

## **Model Code of Conduct Governing On-line Commercial Communications by Member Bodies of the Federation des Experts Comptables Europeens (FEE) & their members**

### ***I. Preamble***

The use of the World Wide Web and the Internet continues to grow exponentially. This growth is affecting every profession, including the accounting profession. Important issues like privacy, freedom of speech, and protection of intellectual property have acquired a new meaning in the information age. The enormous potential for appropriate and inappropriate use of this technology has prompted the European Union (EU) to call for ethical guidelines governing on-line Commercial Communications.

### ***II. Introduction***

The Directive on electronic commerce (2000/31/EC) ("the Directive") is an important step in preparing Europe's transition to a knowledge-based economy. It aims at creating an ideal environment to accelerate e-commerce in order to enhance economic growth, investment, innovation and job creation in the EU and seeks to ensure that electronic commerce benefits fully from free movement of services and freedom of establishment in the Internal Market.

Amongst other things, the Directive encourages the regulated professions to draw up Codes of Conduct in order to determine the types of information that can be provided for the purposes of commercial communications in conformity with the rules regarding, in particular, the independence, dignity and honour of these professions, professional secrecy and fairness towards clients and other members of the profession<sup>1</sup>.

The Directive also states that: "in order to remove barriers to the development of cross-border services within the Community which members of the regulated professions might offer on the Internet, it is necessary that compliance be guaranteed at Community level. (...). Codes of Conduct at Community level would be the best

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<sup>1</sup> Article 8 (1 &2), Directive 2000/31/EC, OJ L 178, 17.7.2000, p. 11

means of determining the rules on professional ethics applicable to commercial communication; the drawing-up or, where appropriate, the adaptation of such rules should be encouraged without prejudice to the autonomy of professional bodies and associations”.

Most professional accountants do not currently provide accounting or auditing services over the Internet, although in the future it is probable that the Internet will play an increasingly important role in facilitating the provision of such services. However, an increasing number of professional accountants have created their own Web Sites as a means of both communicating the services they can provide to the general public and, in some cases, providing those services by electronic means. In general terms, it is these Web Sites that fall within the scope of this Code of Conduct.

The Directive should have been implemented into the laws of the Member States by 17 January 2002. However, many Member States are unlikely to meet this deadline. Accordingly, for the time being, FEE Member Bodies and their members will have to wait until the Directive has been implemented by the Member States in order to fully understand their specific obligations from one country to the next. Nevertheless, the Council of FEE believe that the accountancy profession should be proactive in establishing a Code of Conduct that provides guidance both to FEE Member bodies and to their members on what constitutes acceptable and unacceptable on-line commercial communications, according to recognised standards of professional conduct.

### ***III. Basis of preparation***

When preparing the draft Code of Conduct, the starting point has been to apply the principle of home country control or "country of origin". This means that a professional accountant in country A who provides commercial communications (as defined) to an individual in country B will have to comply with the laws and regulations of country A. There are two main reasons why this principle has been adopted. Firstly, the “country of origin” principle is currently advocated by the European Union Institutions and, secondly, given the nature of Information Society Services, only an option supporting the “country of origin” principle can ensure the effective application of the Code of Conduct itself. Whilst this principle is a departure from the approach adopted by FEE in its 1999 study entitled "Liberalisation of the Accountancy Profession in Europe", the nature of services delivered physically is sufficiently different from electronic services to justify such a departure.

The Code of Conduct has been structured as follows:

Firstly, the Code establishes a number of important definitions that are essential to a proper understanding of the underlying rules (Article 1). Many of these are identical to the definitions used in the Directive itself.

Secondly, the Code sets out the scope of its application in specifying to whom the Code applies and in what circumstances (Articles 2 and 3) but also giving examples of services that do not fall within the Directive's scope (Article 4).

Thirdly, the Code sets out a series of "fundamental principles" (Articles 5 to 14) that should apply to all dealings between a professional accountant and a client. These are not addressed in the Directive but are considered to be issues upon which FEE Member Bodies and their members may welcome guidance.

Fourthly, the Code contains a series of "specific requirements" (Articles 15 to 19) that address certain aspects of on-line commercial communications, in particular the use of Web Sites as a communication tool.

