

THE NEED FOR HARMONISING THE PRACTICE OF TAX CONSULTANT LIBERAL PROFESSION IN THE EUROPEAN UNION

Mihaela-Liliana GÖNDÖR*

ABSTRACT: *The main objective of the present study is to explore and analyze, in a comparative manner, different codes of conduct, regulations, guidelines, procedural rules, and legislations regarding the tax consultant liberal profession in different European Union member countries, to provide an informative review for fiscal consultants in need of practice abroad, and for national professional entities wishing to reform their code of conduct. The results of the study point to the idea of creating a common European code of principles for the tax consultant liberal profession. The study uses official EU and national data from public data sources of national professional bodies of fiscal consultants, institutes of taxation, chambers of fiscal consultants, associations of fiscal consultants, and tax consultants' registers, from European Union member states. As revealed by the scientific literature, and official data, the tax consultant liberal profession principles and practices vary widely across the European Union countries. The results show the need for harmonizing tax consultant practices in order to respond to the higher degree of contemporary European integration.*

KEYWORDS: *Professional Principles; Tax Consultant; Liberal Profession; Harmonization*

JEL Code: *F20, F36, H87*

1. INTRODUCTION

Professional principles play an important role in obtaining and maintaining professional performance all over the world and concerning all professions. In all professional pursuits, the system of values and standards represents a basis of professional practice, and it represents a code of conduct for the practitioners. Usually, this code of conduct relies on national regulations, and is built for domestic purposes dictated by national considerations. The present study reveals that the objectives of all professional bodies are to enact and endorse the highest standards of ethical conduct and excellence in the practice, which represent the common point of the European Member states regulations in the field of the tax consultant liberal profession. What differs is the

*Associate Professor, Ph.D., George Emil Palade University of Medicine, Pharmacy, Science and Technology of Tirgu Mures, ROMANIA

way of achieving this purpose, and this represents the reason for the present study. The exploration and comparison of different codes of conduct, regulations, guidelines, procedural rules, and legislations regarding the tax consultant liberal profession in different European Union member countries represent the main objective of this study.

Data and methods

This article is a qualitative research that investigates compares, and analyses EU laws, EU statistics, national regulations in different European Union member states, and different professional codes of conduct, procedural rules, and guidelines. The study uses EU and OECD official data and public data of national professional bodies of fiscal consultants, chambers of fiscal consultants, institutes of taxation, associations of fiscal consultants, and tax consultants' registers from European Union member states. Data exploring and data analysis in this comparative research have been carried out simultaneously.

As a difficulty related to the data availability, it should be mentioned the lack of national information in English or another international language, as the national regulations and code of conducts are available in their national language, partially available in English translations. This aspect implies a risk of ambiguity, which we have tried to reduce as much as possible with the help of specialized translators.

Background/EU regulations, statistics, and literature

The idea of liberal professions is universally developed across the European Union. Article 57 of the Treaty on the Functioning of the EU specifically refer to the liberal professions as a group of professions carrying out specific activities, different from *commercial, industrial, and craftsmen's activities*. "*Services shall be 'services' within the meaning of the Treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. 'Services' shall include: (a) activities of an industrial character; (b) activities of a commercial character; (c) activities of craftsmen; (d) activities of the professions. Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, to do so, temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals.*" (TEC, 2008, Article 57)

Apart from the Treaty definition (TEC, 2008, Article 57), the term "*liberal profession*" has not been objecting to a more explicit definition within primary EU law, that being the reason for the Member States to provide individual normative legal definitions of the concept.

The Professional Qualifications Directive 2005/36/EC contains a definition of the 'regulated profession', 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*' (The Directive 2005/36/EC, 2005, Article 3a). The Directive 2013/55/EU amended the Professional Qualifications Directive 2005/36/EC, '*for the purposes of strengthening the internal market and promoting the free movement of professionals*' (The Directive 2013/55/EU, 2013, (4), p15). However, although such a directive has been implemented concerning professional

qualifications, it is mentioned that its mechanisms do not apply to professions ruled by specific legal stipulations. A list of these professions under specific national regulation is available in the EU database of regulated professions (EC, Regulated professions database, 2021). The professions which gain recognition based on harmonized minimum training requirements under the 2005/36/EC Directive are *medical and dental practitioners, veterinary surgeons, pharmacists, and architects*. It results that tax consultant's/tax adviser's activity is not subject to European harmonization.

