



COMMISSION OF THE EUROPEAN COMMUNITIES

Internal Market and Services DG

**ENHANCING THE QUALITY OF SERVICES IN THE  
INTERNAL MARKET:  
THE ROLE OF EUROPEAN CODES OF CONDUCT**

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## 1. INTRODUCTION

On 12 December 2006, the Council and the European Parliament adopted Directive 2006/123/EC<sup>1</sup> on services in the internal market (referred to below as the Services Directive) with the aim of creating a genuine internal market for services. Member States have to transpose this Directive by 28 December 2009.

*The Services Directive aims to encourage self-regulation by means of European codes of conduct with the objective of facilitating the free movement of services in the Internal Market*

The Services Directive marks significant progress towards enabling both citizens and service providers to derive the full benefit from the advantages of an internal market for services. In this respect, one of the underrated, but essential aspects of this Directive is the section on the quality of services, which aims to improve quality by encouraging professional associations to draw up European codes of conduct. This section on the quality of services is an essential part of the general objective of the Directive, which is to facilitate the freedom of establishment and the freedom to provide services in the European Union.

Under Article 37 of the Services Directive, "*Member States shall, in cooperation with the Commission, take accompanying measures to encourage the drawing up at Community level, particularly by professional bodies, organisations and associations, of codes of conduct aimed at facilitating the provision of services or the establishment of a provider in another Member State, in conformity with Community law*".<sup>2</sup>

*Public on-line consultation held to take stock of the current situation*

The Internal Market and Services DG conducted a public on-line consultation from 30 May to 15 August 2007, inviting professional organisations to provide it with information on their codes of conduct, in force or under preparation, and to give their views on the best possible way of establishing codes of conduct at European level. This document results from the replies received from this consultation.

*172 replies were received concerning 25 different sectors*

A significant number of replies were received (172 professional organisations representing more than 25 different service sectors and 25 Member States) from professional organisations representing service sectors such as architects, lawyers, real estate services, accountants, tax advisers, health services, engineers, veterinarians, surveyors, financial services, tourism, security, distribution/commercial services, traditional crafts, construction services, etc. Nevertheless, the results of this consultation are not claimed to be exhaustive; they only reflect the situation as borne out by the replies received. In this respect, it should be pointed out straight away that the majority of the replies received come from the regulated professions sector, non-

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<sup>1</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, pp. 36-68.

<sup>2</sup> This provision comes under the approach adopted in the Communication from the Commission "*European Governance: Better lawmaking*" (Communication from the Commission "*European Governance: Better lawmaking*", COM(2002) 275 final/2, 6.6.2002, and Communication from the Commission "*A Europe of Results – Applying Community Law*", COM(2007) 502, 5.9.2007) and the Interinstitutional Agreement on better lawmaking (Interinstitutional Agreement on better lawmaking between the European Parliament, the Council of the European Union and the Commission of the European Communities (OJ C 321, 31.12.2003, p.1)), which aim to encourage the use of alternative methods of regulation at Community level. It is worth recalling that the Interinstitutional Agreement defines self-regulation as "*the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements)*."

regulated professions accounting for about 25% of the replies received.

Similarly, it is worth noting that only about 35% of the professional organisations replying to the consultation stated that they possess a European code of conduct.

It should also be pointed out that some of the replies received come from service sectors excluded from the scope of the Services Directive, such as the health professions. The inclusion of their replies in this document is without prejudice to their exclusion from the scope of the Services Directive and does not call their exclusion into question. It nevertheless seemed important to include their results in order to gain a clearer idea of the current situation.

*This document aims to draw up an inventory of European codes of conduct and to help promote such codes of conduct in the general context of facilitating the functioning of the internal market for services*

This document comes under the actions launched by the Commission in support of the implementation of the Services Directive, in particular Article 37. It uses the results of the public consultation to draw up an inventory of European codes of conduct, in force or under preparation, and specifies their scope and content and their relationship with national codes. Its purpose is not to lay down a European model code, or to oblige professional organisations to engage in self-regulation, but merely to give an overview of existing codes and to provide a source of information and inspiration for professional organisations wishing to draw up their own codes.

Consequently, the sole objective of this document is to promote European codes of conduct by stressing their importance not only for service providers, but also for recipients and the competent national authorities, and by encouraging European professional organisations to draw up such codes and to ensure compliance with them by their members.

## **2. IMPORTANCE OF EUROPEAN CODES OF CONDUCT**

*To achieve the free movement of services in the EU: existing acquis communautaire*

The Services Directive is designed to enable both service providers and consumers to benefit more easily from the fundamental freedoms guaranteed by Articles 43 and 49 of the Treaty establishing the European Community (referred to below as the EC Treaty), i.e. the freedom of establishment and the freedom to provide services. To this end, not only will the Member States have to abolish a certain number of requirements<sup>3</sup> forming barriers to service activities by the end of the period for transposition of the Directive, the conditions for the freedom to provide services on a temporary basis have also been specified to complement those already contained in other directives, such as Directive 2005/36/EC on the recognition of professional qualifications<sup>4</sup> (referred to below as the Directive on the recognition of professional qualifica-

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<sup>3</sup> In accordance with Article 4(7) of the Services Directive, the concept of requirement refers to any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States, whether they are provided for at national, regional or local level. In addition, this concept covers any provision imposed by the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy. For further explanations on the concept of requirement, see section 2.3.1 of the Handbook on Implementation of the Services Directive ([http://ec.europa.eu/internal\\_market/services/services-dir/proposal\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/proposal_en.htm)).