Finally, some additional guidance has been included in the Appendix relating to other requirements of the Directive or related Community legislation that are of potential relevance to professional accountants. This guidance is purely illustrative since the actual requirements will depend upon the way in which the Member States incorporate the requirements of the Community legislation into their national law.

The dynamism of this medium and the unknown possibilities for technical evolution mean that the principles contained in this Code will need to be reviewed periodically to ensure that they continue to be appropriate.

#### ***IV. Key Definitions***

**Article 1.** For the purpose of this Code of Conduct the following terms shall have the following meaning:

- (a) Information Society Services are services within the meaning of Article 1(2) of Directive 98/34/EC as amended by Directive 98/48/EC; i.e. any service normally provided for remuneration, at a distance by electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service (see f. Below). For the purposes of this Code of Conduct, Information Society Services do not include those specific activities identified in Article 4 of this Code of Conduct, namely:
- The statutory auditing of company accounts (since these cannot be carried out at a distance by electronic means);
  - The representation of a client and the defence of his interests before the courts; and
  - The activities of notaries or equivalent professions to the extent that they involve a direct and specific connection with the exercise of public authority.

- (b) Commercial Communication includes any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person exercising a regulated profession. The following do not in themselves constitute Commercial Communications:
- information allowing direct access to the activity of the company, organisation or person, in particular a domain name or an electronic-mail address,
  - communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, particularly when this is without financial consideration.
- (c) Professional accountants include, for the purposes of this Code of Conduct, FEE Member Bodies in their own right together with any of their members to the extent that these latter members are both members of a regulated profession and in professional practice.
- (d) Regulated profession is one which, in order to have access to it, it is necessary to be approved by the competent authorities of a Member State. Approval of a regulated professional is indicated by way of his or her inclusion on the list of those authorised to exercise the activity or activities reserved for the profession in question.
- (e) Service provider means any natural or legal person providing an Information Society Service.
- (f) Recipient of the service includes any natural or legal person who uses an Information Society Service, in particular for the purposes of seeking information or making it accessible.
- (g) Consumer refers to any natural person who is acting for purposes that do not fall within the scope of his or her trade, business or profession.

#### **V. Scope of the Code of Conduct**

**Article 2.** This Code of Conduct applies to each FEE Member body and each individual or corporate member of FEE's Member Bodies to the extent that these latter individuals are professional accountants.

**Article 3.** This Code of Conduct applies to the use of Commercial Communications by FEE Member Bodies or their members to the extent that these Commercial Communications are part of, or constitute, an Information Society Service. This Code of Conduct does not apply to the provision of general Information Society Services that do not include Commercial Communications, neither does it apply to the provision of services by physical means.

The Directive also applies to the provision of Information Society Services that do not include a Commercial Communication element. Once implemented into the national laws of the Member States, these additional requirements will also apply to FEE Member Bodies and their members. However, these additional requirements are outside the scope of this Code of Conduct. For purely illustrative purposes, guidance in connection with these additional requirements is set out in the Appendix.

**Article 4.** The Directive (and, as a result, this Code of Conduct) excludes a number of specific activities from its scope that are likely to be performed by members of FEE Member Bodies and a number of other activities that could, conceivably, be performed by such members. The following activities which may fall into one or both of these categories, do not fall within the definition of Information Society Services:

- (a) The statutory auditing of company accounts (since these cannot be carried out at a distance by electronic means). In a number of Member States, professional accountants are prohibited from advertising their auditing (and other) services. However, in those Member States where such advertising is not prohibited, the on-line advertising of statutory auditing services does fall within the scope of this Code of Conduct even if the provision of statutory auditing services is excluded;
- (b) The representation of a client and the defence of his interests before the courts; and
- (c) The activities of notaries or equivalent professions to the extent that they involve a direct and specific connection with the exercise of public authority.

## ***VI. Code of conduct – Fundamental Principles***

**Article 5. General:** This Code of Conduct contains a set of fundamental principles together with specific guidance aimed at those professional accountants who provide Commercial Communications that are part of, or constitute, an on-line Information Society Service. Whilst this Code of Conduct does not have the force of law, nor can it override either the specific laws of a Member State or an existing Code of Ethics of a professional body or association established in the European Union, it does constitute generally recognised "best practice" in the area of on-line Commercial Communications. Accordingly, in the absence of any contradictory laws in a Member State of the European Union, professional accountants should comply with this Code of Conduct when providing Information Society Services that include on-line Commercial Communications.

