EU laws

The European Commission has taken action to ensure that agreed Internal Market legislation is implemented in Ireland and Poland. The Commission has decided, under Article 228 of the EC Treaty, to send letters of formal notice requesting Ireland and Poland to implement previous judgements of the European Court of Justice in the areas of, respectively,

anti-money laundering and the Markets in Financial Instruments Directive (MiFID). If there is no satisfactory reply within two months, the Commission may send a further reasoned opinion and then refer the case to the European Court of Justice with the proposal to impose a fine.

3. Professional qualifications: Luxembourg, Portugal, Cyprus, Greece and Belgium

Luxembourg will be sent a reasoned opinion and *Portugal* a letter of formal notice asking them for information on steps taken to comply with two Court rulings (case C-223/08 in the case of Luxembourg, and C-245/08 for Portugal) that they have failed to transpose directive 2006/100/EC which provides for technical adaptations to the directives on professional qualifications further to the accession of Bulgaria and Romania to the EU. In *Cyprus*, estate agents from another member state have to meet a number of conditions if their professional qualifications are to be recognised, prove their knowledge of Cypriot law and have to work with a local estate agency. The Commission feels that these requirements are incompatible with directive 2005/36/EC and has sent Cyprus a reasoned opinion. *Greece* will be sent a reasoned opinion calling for an explanation of obstacles to processing requests for recognition of foreign veterinary qualifications.

Belgium is to receive a reasoned opinion because self-employed persons established in another member states have to give advance notification (“Limosas” declaration) if they wish to exercise a professional activity temporarily in that country. The Commission says that this is a disproportionate obstacle to the free provision of services.

European Qualifications Framework: Ireland

Ireland is the first to link its national qualifications to the European Qualifications Framework for lifelong learning (EQF).

The EQF, a European tool to increase the transparency of qualifications across Europe, was adopted by Member States last year on a voluntary basis. They have undertaken to link their national certification system to the EQF by 2010. The Framework aims to help employers to better understand and compare the different national qualifications systems and their levels, whether in general or higher education or vocational education and training. The goal is to make it easier to study and work in other European countries: it may allow students to describe skills to educational institutions or recruiters abroad and may at the same time help employers decide whether candidates meet their criteria.

Hitherto, companies obviously hesitate to take on foreign applicants as they have difficulty in determining the level of qualifications of applicants in relation to their own national system. The EQF is based on eight reference levels which are described in terms of learning outcomes, i.e. what a learner knows, understands and is able to do. Once the EQF is fully implemented, a foreign job applicant's certificate would contain a reference to an EQF level, such as "EQF level 5". Since the relevant qualification authority in each member state will have already provided such a reference to EQF levels in its qualifications in the field concerned, employers may be able to understand the foreign qualification and compare it with their national qualifications.

Audit

Commission proposes cooperation on exchange of audit working papers between member states and Canada, Japan and Switzerland

The European Commission tabled in September a draft decision to allow member states to exchange audit working papers with Canada, Japan and Switzerland by recognising the adequacy of the competent authorities from these countries under the Statutory Audit Directive (2006/43/EC). Adequacy refers to the ability of a third country authority to fulfill the requirements set out in Article 47 of the Statutory Audit Directive, and, in particular, its capacity to enter into reciprocal working arrangements with member states' auditor oversight bodies on the exchange of audit working papers or other relevant documents between competent authorities, and to preserve the confidentiality of any such documents that it may receive from EU member states.

The Statutory Audit Directive introduces a system of independent public auditor oversight and a model of cooperation with third countries. The Commission considers that international cooperation is necessary to ensure that high quality audits are carried out worldwide. The Commission is committed to close cooperation on auditor oversight with its main trading partners. Canada, Japan and Switzerland have indicated their openness to cooperate with EU member states on the exchange of audit working papers. These countries also have the necessary legal framework in place which would enable such cooperation. Therefore, the Commission is now tabling a proposal to allow member states' auditor oversight bodies to exchange audit working papers with their counterparts from Canada, Japan and Switzerland, upon the signature of working arrangements.