<sup>4</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255, 30.9.2005, pp.22-142.

tions) and Directive 2000/31/EC on electronic commerce<sup>5</sup> (referred to below as the Directive on electronic commerce).

*Challenges of drawing up European codes of conduct*

Beyond the current *acquis communautaire*, it might be necessary for professional organisations representing certain service sectors to draw up rules of conduct at European level.

Drawing up such rules would help to promote high quality services and to establish a relationship of confidence between consumer and professional. This would also contribute to the completion of an Internal Market for services. Whereas at present the provisions of the EC Treaty and the *acquis communautaire* help to ensure the free movement of services, the existence of codes of conduct at national level only (and not necessarily in all Member States) makes for a purely national perception of the quality of services, which may result in market fragmentation. In certain service sectors, for example, the absence of common rules of conduct at European level could lead to a certain distrust on the part of European consumers of service providers not established in the same Member State, since they would not know which code of conduct such service providers were subject to, which could therefore make access to this market more difficult for the service providers in question.

*Helping to form a common European base and create an integrated Internal Market for services*

This is why, given the increase in cross-border activities within the European Union, alignment of the rules for the pursuit of professions at European level has become important in certain sectors, especially in sectors where the existence of codes of conduct has traditionally played a key role in the pursuit of their activities. In these sectors, it is important for professionals to agree among themselves on establishing a base of common rules and criteria to help an integrated European perception of their services market to emerge. This common base should also help to promote both the quality of their services and the image of their profession/activity throughout Europe.

*Boosting mutual confidence and facilitate the mobility of the service provider*

The development of European codes of conduct should also give consumers more freedom of choice of service provider, whether established in their Member State of residence or in another, in the knowledge that this service provider is subject to a common European code of conduct.

*Assert the identity of a profession or economic sector*

Laying down codes of conduct at European level may also help to bring out the specific nature of the services of certain sectors, especially regulated professions, by guaranteeing that they can exercise their profession independently and by protecting the impartiality of these rules of professional conduct.

Similarly, drawing up a code of conduct may provide the opportunity for a professional organisation to assert the specific nature of its members by obliging them to act on certain principles, certain ethics or specific know-how when providing their services.

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<sup>5</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000, pp.1-16.

### 3. ROLE OF PROFESSIONAL ORGANISATIONS AT EUROPEAN AND NATIONAL LEVELS

*Various modes of pursuit of a profession* Firstly, it should be pointed out that there are various modes of pursuit of a profession:

1) access to and pursuit of a profession are free, which means that they are not subject to any requirements in terms of professional qualifications (so-called non-regulated professions);

2) access to and pursuit of a profession are regulated in terms of qualifications (so-called regulated professions).<sup>6</sup> Article 3(1)(a) of the Directive on the recognition of professional qualifications defines regulated professions as “a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit”.

*Regulated professions and professional organisations* In the case of regulated professions (such as lawyers or architects), the professional organisations have always played a major role by helping to provide a framework for the pursuit of the activities of their members.

Compulsory registration or membership of the representative professional organisation is a specific mode of regulation of these professions. This obligation leads to self-regulation of the profession. In this context, codes of conduct will generally already be developed. However, this compulsory registration does not exist for all regulated professions or for non-regulated professions.

#### 3.1. Types of organisations

Setting up a representative professional organisation appears to be the first step to be taken for professions wishing to provide themselves with a code of conduct.

*The vast majority are private organisations* The replies received from the consultation reveal that the majority of professional organisations are governed by private law. Whereas all the organisations at European level are governed by private law, a certain number at national level are governed by public law (about 40%, according to the results of the consultation), some of which are public bodies or organisations entrusted with prerogatives of public power (about 10%, according to the results of the consultation), where the State itself has delegated its regulatory power to the professional organisations by calling on them to lay down the rules necessary for the pursuit of the profession and to carry out supervision.<sup>7</sup>

*The importance of organisations differs* However, the importance of professional organisations differs according to profession. Whereas the existence of professional organisations seems to be a

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<sup>6</sup> The list of regulated professions in the various Member States is available on the Commission Internet site at the following address: [http://ec.europa.eu/internal\\_market/qualifications/regprof/index.cfm?lang=en](http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?lang=en).

<sup>7</sup> As explained above, this is usually linked to compulsory registration with these organisations for the pursuit of activities.

*fers according to the modes of pursuit of a profession*

key factor for regulated professions and they are often at the centre of the pursuit of their activities, non-regulated professions often do not have representative professional organisations.

These differences give rise to disparate situations depending on the sectors. Some organisations seek first of all to organise themselves at national level; others, already present at national level, seek to organise themselves at European and even international level.

*Various levels of representation: local, national, European, international*

Consequently, many professions, such as architects, lawyers, engineers or veterinarians, have representative professional organisations not only at local and/or national level, but also at European level. Other professions, such as estate agents, those linked to tourism or surveyors, seek to organise themselves simultaneously at both national and European levels.

It should also be noted that, in addition to European representation, certain professions<sup>8</sup> have also equipped themselves with representative international institutions. Some of these international organisations have even drawn up international codes of conduct.<sup>9</sup>

### **3.2. Representativeness of professional organisations**

*Key question for the purposes of legitimising codes of conduct*

One of the key challenges in setting up professional organisations is representativeness. Indeed, this representativeness helps to legitimise any code decreed by these organisations. What is at stake is the ability to develop a structure which represents a profession or a service activity, is capable of devising self-regulation, must be observed by its members and has the objective of enhancing the level of quality of the service provider by increasing the transparency of the rules laid down in these codes and by improving the general public's awareness of them. In this respect, it must be emphasised that the question of the representativeness of European organisations will be all the more acute where the question of the representativeness of national organisations arises. The more structured the organisation of a profession already is at national level, the less the question of representativeness of the European organisation will arise.