As a general principle, FEE Member Bodies and their members should always maintain the highest standards in all aspects of their professional work whatever the medium (i.e., electronic or physical) through which this work is performed.

The following Articles 6 to 14 establish a series of fundamental principles that should be adhered to by professional accountants who provide Commercial Communications that constitute or form part of an Information Society Services. These fundamental principles need to be considered individually as well as collectively since a number of them have similar characteristics (e.g., honesty, truthfulness and integrity).

**Article 6. *Legality:*** Professional accountants have primary responsibility for ensuring that their on-line Commercial Communications are legal. On-line Commercial Communications should comply with the law and should not incite anyone to break it.

**Article 7. *Decency:***

- (a) On-line Commercial Communications should not contain anything that is likely to cause serious or widespread offence. Particular care should be taken to avoid causing offence on the grounds of race, religion, sex, sexual orientation or disability.
- (b) On-line Commercial Communications could be perceived to be distasteful without necessarily conflicting with 7(a) above. Accordingly, professional accountants should consider public sensitivities before using material that some might consider to be potentially offensive.

**Article 8. *Honesty:*** Professional accountants should not exploit the credulity, lack of knowledge or inexperience of consumers.

**Article 9. *Truthfulness:*** No on-line Commercial Communication should mislead as a result of inaccuracy, ambiguity, exaggeration, omission or otherwise.

**Article 10. *Integrity:*** Professional accountants should, in all cases, act with integrity as concerns their clients which implies not merely honesty but also implies fair dealing and truthfulness.

**Article 11. *Substantiation:*** Professional accountants should not make exaggerated claims for the services they are able to offer, the qualifications they possess or the experience they have gained which is likely to mislead consumers.

**Article 12. *Matter of opinion:*** Professional accountants may express an opinion on any matter relating to the quality or desirability of their services, providing it is clear that they are expressing their own opinion rather than stating a fact.

**Article 13. *Safety:*** On-line Commercial Communications should neither encourage unsafe practices nor show unsafe practices except in the context of promoting safety. Particular care should be taken with on-line Commercial Communications addressed to or depicting children and young people.

**Article 14. *Client confidentiality:*** When providing any Information Society Services, professional accountants should continue to comply with existing national laws and Ethical Standards to protect, inter alia, the confidentiality of clients and any client-related data.

## **VII. Code of conduct – Specific Requirements**

**Article 15. General information to be provided:** When providing Commercial Communications that form part of, or constitute, an on-line Information Society Service (e.g., via a Web site), professional accountants need to ensure that the following information, where relevant, is easily, directly and permanently accessible by the recipient of the service:

- (a) the name of the professional accountant (i.e., firm name or individual name if not member of a firm)
- (b) the geographic address or addresses at which the professional accountant is established
- (c) other details (e.g., e-mail address) which enable the professional accountant to be contacted rapidly and communicated with in a direct and effective manner
- (d) where the professional accountant is a member of, or registered with, a professional body, he should disclose details of such membership or registration. He should also disclose his professional title and identify the Member State in which it was granted
- (e) further to (d) above, the professional accountant should make reference to the applicable professional rules in the Member State where he is established and the way in which these rules can be accessed by the recipient of the service
- (f) the professional accountant's VAT number.

In addition to the above, professional accountants should have regard to the way in which the EU Distance Selling Directive (97/7/EC) has been implemented at a national level. This may require professional accountants to supply more information about the type and cost of services that they can provide together with further details about methods of payment. A recipient of a service falling within the scope of the Distance Selling Directive (arguably anyone whose business is not initiated by physically walking into the service provider's workspace) also has a seven working day right to cancel a purchase, although with consent this can be waived by service providers who expect to begin work within the seven-day period.

**Article 16. Prices:** To the extent that a professional accountant includes details about fees, charges or other price-related information in a Commercial Communication (e.g., on a Web site):

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

- (d) Where additional charges (for example on-line charges) are payable this should be stated.

