

August 2017

Professional Qualifications Directive

Introduction

On 11 May 2017, the Conference of Presidents of the European Parliament authorised its Committee on the Internal Market and Consumer Protection (IMCO) to draw up a report on the implementation of Directive 2005/36/EC regarding regulation and the need for reform in professional services. The timetable envisaged for the preparation of this report was then adapted to the one for the report on the legislative proposal for a proportionality test before adoption of new regulation of professions, also being dealt with by IMCO (rapporteur: Andreas Schwab, EPP, Germany).¹ Due to the limited time consequently available for conducting research on this dossier, this short briefing paper – rather than a full European Implementation Assessment, as is the usual procedure in the case of implementation reports – is hereby provided to the IMCO Members. The scope of this 'Implementation in Action' briefing, covering the history of EU regulation of professions, application of Article 59 of the Professional Qualifications Directive, and the restrictiveness indicator used by the European Commission, was agreed with the IMCO committee secretariat following consultation with the office of the rapporteur (Nicola Danti, S&D, Italy).

1. Background information about the history of EU regulation of professions

Legal and historical framework

The Treaty provisions on free movement (namely free movement of workers, freedom of establishment and freedom to provide services) are at the basis of European legislation concerning professional qualifications. Most notably, EU law in this area concerns regulated professions, as different national rules have made their exercise in another Member State very difficult. In particular, the necessary mechanisms have been established for recognising skills acquired in another country – something that significantly improves the chances of a qualified person to find a job abroad. At present, the specific legal basis for the Professional Qualifications Directive (PQD)² is the following Articles of the Treaty on the Functioning of the European Union:

- Article 46 (on the free movement of workers);
- Article 53 (freedom of establishment as regards mutual recognition of diplomas, as well as coordination of national provisions on access to and pursuit of regulated professions);
- Article 62 (on the freedom to provide services).

It is important to underline that whereas many professional activities are already regulated at EU level (doctors, nurses, architects, pharmacists, auditors, insurance brokers etc.), in areas where access to or pursuit of regulated professions is not harmonised at EU level, Member States remain competent to

¹ [Procedure file 2016/0404\(COD\)](#).

² [Directive 2005/36/EC](#) of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.

establish certain restrictions for the access to or the exercise of any given profession. In any case, the Treaty and Article 59 of the PQD require that no discrimination takes place with regard to other European citizens, and that the rules are proportional. The number of regulated professions throughout the European Union is around 5 500. To facilitate recognition and comparability between professions, the European Commission has created around 600 categories, under which Member States may notify professions,³ linked to ISCO⁴ and NACE⁵ classifications.

Importantly, **regulated professions are present in all economic sectors**, with the following being most relevant (the percentage indicates the relation to all regulated professions):⁶

- health and social service: 40 %
- business services (including lawyers, accountants and architects): 15 %
- transport (such as taxi drivers): 9.6 %
- public service and education: 9.1 %
- construction (including civil engineers and craft professions): 6.6 %

In the early stage of European recognition of professional qualifications – from the 1960s through 1970s – a transitional approach was maintained, with several directives granting recognition of work experience in commerce, industry, and small crafts. In some areas harmonisation was later developed through a number of directives between the mid-1970s and mid-1980s, especially in the health sector (e.g. doctors, nurses, veterinary surgeons and midwives) and self-employed commercial agents. For other professions, the mutual recognition was more limited. In particular, Council Directive 77/249/EEC granted lawyers the freedom to provide occasional services under their home country professional title, whereas full establishment required also a diploma of the host country. Directive 98/5/EC further improved their free movement by allowing lawyers to practise in another Member State under their home professional title (with the possible restriction of being assisted by a local lawyer in court), and the option to practise under the title of the host Member State after three years of regular exercise of the profession. Separate directives applied the principles of harmonised training, automatic recognition of titles and general recognition to other professions, such as road haulage operators, insurance agents and brokers, hairdressers and architects.

The Professional Qualifications Directive and its application

The PQD replaced as many as 15 separate directives concerning specific professions, in order to facilitate the flexibility of the labour market in the EU. As it stands, it applies to all nationals of EU and non-EU European Economic Area (EEA) countries wishing to pursue a regulated profession, either on a self-employed or an employed basis, in a country other than the one where they obtained their professional qualifications.

The PQD makes a distinction between temporary mobility and freedom of permanent establishment in another country. It established **three systems of recognition for permanent establishment**:

1. Automatic recognition (for seven professions known as 'sectoral' professions which are regulated at EU level: architects, dentists, doctors, midwives, nurses, pharmacists and veterinary surgeons);
2. Recognition on the basis of professional experience for certain occupations such as professionals in the craft, commerce or industry sectors;

³ For the full database of these professions, see [European Commission, Regulated professions database](#).