*A European professional organisation should consist of national representative professional organisations of different Member States.*

The question of representativeness is therefore crucial when it comes to drawing up codes of conduct at European level. One of the first criteria in this respect could be representativeness in terms of members. Professions must be distinguished for which membership of a professional organisation, at national level, is compulsory, and the problem of representativeness in terms of members will not arise at national level. On the other hand, the question of representativeness at European level will remain. Moreover, a professional organisation with a European vocation should include the national representative professional organisations of the various EU Member States.

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<sup>8</sup> For example, the accounting sector, with the European organisation FEE (Fédération des experts comptables européens – European Federation of Accountants) and the international organisation IFAC (International Federation of Accountants).

<sup>9</sup> For example, see the code of conduct drawn up by IFAC (International Federation of Accountants).

*Representativeness, not exclusivity, is the key criterion*

It should always be emphasised that representativeness of the professional organisation among all the members of the profession is the key criterion, not exclusivity of representation of a profession. Hence, when examining the representativeness of a given organisation, it is essential to take into account the number of other associations/organisations representing the same profession at national and European levels and their representativeness.

The replies to the Commission consultation indicate that the majority of sectors with a code of conduct come under the sector of regulated professions.<sup>10</sup> This situation stems primarily from the fact that membership of a professional organisation is often compulsory by law for some of these professions. However, although such compulsory membership may exist at national level, it does not exist as such at European level. The formation of representative European organisations results solely from voluntary moves by organisations. The challenge is then for these national professional organisations to regroup at European level.

In the case of other professions which are not regulated, some, as in the financial services sector, sales or advertising, have attempted to organise themselves at European level with a view to drawing up a European code of conduct.<sup>11</sup>

#### **4. FORM OF EUROPEAN AND NATIONAL CODES OF CONDUCT**

##### **4.1. Codes of conduct and quality charters**

The results of the consultation show that the standards drawn up at European or national levels by the professional organisations representing professional services are first and foremost in the form of codes of conduct. Whereas about 75% of professional organisations state that they have a code of conduct, only about 20% of them mention that they have a quality charter.

The codes seem to differ from quality charters not only in content, but also in their status and their characteristic mechanisms for control of application. The following conclusions regarding the distinction between codes of conduct and quality charters can be drawn from the consultation.

*The code of conduct as a set of professional ethics principles*

A code of conduct is generally defined by professionals as a set of professional ethics principles governing the professional pursuit of a service activity. They relate to the conduct which professionals must display, for example, in relation to their customers and which customers must be entitled to expect on the part of these professionals.

A code of conduct contains a set of ethical provisions and regulations by which professionals must abide. If they fail to do so, professionals are normally liable to a disciplinary sanction imposed by the professional organisa-

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<sup>10</sup> For instance, the CCBE (Council of Bars and Law Societies of Europe) for lawyers, ACE (Architects' Council of Europe) for architects, FEE (Fédération des experts-comptables européens – European Federation of Accountants) for accountants, also including certain professional organisations representing regulated professions in certain Member States, such as CFE (Confédération fiscale européenne – European Tax Confederation) for tax advisers, CEPI (European Real Estate Council), CEPLIS (European Council of the Liberal Professions), etc.

<sup>11</sup> See, for example, FENCA (Federation of European National Collection Associations), EMOTA (European E-commerce and Mail Order Trade Association) or the EASA initiative (The European Advertising Standards Alliance) – Advertising self-regulation in Europe.

tion itself or even a civil or penal sanction depending on the seriousness of the infringement committed and the legal value of the code breached. Where compliance with these standards is obligatory, the principles or standards contained in the codes are therefore directly applicable for the members of the professional organisation and provide a framework for the pursuit of their service activities.

According to the information received, certain professional organisations even recommend to their members that they include the basic principles of the code in the service contract concluded between the service provider and the customer in order to reflect the will of the parties concerning the conduct to be expected of the service provider.

*The quality charter is a voluntary commitment on the manner in which a service is supplied*

Whereas a code of conduct tends to lay down ethical principles relating to the conduct of the service provider, the quality charter, on the other hand, focuses more on the manner in which the service is provided. A quality charter therefore represents a voluntary commitment by a professional to improve the quality of the service delivered. Compliance with this charter by a professional may be subject to independent, objective control by a third party.

Whereas the code sets out obligations and behavioural duties for the service provider, the quality charter, for its part, lays down principles relating to the methodology, the detailed arrangements and the quality of the service offered by the service provider.

A quality charter may consist of the commitment of the service provider to meet certain standards relating to the quality of the service provided, such as ISO standards, the quality of the management of the service provided or the possession of a certificate of competence, or may consist of the performance of services (times for procedures, replies, complaints, etc.).

The quality charter is a voluntary direct declaration of intent on the part of the service provider. Non-compliance with the quality charter does not generally give rise to disciplinary proceedings, but it will no longer be possible for the professional to claim compliance with the charter as evidence of meeting professional standards. Quality charters seem to come more under the concept of voluntary certification by way of measurable principles.

Code and quality charter therefore form the first two complementary links of one and the same service activity for the purposes of quality assurance. This complementarity is reflected in particular by the fact that certain professional organisations can choose to deal with certain subjects under the charter rather than the code, and vice versa. This distinction between code and charter must therefore take account of the potential interaction between these two instruments.

In this perspective of promotion of the quality of services provided, it must be noted that certain organisations also distribute “good practice” guides to their members.