**Article 17. *Other information to be provided:*** In addition to other information requirements established by Community law, professional accountants should ensure that Commercial Communications which are part of, or constitute, an Information Society Service comply at least with the following conditions:

- (a) the Commercial Communication shall be clearly identifiable as such;
- (b) the natural or legal person on whose behalf the Commercial Communication is made shall be clearly identifiable;
- (c) whilst promotional offers, such as discounts, premiums and gifts, are regarded in some countries as being inconsistent with an accountant's professional image, where permitted in the Member State where the service provider is established and to the extent that a professional accountant uses them, promotional offers shall be clearly identifiable as such, and the conditions which are to be met to qualify for them shall be easily accessible and be presented clearly and unambiguously;

**Article 18. *Advertising via third parties on the World Wide Web:*** In a number of Member States, professional accountants are prohibited from advertising their statutory auditing and other services. In those Member States where such advertising is not prohibited, in addition to maintaining their own web sites for commercial reasons, professional accountants may decide to advertise by, for example, using banner displays on the web sites of other third parties. In some cases, banner displays might contain hyperlinks to the website of the advertiser which are activated by clicking on the banner itself. In other cases, clicking on the banner can have other, less welcome, implications.

- (a) Unless there is previous knowledge by the user, when a professional accountant uses the World Wide Web for advertising purposes, the advertisement should not interfere with the free navigation of the user.
- (b) A user should receive a prior warning if the receipt of an on-line Commercial Communication is a prerequisite for being able to enter the editorial contents of a web page or to navigate within a web site. A clear warning of this on the home page will comply with the terms of this article.

**Article 19. *Unsolicited Commercial Communications:*** Where the national law of a Member State permits unsolicited Commercial Communication by electronic mail, to the extent that a professional accountant established in such a Member State uses this method of communication he shall ensure that:

- (a) any unsolicited Commercial Communication (i.e., e-mail) is clearly and unambiguously identified as such as soon as it is received by the recipient, and
- (b) before sending any unsolicited Commercial Communications, the professional accountant should regularly consult the opt-out registers in which natural persons not wishing to receive such Commercial Communications can register themselves.



## APPENDIX

### ILLUSTRATIVE GUIDANCE ON ADDITIONAL MATTERS

**NOTE:** The following sections relate to other matters to be considered. Section A addresses certain specific requirements of the Directive that will impact FEE Member Bodies and their members but which first have to be implemented into the national laws of the Member States. Accordingly, FEE Member Bodies and their members will have to wait until their respective governments have fully implemented the Directive before the exact scope of the national requirements can be fully appreciated. In the meantime, these sections are intended to be illustrative (but not definitive) guidance and do not form part of the Code of Conduct itself. Article references are to the Directive itself. Section B contains some other best practices, not specifically addressed by the Directive, but where FEE member bodies and their members may benefit from additional illustrative guidance.

#### **(A) MATTERS ADDRESSED BY THE DIRECTIVE**

***Contracts concluded by electronic means (Article 9):*** Member States are required to ensure that their legal systems allow most contracts to be concluded by electronic means. Whilst there are some exceptions to this general rule (e.g., contracts that create or transfer rights in real estate) there should be few restrictions on a professional accountant concluding contracts in this way. Except when otherwise agreed by parties who are not consumers (see definitions) a professional accountant should ensure that a service recipient is provided with the following information prior to an order being placed by electronic means:

- (a) The different technical steps that have to be followed in order to conclude the contract
- (b) Whether or not the concluded contract will be filed by the professional accountant and whether it will be accessible
- (c) The technical means for identifying and correcting input errors prior to placing of the order
- (d) The languages offered for the conclusion of the contract.

***Other contractual requirements (Article 10):*** In addition to the requirements of the previous section ("Contracts concluded by electronic means"), the professional accountant shall also ensure that:

- (a) He informs the recipient of the service of any relevant codes of conduct to which he subscribes and also indicates how such codes can be consulted, electronically
- (b) All contract terms and conditions are made available to the recipient in a way that allows them to be stored and reproduced

The requirements of this and the previous section do not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

**Orders placed by electronic means (Article 11):** Where a recipient of an Information Society Service places his order through the use of technology, the following principles will apply to the professional accountant providing that service:

- (a) He must acknowledge receipt of the order, without undue delay, by electronic means, and
- (b) The order and the acknowledgement of the receipt of the order are deemed to be received when the parties to whom they are addressed are able to access them, and
- (c) He must make available to the recipient of the service the technical means for identifying and correcting input errors prior to placing the order.