In a 2014 study about liberal professions in the EU, the European Economic and Social Committee (EESC) analyses the legal framework of the liberal professions and presents different regulatory systems and organizational forms of liberal professions mostly used in Europe, revealing the information asymmetry as a characteristic of liberal professions, and "*the difficulties of statistical recording of liberal profession activities*". (EESC, 2014, pp. 14)

As stated by the scientific literature, the liberal profession of fiscal adviser/tax adviser is not subject to European harmonization (Reibel, 2013). As a result, "*tax advisers in Europe are subject to highly different regulatory frameworks*" as demonstrated by Widt Dennis et al. in a study named "*Regulating Tax Advisers: A European Comparison of Recent Developments and Future Trends*" (Widt, Dennis de, Mulligan, Emer, Oats, Lynne, 2016).

2. FINDINGS, RESULTS, AND DISCUSSIONS

The liberal profession investigated in this study is subject to specific national professional regulations. "*Tax consultancy*" or "*Tax advice*" is a liberal profession of an individual, under the condition of fulfilling some requirements of the national regulations, which consists of tax advisory activities for his clients. The requirements differ from state to state, as well as the professional title, "*Tax Consultant*" or "*Tax Adviser*".

In some EU countries, there exist some professional organizations like professional chambers, or associations, authorized by the state to regulate, organize, and monitor the activity of the tax advisers /tax consultants according to a specific professional code of conduct, and setting the conditions for awarding the professional title.

The tax advisory activities mainly refer to the rendering of legal advice/consultancy in tax matters, the filing of tax returns or tax compliance obligations, and representing the client during a tax control, in tax courts or tribunals. (Reibel, 2013)

The main findings regarding the differences related to the tax advisory practices within EU member states are:

- In some European countries, there is no profession of tax adviser/tax consultant (Greece, Ireland, Latvia), as stated by Reibel (Reibel, 2013);
- In some European countries, the tax advisory activities can be carried out by the accountants - when tax advice includes the filing of tax obligations (as in Portugal), or by the lawyers - when tax advice refers to the rendering of legal advice/legal consultancy in tax matters (as in France and Portugal); tax advice is provided in Cyprus by chartered auditors and accountants;
- In some European countries, tax advisers are typically self-employed, in other European countries, tax advisers are employees in tax, law, audit, or accounting firms or

in-house tax advisers (Graph. no.1), mostly having the permission to carry out more than one professional liberal profession (Graph no.2)

- In Romania, the tax advice activities can be carried out by tax advisors, lawyers, chartered accountants, and auditors, but the professional title is reserved only for tax advisors, members of the professional chamber of fiscal consultants of Romania (*Camera Consultantor Fiscali din Romania, CCFR*);

- In some European countries, a registration requirement exists, as in Belgium, Bulgaria, Denmark, Greece, Ireland, Latvia, Luxembourg, Portugal, Romania, and Spain;

- Regarding the fees charged by the tax advisers, we did not find any regulations; there are in some European countries some recommendations (not compulsory) or guidelines as in Belgium, Greece, Ireland, and Luxembourg); only Germany and Czech Republic require a specific price range - Germany for all kind of activities carried out by a tax adviser, and the Czech Republic for the representation in court;

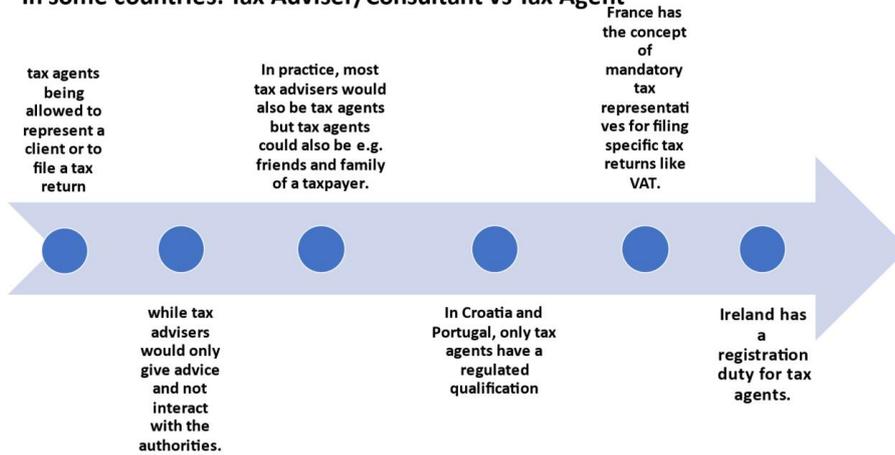
- As regards the professional development, there are specific requirements only in some European countries such as France, Ireland, Austria, Poland, and Romania, consisting in mandatory participation at courses on fiscal themes, a certain number of hours each year; only in Romania and Slovakia, the courses are offered by the specific professional body;

- The client confidentiality rules widely differ in the EU, as presented in Figure no. 3;

- As regards the possibility for tax advisers to work as public servants or employees of the state, there are some specific national requirements, as follows: in Belgium, tax advisers may work as employees of the state, except the fiscal administration, in Ireland, public servants are not permitted to give tax advice to the public, considered as a conflict of interest, and in many European countries it is not allowed to work as a tax adviser and at the same time to be employed by the state (Austria, Czech Republic, Germany, Italy, The Netherlands, Romania, Slovakia, and Spain);

- Regarding the possibilities for tax advisers to associate in firms for joint practice, we found different regulations. Most Member States allow multi-professional groupings of tax advisers or a limited liability company to carry out the tax advice professional activity. In Romania, such a company must be (compulsory) a member in the professional chamber or professional association (CCFR).