It should also be stressed that professional organisations are strongly encouraged to draw up quality charters at European level in the context of the transposition of the Services Directive.<sup>12</sup>

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<sup>12</sup> In accordance with Article 26 of the Services Directive, Member States will work together with the Commission and encourage providers to take action on a voluntary basis in order to ensure the quality of service provision, in

## 4.2. Scope of the codes of conduct

<i>Choice of professional organisations</i>	The Services Directive encourages the drawing-up of codes of conduct at European level, but it does not predetermine their form. It is for the professional organisations and their members to decide on the most appropriate form.
<i>Interprofessional code</i>	Hence, a European interprofessional organisation may choose to be a receptacle, so to speak, for the various codes specific to each profession/member organisation, while drawing up a common base of interprofessional rules which are to be found in each of the professions. <sup>13</sup> It would then be for each professional organisation to establish its founding principles according to its own specific characteristics at European and even national level.
<i>Single profession code</i>	<p>A single profession European organisation may also choose to draw up a code of conduct specific to the profession it represents and reflect the specific nature of its profession.<sup>14</sup></p> <p>For non-regulated professions, the content of these codes could also include, alongside ethical aspects, certain social aspects, such as those associated with vocational training. For example, codes have been drawn up for these professions in the context of social dialogue.<sup>15</sup></p> <p>The form assumed by the code of conduct will therefore be predetermined primarily by the national and/or European organisational arrangements of a profession.</p>

## 4.3. Method of drawing up codes

<i>Generally speaking, the work is carried out at European level and endorsed by the member organisations</i>	<p>Many European professional organisations have already adopted European codes of conduct or are currently working on drawing up such codes. The results of the consultation show that the European professional organisations of about 50% of the organisations already have a European code of conduct, whereas the others state that they are either in favour of drawing one up or have already started to work towards this.</p> <p>The consultations show that the preparatory work is generally conducted by the European organisations, following internal consultation of their members, and then amended/endorsed by the member national professional organisations. For some professional organisations, the preparatory work could also be outsourced with a view to subsequent ratification by the members of the organisation.</p> <p>It should be emphasised that, when drawing up their codes, professional organisations should themselves conform to and ensure that their procedures conform to the principles of integration, transparency and responsibility. The code of conduct development process should be open to the participation of all parties concerned, under fair and non-discriminatory conditions, and the conditions for drawing it up should be clear and known in advance. Consequently, the appro-</p>
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particular by drawing up their own quality charter or participation in quality charters or labels drawn up by professional bodies at Community level.

<sup>13</sup> See, for example, the CEPLIS code (European Council of the Liberal Professions).

<sup>14</sup> See, for example, the codes of the CCBE (Council of Bars and Law Societies of Europe), the ACE (Architects' Council of Europe), and the CFE (Confédération fiscale européenne – European Tax Confederation).

<sup>15</sup> For example as regards private security services, Code of conduct and ethics for the private security sector, drawn up under the EU social dialogue programme.

ropriate documents should be widely accessible and public access to the results should be guaranteed. Procedures established by the organisation should ensure that either their members comply with the code or are unable to avail themselves of it.

## 5. CONTENT OF EUROPEAN CODES

*The Services Directive lays down certain contents of the codes of conduct*

In accordance with Article 37 and recital 114 of the Services Directive, codes of conduct should include, as appropriate to the specific nature of each profession, rules for commercial communications relating to the regulated professions and rules relating to the conditions to which the activities of professionals are subject, such as rules of professional ethics and conduct of regulated professions designed to ensure independence, impartiality and professional secrecy.

These European codes must of course always comply with the regulatory framework applicable. Hence, a code of conduct cannot go back on the *acquis communautaire* by introducing barriers to mobility or to the free movement of services.

The content of these codes must be left to the discretion of the representative professional organisations, with due respect for the national and Community legal frameworks. The considerations below are therefore not intended under any circumstances to impose the compulsory inclusion of any particular principle in the code of conduct, but simply to identify the current principal components of the codes of conduct already in existence or under preparation, as communicated or known to the Commission.

### 5.1. Compliance with Community law

*Compliance with Community law and in particular the rules of the internal market and competition*

It must first be emphasised, as explained in Article 37 of the Services Directive, that the codes of conduct must comply with Community law, and in particular internal market and competition law.

It is not therefore a matter of self-regulation by the professional organisations in the form of promoting principles or rules which are contrary to the EC Treaty. For example, encouragement to draw up codes of conduct by the professional organisations does not under any circumstances mean encouragement to draw up rules such as those establishing fixed prices. In accordance with the Court of Justice case-law and the Commission decisions in this field, such provisions have already been deemed to be contrary to Articles 81 and 82 of the EC Treaty.<sup>16</sup>

Similarly, codes must comply with the basic freedoms, i.e. freedom of establishment and freedom to provide services, as guaranteed by Articles 43 and 49 of the EC Treaty and by the related statutory instruments. Hence, codes of conduct should not call into question the *acquis communautaire* on the subject, es-

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<sup>16</sup> See the Commission Decision on the Belgian architects' fee system, the press release on which is available at:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/800&format=HTML&aged=0&language=EN&guiLanguage=en>; as well as the ECJ judgments of 10 December 1985, *Stichting Sigarettenindustrie and others v Commission* (240/82 to 242/82, 261/82, 262/82, 268/82 and 269/82, [1985] ECR 3831, point 82), in which the Court rules that price agreements are "particularly serious", considering that, *through its very nature*, the *object* of an agreement fixing the price of goods or services is to restrict competition on the market.

pecially as regards the recognition of professional qualifications,<sup>17</sup> by imposing requirements which would be contrary to the Services Directive or the Directive on electronic commerce. It should be borne in mind in particular that, under Articles 14 and 15 of the Services Directive, a certain number of requirements will have to be abolished (such as nationality requirements) or be evaluated by the Member States (fixed minimum and/or maximum tariffs, or quantitative or territorial restrictions).