The United States also seems open towards cooperation with the Member States on the exchange of audit working papers, but it has not yet established the necessary legal mechanism allowing for mutual

exchange of audit working papers.

READ MORE (click to open):

Draft decision

EN

Anti money laundering

Study of the European Commission

The Commission published in June the contract notice for an external study on the application of the anti money laundering Directive. This study will examine the operation of the directive and its implementing measures as well as undertake a specific examination of the independent legal professionals and on other professionals and finally analytical conclusions. The COM is currently selecting the contractors, the contract might be signed by end of November/ beginning of December. First results will be available after 10 month but the COM might ask for comments before publishing the final study in the course of next year.

The Third anti-money laundering Directive adopted in 2005 builds on existing EU legislation and incorporates into EU law the June 2003 revision of the Forty Recommendations of the Financial Action Task Force (FATF), the international standard setter in the fight against money laundering and terrorist financing. The Directive tightens the EU anti-money laundering regime currently applicable to the financial sector as well as lawyers, notaries, accountants, real estate agents and casinos. The directive applies- amongst others- to tax advisers.

The scope of the Directive is broadened also to encompass trust and company service providers as well as all providers of goods, when payments are made in cash in excess of €15,000. In addition, the Directive requires the application of the anti-money laundering tools (identification and verification of customers' identity, record keeping, training of personnel, etc.) to the fight against terrorist financing, and introduces additional requirements and safeguards for situations of higher risk (e.g. trading with correspondent banks situated outside the EU). The transposition deadline for the Directive was 15 December 2007.

Single market

Mario Monti: mission to prepare a report on the re-launch of the Single Market

According to Commission President Barroso, announced in his political guidelines, the Single Market requires renewed political determination so that it can withstand the threat of economic nationalism and fulfill all its potential. He has therefore decided to entrust Mario Monti, President of Bocconi University and former Commissioner for the Internal Market, Financial services and Tax policy (1995-1999) and for Competition (1999-2004), with the mission of preparing a report containing options and recommendations for an initiative to relaunch the Single Market as a key strategic objective of the new Commission.

Mr Monti will conduct this mission under his personal responsibility, but will be able to rely on the Commission's expertise and support. He may hold consultations, as appropriate, with the European Parliament, with the relevant Commissioners, with the competent authorities of members states and with other stakeholders.

OECD

Anti-Money Laundering

The OECD has released a handbook that aims to support tax administrations detect and deter money laundering. The Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors may provide guidance in identifying money laundering during the conduct of tax audits, and describes the nature of money laundering activities so that tax examiners and auditors may better understand how their contribution can assist criminal investigators in countering money laundering.

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

Handbook

[EN](#)

OTHERS

External ownership

Alternative business structures in England and Wales

Two consultations on alternative business structures have recently been undertaken in England and Wales in order to open the market of legal services to non lawyers and to facilitate new entry in such a way that non professionals entrants into the market should work together with lawyers to provide legal and other services within a single alternative business structure (LBS consultation "wider access, better value, strong protection" and SRA consultation "New forms of practice and regulation, Consultation paper 18). The consultations are the follow up of the "Legal Services act" from 2007.

The subject of "external ownership" was a main issue which has been discussed at the CFE conference on professional affairs in 2008. The key question is whether professional duties to maintain independence, to avoid conflict of interests and to respect confidentiality are endangered if a non professional is allowed a significant degree of control over the affairs of the firm.

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

LBS consultation

[EN](#)

SRA consultation

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CFE Conference 2008

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NEWS - COMPETITION

Neelie Kroes: consumers get many benefits from functioning market

During a speech made on 21 October in Brussels -Competition and Consumers in the 21st Century - Commissioner for Competition Neelie Kroes affirmed that “competition policy is about more than lowering prices for consumers. The effect on choice and quality is just as important”. She highlighted the link between consumer wellbeing and the Commission’s competition policy. According to Kroes, dissuasive sanctions applied as part of an effective market not only cut prices but also encourage competitiveness and subsequently, greater innovation and better quality in services and products. She reiterated her appeal for more private damages to be pursued against companies guilty of being involved in cartels. She stressed that if cheating is involved, consumers have the right to get their money back but reassured those listening to her that this “will not be a US-style system; it will be a European system”. She also pointed out that a consumer liaison office had been set up at DG Competition in 2008.