In some countries: Tax Adviser/Consultant vs Tax Agent



Graph.no.1 Differences related to the tax advisory practices within EU member states

Tax advisers - generally not restricted from holding more than one professional qualification.
 Except Belgium: tax advisers may not be lawyers or auditors.



Graph.no.2 Differences related to the tax advisory practices within EU member states

Client confidentiality

- In 11/23 countries, client confidentiality **rules for tax advisers are contained in legislation** (AT, BE, HR, CZ, FR, DE, IT, LV, MT, PL, SK).
- In 8/23 countries, violation of such duties **can even be considered a criminal or administrative offence** (AT, BE, FR, DE, LU, NL, PL, PT).
- In 3 countries (LU, PT, RO), there is **no specific legislation but professional bodies with mandatory membership have adopted confidentiality rules** (LU: for tax advisers who are accountants).
- In 6 countries, professional associations with **voluntary membership have established such rules** (FI, IE, NL, RU, CH, UK).
- In 3 countries (GR, ES, UA), there are **no specific confidentiality rules in place**; however, the client information may still be protected by general provisions of the law or client confidentiality may be considered **an implied term of the contract**.
- 14 countries have confirmed that **tax advisers may reveal confidential information to defend themselves in judicial proceedings** (AT, BE, FR, DE, IE, LV, MT, NL, PT, RO, RU, SK, CH, UK) It is understood that this may only be a last resort.

Figure no. 3 Rules for tax advisors in the EU regarding the client confidentiality (data from scientific literature, particularly from the study coordinated by Reibel, 2013, pp. 29-33)

The case of Romania

The professional conduct of tax advisers is under the regulation of the CCFR. The name of the profession in Romanian is "*Consultant fiscal*" and English "*Fiscal consultant*".



Fig. no. 4 The picture of the consultant fiscal profession in Romania

The essential rules regarding liability, insurance, and pricing have been presented in Fig. no. 5.

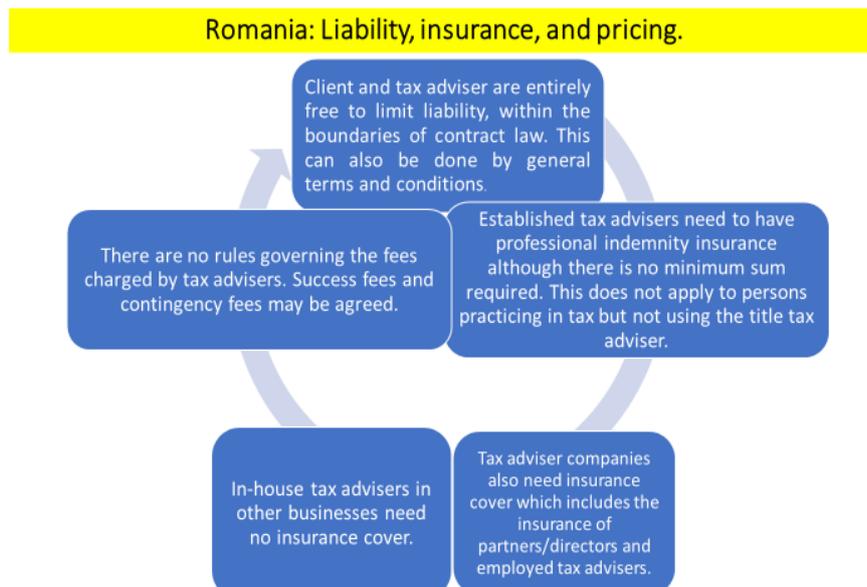


Fig. no.5. Romania: Liability, insurance, and pricing in consultant fiscal liberal profession

As regards the protection of client data and client confidentiality, we found rules adopted by the CCFR. Fiscal consultants may reveal client information to defend themselves in judicial issues and have the right not to disclose confidential client information to financial authorities in regular tax inspections. It is not the case of the criminal investigations, where, upon the authority's formal request, the fiscal consultant is obliged to disclose the client's information. Reporting money laundering is compulsory.

The main results of the study have been presented in Fig. no. 6.