It is clear that the existence of European codes does not “*preclude Member States, in accordance with Community law, from taking more stringent measures in law or national professional bodies from providing for greater protection in their national codes of conduct*”.<sup>18</sup> However, it should also be recalled that, when laying down rules applicable to temporary service providers, Member States have to comply with the principle of the freedom to provide services, as guaranteed in Article 49 of the EC Treaty, and with the *acquis communautaire* on the subject (such as the freedom to provide services clause of the Services Directive or Title II of the Directive on the recognition of professional qualifications).

## 5.2. Subjects covered<sup>19</sup>

It should first be recalled that the consultation shows that the majority of the main European organisations with a European code of conduct at present come under the category of regulated professions. The considerations below reflect the results of the consultation and the possibly more specific practice of the professional organisations representing the regulated professions in this field.

The replies received indicate that the main subjects dealt with in the codes of conduct at Community level are: professional ethics, rules of conduct, professional secrecy, training, insurance, commercial communications, remuneration and control mechanisms.

### 5.2.1. Professional ethics

The principles governing professional ethics are at the heart of the specific nature of regulated professions. This is why the vast majority of the codes governing their activities deal with professional ethics, highlighting principles such as independence or impartiality of professionals in the pursuit of their activities.

*Independence* Independence in this respect appears to be one of the fundamental values governed by almost all the codes, which establish this principle for the purpose of assuring recipients that the service provided meets their interests alone, irrespective of any external influence or pressure.

*Impartiality* Professional rules are provided for in this way to ensure the impartiality of the service provision, the freedom of technical appraisal or advice. The purpose of these rules is to avoid any conflicts of interests or external pressures and to ensure that impartiality of a professional’s judgment is not called into question by

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<sup>17</sup> See in particular the Directive on the recognition of professional qualifications.

<sup>18</sup> Recital 115 of the Services Directive.

<sup>19</sup> The description of the main provisions contained in codes of conduct, as shown by the replies received to the consultation, is irrespective of other provisions which might be contained in these codes and are not mentioned in this document.

any other activity.

*Interests of the recipients of the service*

Another key aspect of professional ethics laid down in the codes of conduct is the relationship with the recipient of the services. In this respect, codes include the principle that the interests of the recipient must always be the prime concern of the provider.

Professionals must act ethically in the pursuit of their activities. Consequently, the provider is obliged to respect the relationship of confidence with the recipients of the services, for example by providing them with objective information concerning the service provided.

It is also of interest to note that, for the non-regulated professions, drawing up professional ethics also seems to be at the heart of the codes of conduct and could provide an opportunity for public assertion of social ethics regarding conduct in the provision of the service.

### 5.2.2. *Rules of conduct in relation to consumers/colleagues*

*Relations with the recipients of services*

It emerges from the consultation that customer relations are regulated under codes of conduct in order to ensure that the provider behaves correctly when providing the service. This behaviour is described in the codes and made known to recipients of the service. This applies to both regulated and non-regulated professions.

*Relations with colleagues*

The regulated professions also attach a great deal of importance to the ethics of relations between colleagues and lay down in their rules of conduct that professionals must refrain from any unfair hindrance of colleagues. They therefore have an obligation of circumspection in this respect.

### 5.2.3. *Professional secrecy*

*Forges the link of confidence between service provider and recipient*

Professionals are generally also required to observe strict professional secrecy. In this respect, professional secrecy seems to be symbolic of the regulated professions. Professional secrecy is considered as being at the heart of activities; it contributes to the delivery of a service adapted to the needs and expectations of the recipient and forms the basis of the confidence between service provider and recipient.

The degrees of protection of professional secrecy vary from one Member State to another and from one profession to another. However, according to the information obtained from the consultation, about 45% of current European codes contain professional secrecy provisions.

### 5.2.4. *Professional qualifications and continuing vocational training*

#### 5.2.4.1. Professional qualifications to gain access to the profession

Some codes of conduct contain provisions relating to the level of qualifications required to pursue an activity by the members of the association, the aim being to ensure the quality of the services provided by their members.

However, it is important to note that under no circumstances may self-regulation provisions either counter or replace national regulations or hamper the recognition of professional qualifications between Member States.

*Common platforms*

Although professional organisations may be able to agree, through a code of conduct, on the level of professional qualifications required for new entrants to

their organisation, any such agreement cannot be assimilated to the common platforms provided for in the Directive on the recognition of professional qualifications. Under Article 15 of that Directive, professional organisations may submit common platforms to the Commission which are representative at national and European level, but these platforms may subsequently be covered by regulations adopted by the Commission and imposed on the Member States. The purpose is to establish a set of criteria for professional qualifications that can compensate for the substantial differences in the level of training required by the various Member States for a given profession. A further aim is to facilitate the free movement of professionals and to arrive at quasi-automatic recognition where a professional meets the conditions defined in the platform.<sup>20</sup>

*Ensuring know-how*

Nevertheless, drawing up codes of conduct may provide an opportunity for professional organisations to emphasise the know-how of their members by ensuring that they possess high-level qualifications. Consumers approaching members of this organisation would then be certain that a professional possesses the minimum qualifications detailed in the code. The consultation showed that certain professional organisations try this to promote voluntary convergence of professional qualifications of the members of their profession.