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

Further information for consumers:

[EN](#)

Competition policy

The leniency arrangements applied by member states’ authorities is gradually becoming more and more harmonised, according to a study by the European Competition Network (ECN) published on 13 October. The ECN is a grouping of the European Commission and the 27 national competition authorities. One of its aims is to bring member states’ anti-trust practices into line with those of the Commission (on a voluntary basis). The study notes just such harmonisation, particularly in the area of leniency: where a participant in a cartel can have the sanction reduced if it provides information that is useful to the investigation. Twenty-five member states currently have a leniency policy, only Cyprus and Estonia do not.

NEWS - OTHER

CFE**CFE Manifesto “TAX ADVISERS ARE HIGHLY QUALIFIED, INDEPENDENT LIBERAL PROFESSIONALS”**

In a manifesto published earlier in October, the Confédération Fiscale Européenne emphasised the crucial role of the tax adviser profession in the tax system in Europe. On the occasion of the celebration of the 50th anniversary of the CFE on 26 September 2009, the 32 Members and Observers adopted at the General Assembly the manifesto in Paris. According to the chairman of the Professional Affairs Committee of the CFE, Henk Koller, CFE has the responsibility to represent the high quality of the tax adviser profession in Europe.

The manifesto is the declaration of the aim of the CFE to continue to demonstrate the tax professions integrity, independency and expertise by providing balanced opinion statements in both taxation issues and professional affairs. The CFE will use this manifesto to raise awareness among EU key stakeholders of the role of the tax adviser profession as the unique profession in all our tax systems by helping taxpayers to understand and comply with the tax obligations.

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Manifesto:

[EN](#)

NOB: Lustrumcongres 1954-2009 “The triangle”

De Nederlandse Ordre van Belastingadviseurs (NOB) is one of the founding Member Organisations of the CFE. On the occasion of the 55th anniversary of the NOB, the Dutch tax adviser organisation organised a “Lustrumcongres” in Amsterdam on 3 June 2009.

With regard to the triangular relationship between tax adviser, client and tax administration, over 500 participants discussed interactively the position of tax advisers within the triangle. The congress was divided into 3 parts. One part dealt with the position of the tax administration. Chris Davidson from the HMRC (the leader of the study group of the “OECD

study into the role of tax intermediaries” (published in 2008) discussed with the participants the pros and cons of the “Horizontal approach”. Theo Poolen from the Dutch Ministry of Finance stressed once again the results of the OECD study and the crucial role of tax advisers in the tax system. Another part of the congress embraced the effective tax rate for the client; the last part covered the issue of diversity (pros and cons for a mandatory percentage of women in a tax firm).

EUROPEAN COMMISSION

Communication between authorities in the EU: ISA

A new programme aiming to improve electronic co-operation between the public administrations of the Member States of the EU entered into force on 23 October. This programme, known as “Interoperability Solutions the European Public Administrations” (ISA), aims to facilitate communication between administrations throughout Europe. It draws on the experience acquired since 1999 with the two previous programmes, IDA II and IDABC. ISA will run from 2010 to 2015. It will allow actions to be carried out in four fields of activity: - joint frameworks to support interoperability; - re-usable generic tools; - common services; - an analysis of the implications for ICT (information and communication technologies) of the implementation of Community legislation. The ISA is managed by the Commission working closely together with the Member States of the EU represented on the programme’s management board.

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

An IDABC follow-on programme: ISA

[EN](#)

Conference “Personal data - more use, more protection”

The European Commission organized on 19 and 20 May in Brussels a personal data use and protection conference. The conference dealt with questions on how should personal data be protected in a globalised world with increased mobility and in the wake of modern communication and information technologies and new policies and which data is accessed and exchanged by public authorities and private companies. Furthermore, it has been discussed how well are current rules on international transfers of personal data working in a time of “cloud com-

puting” and what are the expectations of individuals and business and society as a whole. Interested individuals, business leaders, consumer associations, academics, data protection supervisors and public authorities from both the EU and third countries were invited to take part.