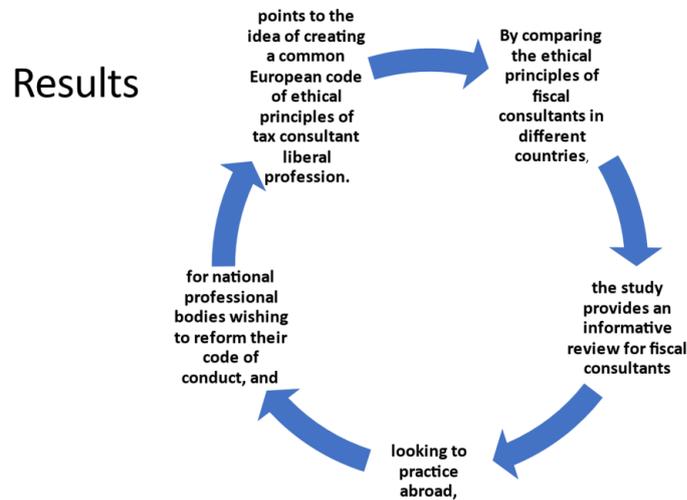


Fig. no. 6 The main results of the study

3. CONCLUSIONS

The results demonstrate big differences in the tax consultant practices between different EU member states, and the lack of harmonization regarding the Tax Consultant/Tax Adviser liberal profession at the European Union level. As the taxation and fiscal regulations become important features of the new global world and particularly in terms of European integration, the role of the tax advisers becomes more and more significant, especially in the large businesses operating across borders. The entire evolution process requires a certain degree of harmonization so as to increase the performance and the transparency of this profession. The first step would be a definition of tax consultant/tax adviser liberal profession at the European Union level, a common definition for all the member states.

The present study represents the starting point for future research. Future studies are going to find the harmonization mechanism for the tax adviser practices within the EU.

REFERENCES

- European Economic and Social Committee (EESC), (2014). *The State of Liberal Professions Concerning their Functions and Relevance to European Civil Society*, Brussels, Belgique.
- OECD, (2015). *Tax Administration 2015: Comparative Information on OECD and other Advanced and Emerging Economies*, Paris, France.
- Official Journal of the European Union, (2008). *Consolidated version of the Treaty on the Functioning of the European Union (TEC), Part Three - Union Policies and Internal Actions, Title Iv - Free Movement of Persons, Services, And Capital, Chapter 3 – Services, Article 57.*

- Official Journal of the European Union, (2005). *DIRECTIVE 2005/36/EC of The European Parliament and of The Council of 7 September 2005 on the recognition of professional qualifications*, Article 3 Definitions.
- Official Journal of the European Union, (2013). *Directive 2013/55/EU of The European Parliament and of The Council of 20 November 2013, amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation, No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')*.
- Reibel, Rudolf, (2013). *European Professional Handbook for Tax Advisers*, Brussels.
- Widt, Dennis de, Mulligan, Emer, Oats, Lynne, (2016). *Regulating Tax Advisers: A European Comparison of Recent Developments and Future Trends*, FairTax WP-Series No.6.
- Website: Camera Consultantilor Fiscali, <https://www.ccfiscali.ro>, 2021
- Website: Conseil Supérieur de l'Ordre des Experts-Comptables – CSOEC, <https://www.experts-comptables.fr/>, 2021
- Website: Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili – CNDCE, <https://www.commercialisti.it/>, 2021
- Website: Corpul Expertilor Contabili și Contabililor Autorizați din România – CECCAR, <https://ceccar.ro/ro/>, 2021
- Website: European Commission, Internal Market, Free movement of professionals, Regulated professions database, <https://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=sites>, 2021
- Website: ETAF, The European Tax Adviser Federation, <https://www.etaf.tax/>, 2021
- Website: Instituut van de Accountants en de Belastingconsulenten/Institut des Experts-Comptables et des Conseils Fiscaux - IEC-IAB, <https://www.iec-iab.be/fr/Pages/default.aspx>, 2021
- Website: Irish Tax Institute, <https://taxinstitute.ie/>, 2021
- Website: Kammer der Steuerbarater und Wirtschaftsprüfer – KSW, <https://www.ksw.or.at/desktopdefault.aspx/tabid-2/>, 2021
- Website: Magyar Okleveles Adószakértők Egyesülete – MOKLASZ, <https://moklasz.hu/>, 2021
- Website: OECD, Organisation for Economic Co-operation and Development, www.oecd.org, 2021
- Website: RB, Register of Tax Advisers (Register Belastingadviseurs), <https://rb.nl/>, 2021
- Website: NOB, The Dutch Association of Tax Advisers (Nederlandse Orde van Belastingadviseurs), <https://www.nob.net/dutch-association-tax-advisers>, 2021
-
-
-