#### 5.2.4.2. Continuous vocational training

*Updating these skills on a regular basis*

Some codes of conduct also include continuous vocational training requirements. All professionals are therefore required to update and/or increase their skills on a regular basis, so as to ensure a constant level of quality in the services supplied by members.

#### 5.2.5. *Insurance and professional liability*

Under Article 23 of the Services Directive, Member States are encouraged to require providers established within their territory whose services present a direct and particular risk to the health or safety of the recipient or a third person, or to the financial security of the recipient, to take out appropriate insurance or provide another form of financial guarantee.

*Provisions relating to insurance for a service activity*

Some professional organisations have already decided to deal with this matter under their codes of conduct. The consultation results show that about 30% of existing European codes contain provisions covering insurance in the pursuit of a service activity.<sup>21</sup>

#### 5.2.6. *Partnership rules*

On the subject of partnership rules, it has to be said first of all that, under Article 25 of the Services Directive, the pursuit of multidisciplinary activities must be authorised. However, for regulated professions, the pursuit of multidisciplinary activities may be restricted in so far as is justified in order to guarantee compliance with the rules governing professional ethics and conduct, which vary according to the specific nature of each profession, and is necessary in order to ensure their independence and impartiality. Indeed, these obligations

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<sup>20</sup> Further information on the practical arrangements for common platforms is available on the Internal Market and Services DG website: [http://ec.europa.eu/internal\\_market/qualifications/future\\_en.htm](http://ec.europa.eu/internal_market/qualifications/future_en.htm).

<sup>21</sup> Tax advisers, lawyers, certain health sector professions, veterinarians, architects, engineers in some countries, etc.

may have not inconsiderable implications for the structure of the markets in the services in question.<sup>22</sup> However, it must be stressed that even where multidisciplinary activities are authorised, Member States will have to ensure, on the one hand, that the rules governing professional ethics and conduct for different activities are compatible with one another, especially as regards matters of professional secrecy, and, on the other, that conflicts of interest between certain activities are prevented and that the independence and impartiality required for certain activities are secured.

*Ensuring independence of professionals in the pursuit of their activities*

The replies to the consultation indicate that about 25% of European codes contain provisions concerning partnership rules. These aim primarily to ensure the independence of judgment and pursuit of activities on the part of professionals and to define incompatibilities in the pursuit of such activities.

Some codes may therefore lay down rules governing integrated cooperation or subject partnerships to compliance with conditions ensuring independence of pursuit of activities by professionals, such as a rule stipulating that only activities which do not compromise compliance with professional obligations are compatible with the pursuit of a profession.

#### 5.2.7. *Commercial communications*

*The concept of commercial communications*

Commercial communication means any form of communication designed to promote the services or image of a service provider. This concept therefore covers advertising and other forms of commercial communication, such as professional cards mentioning the title and specialisation of the service provider.<sup>23</sup>

*The Services Directive requires the inclusion of rules on commercial communications*

Under Article 24 of the Services Directive, professionals are invited to draw up Community codes of conduct to lay down the rules relating to the content and practical arrangements for commercial communications. In this respect, recital 114 of the Directive specifies that: "*These codes of conduct should include, as appropriate to the specific nature of each profession, rules for commercial communications relating to the regulated professions.*"

It is therefore interesting to note that formulating provisions relating to commercial communications should be one of the main challenges for professionals when drawing up these codes. In fact, only a minority of codes (about 20% according to the results of the consultation) seem to contain such rules; the majority of professional organisations (nearly 80%) apparently have no plans to draw any up.

The main purpose of the current rules on commercial communications is either to provide a framework for making such communications by stipulating, for example, that they must comply with the principles of the profession, or to ensure the truthfulness of the communications made.

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<sup>22</sup> See ECJ, Wouters judgment, C-309/99 of 19.2.2002 (point 101) in which the Court recognises that "*Those obligations of professional conduct have not inconsiderable implications for the structure of the market in legal services, and more particularly for the possibilities for the practice of law jointly with other liberal professions which are active on that market.*"

<sup>23</sup> Article 7(3) and Articles 52 and 54 of the Directive on recognition of professional qualifications contain the rules applicable to the use of professional and academic titles where professionals engage in their profession in a Member State other than the one in which they acquired their professional qualifications.

### 5.2.8. Remuneration

*Guaranteeing transparent, objective fees*

According to the results of the consultation, a low proportion of existing European codes contain provisions concerning the remuneration of the services provided (about 15%). The current rules do not aim to lay down fixed scales to be employed by the members of the organisation (a practice which is considered to be contrary to Community law), but to guarantee that the means of calculating fees is transparent for the recipient of the service, to protect the information of the latter and to prohibit any competition deemed to be unfair.

### 5.2.9. Control mechanisms and sanctions

*A control mechanism and a system of sanctions*

To guarantee the good conduct of their members in accordance with the principles set out in the current code of conduct, professional organisations have generally put in place control mechanisms and sanctions to cover any infringement of the provisions of the code.

*Types of sanctions*

Depending on the type of infringements, sanctions range from fines to reprimands, temporary suspension from the organisation and exclusion from the organisation. These sanctions are contained in the codes, which explain the self-regulation system of the members put in place.

## 6. LEGAL FRAMEWORK AND LEGAL VALUE OF CODES OF CONDUCT

One of the crucial challenges of drawing up European codes of conduct is to ensure that they are observed. A code which is purely declaratory would certainly offer less of a guarantee in the view of the public, since the existence of the code would not mean that it was observed by the members of the organisation. Consequently, the problem arises of the interaction and integration of the European code with national codes.

### 6.1. Legal value of codes of conduct

#### 6.1.1. National codes

A large number of organisations representing professional services already have codes at national level. Depending on the role assigned to the professional organisations, the legal value of the code differs in the national legal systems.