The requirements of paragraphs (a) and (c) do not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

**Liability of intermediary service providers acting as a conduit of information (Article 12):** There will be occasions when a professional accountant delivers an Information Society Service that consists of the transmission of information provided by the recipient of the service within a communication network. Alternatively, the professional accountant may provide access to such a communication network. The automatic storage of such information will also come within the scope of this article. The professional accountant will not be liable for the information transmitted across the communication network or stored on a temporary basis providing:

- (a) He does not initiate the transmission, and
- (b) He does not select the receiver of the transmission, and
- (c) He does not select or modify the information contained in the transmission, and
- (d) The information is not stored for any period longer than is reasonably necessary for the transmission.

**Liability of intermediary service providers that store information (Article 13)** As an extension of the previous section, there will be occasions when the professional accountant may store electronic data provided by a recipient of an Information Society Service, on a temporary basis, before transmitting this data across a communication network at the request of other recipients. For example, it may be more efficient to temporarily store the data until all of it has been collected thereby allowing the professional accountant to transmit all the data in one go rather than having to make numerous transmissions of small amounts of data. The professional accountant will not be liable for the storage of this data providing:

- (a) He does not modify the information
- (b) He complies with any conditions granting access to the information
- (c) When updating the information, he complies with rules which are specified in a manner that is widely recognised and used by others in the profession,
- (d) He does not interfere with the use of generally recognised technology that enables an individual to obtain data on how the information is used, and

- (e) He removes the information or disables access to it if the original information is no longer available to the communication network.

***Liability of intermediary service providers that host information (Article 14):*** Where a professional accountant provides an Information Society Service that consists of storing information provided by the recipient of the service, he will not be liable for the stored information providing:

- (a) He has no knowledge that would indicate that the stored information is in any way associated with illegal activities, and
- (b) If he becomes aware that the stored information is associated with illegal activities, he removes the information or disables access to it as quickly as possible.

## **(B) OTHER GENERAL MATTERS TO CONSIDER**

***Security & Liability in general:*** Security problems can arise when unauthorised access occurs to the content of an Internet communication. In exceptional situations, this can expose the professional accountant to the threat of litigation from the injured third-party. Accordingly:

- (a) Professional accountants should ensure that they create and maintain a secure environment for the processing of financial Internet transactions.
- (b) If permitted by the terms and conditions of their professional indemnity insurance contracts, professional accountants should be prepared to confirm to their clients, if asked, that they have available professional indemnity insurance.

***Consumer privacy:*** When supplying on-line services it is customary for the professional accountant to request certain consumer-related information. This can include the choice of services, delivery address, statistics concerning the frequency of electronic visits, the amount spent and payment details.

- (a) A professional accountant may only retain this information for the purposes of building customer profiles for future use with the consent and acknowledgement of the consumer.
- (b) Unless specifically required by national law, this information will not be passed to third parties such as credit agencies, tax agencies and marketing companies without the prior consent and acknowledgement of the consumer.
- (c) When any "personally identifiable" information is collected, the collection of this data must comply with the requirements of the EU Data Protection Directive 95/46/EC. The professional accountant will need to establish the way in which this Directive has been implemented at a national level in order to ensure that his or her data collection methods comply fully with domestic data protection legislation.

**Intellectual property:** Notwithstanding the fact that there are laws protecting the acquisition and use of intellectual property, professional accountants should refrain from illegally copying or making available to their clients copies of protected works.

**Guarantees:** In some situations, a professional accountant may believe it appropriate to offer some form of guarantee of the Information Society Service being offered. In such situations, the professional accountant should consider the following:

- a) The word 'guarantee' should not be used in a way that could cause confusion about consumers' legal rights. Substantial limitations should be clearly stated in the on-line Commercial Communication. Before commitment, consumers should be able to obtain the full terms of the guarantee from the professional accountant.
- b) Professional accountants should inform consumers about the nature and extent of any additional rights provided by the guarantee, over and above those given to them by law, and should make clear how to obtain redress.