⁴ [International Standard Classification of Occupations](#).

⁵ Statistical Classification of Economic Activities in the European Community, see [Eurostat, RAMON](#).

⁶ Data from [European Semester Thematic Factsheet](#) of the European Commission, November 2016.

3. A general system to be applied to all other professions, either regulated at national level such as teachers, translators and real estate agents or regulated at EU level, but without a specific recognition procedure.

The PQD applies to professions covered by specific legal provisions (such as sailors, statutory auditors, insurance intermediaries or some transport operators) **only to the extent that the matter is not covered by specific EU instruments in that area.** Its application to lawyers should be seen in the context of the ruling of the Court of Justice in Case C-359/09, which considered the complementary character of the above-mentioned Directive 98/5/EC and Directive 89/48/EEC (repealed by PQD).⁷

In order to promote a uniform application of the PQD and to collect all the information which is relevant for its application, a group of coordinators for the recognition of professional qualifications, composed of the national coordinators designated by the Member States, was established by Commission Decision of 19 March 2007.⁸ Ensuring good cooperation between the relevant national authorities involved in the process of managing the recognition of professional qualifications was also developed throughout the years, including the Internal Market Information (IMI) system⁹ and the Points of Single Contact introduced in 2013. In addition, a growing amount of case law (including from the European Court of Justice)¹⁰ confirmed the practical importance of the rules facilitating the mobility of professionals. Instruments such as SOLVIT¹¹ also contributed to solving individual problems throughout the European Union.

The 2013 modifications and further developments

Although it may seem that Parliament's implementation report will be looking at the implementation of the PQD adopted in 2005, it is important to note that the current state of play is the result of a significant modification of this directive made in 2013, following an extensive analysis of how EU law on professional qualification was working until then.¹²

The Single Market Act, published in April 2011, identified the modernisation of the system of recognition of professional qualifications as a key action for improving mobility of EU citizens in the single market.¹³ Additionally, a green paper on modernising the PQD proposed new ideas for facilitating mobility and prepared the ground for the legislative revision.¹⁴

Thus, **Directive 2013/55/EC**¹⁵ introduced a mutual evaluation exercise for the Member States, the results of which also led the European Commission to present the above-mentioned legislative proposal (on the proportionality test).¹⁶

Another important element created by the 2013 modification of the PQD, is the European Professional Card,¹⁷ facilitating permanent and temporary mobility by an electronic certificate of competences in a given field. This card has already been introduced for five selected professions (general care nurses, pharmacists,

⁷ <http://courtofjustice.blogspot.be/2011/02/case-c-35909-donat-cornelius-ebert.html>

⁸ Commission Decision [2007/172/EC](#).

⁹ See http://ec.europa.eu/internal_market/imi-net/about/index_en.htm

¹⁰ See [here](#) for examples, including those before the adoption of the Professional Qualifications Directive.

¹¹ <http://ec.europa.eu/solvit/>.

¹² This included the European Parliament's [resolution on the implementation of Directive 2005/36/EC](#), adopted on 15 November 2011, covering multiple aspects of the regulation of professions. See also the European Commission's [website](#).

¹³ [COM\(2011\) 206 final](#).

¹⁴ [COM\(2011\) 367 final](#).

¹⁵ [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 (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System, applicable from 18 January 2016.

¹⁶ [COM\(2016\) 822](#).

¹⁷ See https://ec.europa.eu/growth/single-market/services/free-movement-professionals/european-professional-card_en.

physiotherapists, mountain guides and real estate agents) and could be further extended to other professions in the future.

Support for further developments in the area of the mutual recognition of professional qualifications was expressed by a number of EU institutions (European Council, European Parliament, European Commission) in the framework of the single market, as referred to in the Commission's Communication.¹⁸ The aim of further activity is clearly identified as reducing the number of regulated professions and removing unjustified regulatory barriers for the remaining ones, in the belief that doing so will have 'a positive impact on the productivity and competitiveness of the EU economy'.¹⁹

2. Implementation of Article 59 of the Professional Qualifications Directive

Article 59 of the PQD was probably the most important one introduced in 2013.²⁰ Entitled '**Transparency**', it obliged Member States to list their regulated professions (paragraphs 1 and 2) and assess the non-discriminatory character, justification and proportionality of the rules in place (respectively - points a, b and c of paragraph 3).

It also (in paragraphs 5 and 6) obliged Member States to inform the European Commission about the actions they decided to take with regard to those requirements, with the deadline for the first report being 18 January 2016 – the same as for the listing exercise.

Mutual evaluation and additional consultation were provided for under paragraphs 7 and 8, and the Commission's report to the European Parliament and the Council under paragraph 9.