*Codes enshrined in law*

In some Member States and for some regulated professions, such as lawyers or architects, codes are prepared by professional organisations constituted as professional bodies and approved by public authority regulation. These codes are therefore binding by law and infringement of them is subject to legal proceedings.

*Codes complementary to the principles already provided for by law*

On the other hand, in other Member States, the basic principles of professional ethics may be laid down by law. The codes of conduct adopted within professional organisations must consequently comply with the regulatory framework in force, but will not have the status of self-regulation as such. Compliance with these codes will therefore be binding only for their members and infringement of these codes is not in itself, in principle, actionable.

*Other codes*

For other sectors, as for the non-regulated professions, the law establishes only the general conditions for the pursuit of the activity, but does not lay down any rules of conduct. Codes drawn up by professional organisations in this context

have only declaratory value. It is for the professional organisations themselves to ensure that the principles they have laid down are upheld, should they decide to make this code obligatory for their members, by means of internal sanctions mechanisms.

### 6.1.2. *European codes and interaction with national systems*

*European codes have declaratory value*

In legal terms, the current European codes have only declaratory value and can be binding only in relation to their members. This is the logical consequence of the status of private organisation.

*The challenge of interaction between European code and national codes*

However, beyond this legal value, the problem arises of the interaction between the European code of conduct and national codes and therefore its incorporation at national level. This question is crucial for the effectiveness and usefulness of the codes drawn up.

Ideally, it should be possible for the European code of conduct to be transposed by the national organisations into their national codes in order to guarantee its effectiveness. In fact, professionals choose to join a national professional organisation, but are not members as such of the European organisation. It is the representative national organisations that are members of the European organisation. Consequently, supervision of compliance with the European code may be the responsibility of the national organisations only.

*European code does not replace the national codes but complements them*

Whereas it is obvious that the European code is not intended to replace the national codes, the European code should nonetheless contain common minimum requirements which are transcribed into the various national codes and which are duly observed. Accordingly, the Services Directive specifies that: “*Member States should take accompanying measures to encourage professional bodies, organisations and associations to implement at national level the codes of conduct adopted at Community level.*”<sup>24</sup> It is interesting to note in this respect that although, according to the results of the consultation, about half of European codes have been transcribed into the national codes, the other half exist only independently at European level, not having been transcribed into national codes, or have only a declaratory value without legal effect.

Interestingly, the results of the consultation show that about 30% of professional organisations with a European code already consider that the European code provides a basis for their national codes.

*Means of incorporation into national law*

The means of incorporating a European code of conduct into the national system depends first and foremost on the legal value of the national code and on the role assigned to the professional organisations.

If a national code has been approved by law, it should contain, as promulgated, the principles defined at European level. If a national code is purely voluntary, the national organisation should also transcribe the principles of the European code into the national code. The European code would then be included in the national codes on a voluntary basis and compliance with it should in principle be effective, but it would obviously depend on the way in which compliance with such codes is ensured.

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<sup>24</sup> Recital 114 of the Services Directive.

## 6.2. Supervision and implementation of the codes

One of the key challenges of drawing up European codes of conduct is therefore to introduce mechanisms to ensure implementation of the codes and to guarantee compliance with these codes by the members of the organisation.

*Key role of the national organisations in the supervision of compliance with the European code*

In order to guarantee implementation of the code, the European professional organisation is heavily reliant on its member organisations to which the service providers belong. It will be first and foremost for the professional organisations belonging to the European professional organisation, which will have direct contact with the service providers, to ensure compliance with the code adopted. The scope of this control will vary according to the role assigned to the professional organisation (entity assigned the prerogative of public power, public entity, private entity, etc.), but its role is essential.

National professional organisations will therefore be the first and often the only organisations empowered to handle any proceedings in the event of infringement of the provisions of the code. It is therefore important for European codes to be transposed in the various national codes in order to ensure implementation.

Furthermore, it is important to recall that these codes will have to be implemented in accordance with Community law, in particular Articles 43 and 49, 81 and 82 of the EC Treaty, and with the existing *acquis communautaire*. Indeed, supervision of the service provider by the competent authorities of the Member States will always have to be carried out in the context of the existing *acquis communautaire* and in particular the administrative cooperation provided for in the relevant Community instruments (such as the Services Directive and the Directive on the recognition of professional qualifications).

## 7. HOW TO ENCOURAGE THE DRAWING-UP OF EUROPEAN CODES OF CONDUCT AND BUILD AWARENESS OF SUCH CODES

Article 37 of the Services Directive requires Member States and the Commission to encourage the preparation of European codes of conduct. In this context, the Member States are called upon to take accompanying measures to encourage professional bodies, organisations and associations to implement European codes of conduct at national level.

*Accompanying measures*

Even though it is for the professional organisations at national level to organise themselves at European level, in accordance with the principle of self-regulation, there are nevertheless certain initiatives that could be taken to help professional organisations to draw up and promote European codes of conduct.

### 7.1. Ensuring transparency of existing codes

*Lack of transparency*

Most of the replies to the consultation reveal a lack of awareness and a lack of transparency of existing codes of conduct. Professional organisations, whether national or European, may therefore find it difficult to access existing codes and documents on the subject and to obtain information concerning “best practices” from other organisations.

*Database*

In this context, the European Economic and Social Committee, together with

the European Commission, has created a public database, which is accessible on-line.<sup>25</sup> This database has been set up under the “Better lawmaking” initiative,<sup>26</sup> the objective being to draw up an inventory of existing European self-regulation instruments, including European codes of conduct, whether they relate to a regulated or a non-regulated profession, and to enhance awareness of them. Accordingly, professional organisations are encouraged to submit their codes so that they can be recorded in this database. This database will help to disseminate existing codes and thus improve the information of recipients of services and professional organisations. In this respect, it must be stressed that the more complete the database, the greater the transparency for the public.