The conference gave the opportunity to various stakeholders to express their views and questions on the challenges for data protection and the need for an effective information management strategy in the EU. The conference was part of the Commission’s open consultation on how the fundamental right to protection of personal data can be further developed and effectively respected.

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Event page of the EC’s website

[EN](#)

COUNCIL

E-Justice portal

The European Council adopted a Multi-annual European e-Justice action plan (2009-2013) end of March 2009. According to the Council, that work should be carried out with a view to developing at European level the use of communications and information technologies in the field of justice, particularly by creating a European e-Justice portal. The use of new technologies would help to rationalize and simplify juridical procedures. The use of an e system in this area would reduce procedural deadlines and operating costs, to the benefit of citizens, undertakings, legal practitioners and the administration of Justice. Due to the challenge of Multilingualism, the development of automated translation tools, the creation of a database of legal translators and interpreters and finally the possibility to produce online forms of automatic translations is envisaged. The Council decided to focus on devising a working method which ensures accurate translation in the 23 EC official languages of legal concepts taking into consideration issues relating to semantics. The e-Justice portal of the Commission will be launched in December 2009.

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

Event page of the EC’s website

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EU COUNCIL OF NOTARIES (CNUE)

CEDEFOP

Notaries back draft EU regulation on wills and inheritance

The EU Council of Notaires (CNUE) backs the draft legislation unveiled by the European Commission on 14 October 2009 to make it easier to administer cross-border inheritance in the European Union. CNUE chair Bernard Reynis said that the council backed this ambitious project that will provide greater legal certainty to European citizens. To date, inheritors have often had serious problems asserting their rights and the diversity of national rules has caused great uncertainty. The EU regulation will clarify which rules apply to inheritance and this will help citizens and their families, while respecting the various systems and legal traditions in the EU. The CNUE is happy that the draft legislation includes the principle of 'controlled autonomy' whereby the law applying to inheritance will be that of the place where the deceased habitually resided. European notaries are also happy about the option of allowing people to plan how to deal with their estate by opting instead for the law of the country of their nationality.

The European Centre for the Development of Vocational Training (CEDEFOP) hold a conference on funding vocational training in the new member states, in Thessaloniki on 15 and 16 October. Debates showed how investment and participation in training can both increase if there are well designed financing schemes combining public and private funds for vocational education and training. The conference underlined the results and recommendations of a CEDEFOP report entitled: "Sharing the costs of vocational training: an analysis of schemes in the newer EU member states". This is the first study of this kind that reviews funding schemes for private and public cost-sharing in the new member states and gives an analysis of the advantages of these schemes.

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COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE (CCBE)

SPANISH PRESIDENCY 1st HALF 2010

Roundtable discussion on studies concerning liberal professions

The CCBE will hold a roundtable discussion on European Commission and other competition and regulatory studies concerning the liberal professions. The event will take place on 11 November 2009 in Brussels and will bring together academics and stakeholders including the European Institutions, in order to discuss the methodologies of such studies.

On 13 October, Spanish Secretary of State Diego Lopez Garrido explained in Brussels that Spain, (will take over the presidency of the EU in the first half of 2010), will prioritise the implementation of the Lisbon Treaty. He stated that the difficulties involving Czech ratification will have been overcome. Mr Garrido affirmed that with the entry into force of the new treaty, the Spanish Presidency will also mark the beginning of "a new political phase" for the EU, for which Madrid wanted to "provide the tone" during the first half of 2010. Further priorities of the Spanish Presidency will be: - the economy: preparation of the exit strategy from member state budget deficits linked to the economic crisis; implementation of new rules for regulating the financial markets and adopting a new post-2010 Lisbon strategy to encourage growth and employment; - European citizenship. Based on the Charter of Fundamental Rights, which is an integral part of the Lisbon Treaty, the Spanish Presidency is seeking to work on equal opportunities for men and women and highlight the problem of gender violence.

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IMPRESSUM

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