## 7.2. Ensuring that the recipients of services are informed

*Ensuring that the recipients of services are informed*

To ensure that recipients in Europe receive consistent information, Article 22 of the Services Directive lists the information to be communicated by service providers on themselves and their services. All professionals will have to deliver this information or make it accessible, without prejudice to the adoption by Member States of other, stricter provisions for providers established within their territory. From 2010, service providers, at the request of the recipient of the service, will have to communicate the codes of conduct to which they are subject and the address at which these codes may be consulted by electronic means, specifying the language versions available. This provision aims to improve the transparency of the information available to the recipient, but it is not necessarily sufficient to ensure public awareness of European codes of conduct.

## 7.3. Raising the profile of European codes of conduct

*Awareness of application of the codes by professionals*

To ensure transparency for the recipients of services and raise awareness of the rules of conduct contained in the European code, professional organisations could also introduce distinctive signs, such as logos, labels or professional cards. This would facilitate mobility among professionals in the various Member States by enabling them to show that they belong to a professional organisation and that they comply with the code of conduct in force in that association.

Various means appear to have been implemented to achieve this so far (mentioning these possibilities is obviously without prejudice to other means which could be implemented by professional organisations).

- **Public availability**

*Ensuring transparency of the codes to the public*

To guarantee transparency and dissemination of the codes to the public, the majority of European organisations (over 60% according to the results of the consultation) already put their codes of conduct on-line on their websites and/or on the websites of their national organisations. Only a minority of organisations (about 15%) arrange for their codes to be available to their members only.

- **Granting of labels**

*A distinctive logo*

The granting of labels could improve public awareness of the code of conduct. In this way, all service providers using a professional organisation and comply-

<sup>25</sup> <http://www.eesc.europa.eu/self-and-coregulation/index.asp>.

<sup>26</sup> See footnote 2 of this document for the references concerning this initiative.

ing with its code of conduct could display a distinctive logo on business cards, headed stationery, etc. Displaying the logo could indicate to the recipients of services that the provider complies with a certain number of ethical principles governed by a code.

The consultation showed that over 60% of organisations already have a label to aid external recognition.

*Creation of a European label*

One way of raising the awareness of European codes is therefore to create a European label. It will be for the professional organisations to determine whether the label needs to be specific to the European organisation, possibly coexisting with the label/logo of the national organisation, or if the label/logo needs to be standardised at European level as representing a given service activity.

- **Professional cards**

*Professional cards*

Recital 32 of the Directive on the recognition of professional qualifications deals with the creation of professional cards at European level by professional organisations.

According to this recital: *“This professional card should make it possible to monitor the career of professionals who establish themselves in various Member States. Such cards could contain information, in full respect of data protection provisions, on the professional’s professional qualifications (university or institution attended, qualifications obtained, professional experience), his legal establishment, penalties received relating to his profession and the details of the relevant competent authority.”* Granting such cards to professionals could also imply not only that they are members of the professional organisation,<sup>27</sup> but also that they are committed to complying with the code of conduct in force. Holding a professional card could also be a pledge of a professional’s observance of the basic principles defined at European level in a European code and then transcribed at national level. A European professional organisation or its member national organisations would decide whether to grant or to withdraw a card.

One of the challenges of creating such cards is the issue of compatibility between the various national systems responsible for issuing them. Creating such cards therefore implies that the various organisations agree among themselves on a common format and on the information to be contained on the cards within their European professional organisation.

In the context of the European Year of Mobility 2006, the Commission decided to support projects aiming to facilitate this mobility, which included the feasibility of a professional card initiative.<sup>28</sup>

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<sup>27</sup> These cards could be submitted by professionals in order to support their request for recognition of their professional qualifications. It will of course be for the competent authorities of the Member States to assess the quality of the information contained on the card and to use it or otherwise in the recognition procedure.

<sup>28</sup> For further information, see the FEANI ENGCARD initiative [http://ec.europa.eu/employment\\_social/workersmobility\\_2006/index.cfm?id\\_page=58&language=en](http://ec.europa.eu/employment_social/workersmobility_2006/index.cfm?id_page=58&language=en).

- **Register of members within the organisation**

*A public register of members applying the code of conduct*

For public promotion of compliance with the code of conduct by its members, a European professional organisation could also consider introducing a public register of members of the various professional organisations belonging to it. Entry in such a register would imply professionals' commitment to observing the European code of conduct in force in the organisation, and, in the event of infringement, they could be struck from this register or suspended temporarily. Similarly, registration with national professional organisations in a public register could imply a commitment by professionals to observing the codes of conduct in force in that organisation, i.e. the national code and the European code (directly or indirectly via its transcription in the national code). The professional organisation in charge of this register should be responsible for monitoring and updating it.

#### **7.4. Heightening awareness of the importance of codes of conduct**

*Information and awareness campaigns*

In addition to the publication of this document, which will help to make parties aware of the importance of European codes of conduct, other initiatives, such as information campaigns, could be developed in order to prompt a discussion on codes of conduct at European level and to exchange "best practices". These campaigns could be organised either at European level, or at national level, by the national authorities, or by the professional organisations. These campaigns would have the aim of establishing wider cooperation between professional organisations in Europe and thus facilitating the drawing-up of codes. Similarly, information campaigns could be conducted among citizens to heighten their awareness of European codes of conduct and their importance.