The following table presents the main characteristics of the information provided by Member States:

Member State	Number of regulated professions	Percentage of the overall labour force	Restrictions in seven professions compared to the EU average (more / less)	Participation in the mutual evaluation	National Action Plan
Austria	219	22 %	5 / 2	active	+
Belgium	134	17 %	3 / 4	limited	+
Bulgaria	109	21 %	2 / 5	active	+
Croatia	261	31 %	6 / 1	active	+
Cyprus	114	19 %	6 / 1	limited	
Czech Republic	366	25 %	3 / 4	active	+
Denmark	161	14 %	1 / 6	active	+
Estonia	98	19 %	1 / 6	active	+
Finland	141	17 %	1 / 6	active	+
France	258	17 %	4 / 3	active	+
Germany	149	33 %	5 / 2	active	+
Greece	153	22 %	4 / 3	limited	
Hungary	545	26 %	4 / 3	active	
Ireland	144	29 %	3 / 4	limited	

¹⁸ COM(2016) 820 final, p. 2.

¹⁹ The short economic argument in favour of this belief is provided by the European Commission in part I.3 of its Communication COM(2016) 820 final, p. 7. For comparison, as put in the [European Semester Thematic Factsheet](#): 'The modernisation of professional regulation can improve the functioning of the labour market by promoting mobility between Member States; contribute to lower prices for professional services and by doing so, increase the capacity for growth of the European economy', European Commission, November 2016, p. 1.

²⁰ See the [consolidated version](#).

Italy	176	19 %	6 / 1	active	+
Latvia	267	15 %	2 / 5	active	+
Lithuania	76	18 %	1 / 6	active	+
Luxembourg	105	21 %	5 / 2	limited	+
Malta	138	17 %	4 / 3	limited	
The Netherlands	147	25 %	0 / 7	active	+
Poland	350	21 %	3 / 4	active	+
Portugal	239	17 %	4 / 3	active	+
Romania	189	22 %	4 / 3	active	+
Slovakia	311	27 %	7 / 0	active	+
Slovenia	264	20 %	5 / 2	limited	
Spain	182	17 %	3 / 4	active	+
Sweden	88	15 %	1 / 6	active	+
UK	216	19 %	1 / 6	active	+

Source: Part IV of SWD(2016)436 and National Action Plans ([NAPs](#))

In accordance with Article 59(1), the database is managed by the European Commission and publicly available.²¹ The Commission's 2017 Communication admits that differences between national regulations in respect of regulated professions 'do not necessarily indicate a need for reform', since the similar public interest objectives might lead Member States to intervene in a different way.²²

In order to facilitate the application of this transparency exercise, the European Commission published, already in October 2013, a Communication on evaluating national regulations on access to professions²³ – setting out suggested details of the listing and screening of national regulations, as well as the structure of the **mutual evaluation of results**. In fact, this approach has speeded up the possibility for Member States to comment on each other's regulations and actions, as the PQD only provided such a possibility after submitting country reports. The Communication also divided the mutual evaluation into two clusters, with the first including business services, construction, manufacturing, real estate, transport, wholesale and retail, and the second including education, entertainment, health and social services, network services other than transport, public administration, tourism, and other activities. Following a consultation process, twelve sectoral reports have been made available so far.²⁴

In accordance with the PQD and the 2013 Communication, all Member States were supposed to submit **national action plans (NAP)** in order to present the decisions they took on the regulations covered by earlier evaluation, with the aim of improving professional access by removing or changing unnecessary or disproportionate regulation. Six countries (Cyprus, Greece, Hungary, Ireland, Malta and Slovenia)²⁵ have not yet provided these documents, and while the Commission's communication also additionally mentions Spain, its contributions (separate for each of the two clusters mentioned above) are available amongst others, while Latvia's is not. The Commission's comments on the NAPs submitted so far, which were also subject to public consultation, indicate that there is still a big potential for improving the situation of regulated professions, namely in the direction of limiting their blocking effect on economic growth.²⁶ In fact, the Communication adopted on 10 January 2017 is a list of reform recommendations,

²¹ <http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=homepage>.

²² COM(2016) 820 final, p. 5.

²³ COM(2013) 676 final.

²⁴ See the list under 'Sector reports' at http://ec.europa.eu/growth/single-market/services/free-movement-professionals/transparency-mutual-recognition_fr.

²⁵ [Mutual evaluation of regulated professions: National Action Plans](#), accessed last on 5 July 2017.

²⁶ COM(2016) 820 final, p. 5. For comparison, as put in the [European Semester Thematic Factsheet](#): 'As well as bringing to light many instances of unjustified, detrimental and burdensome regulations, the mutual evaluation process has also revealed a scarcity of arguments based on sound analysis', European Commission, November 2016, p. 9.

complemented by the legislative proposal on a proportionality test to be used in advance of future national regulations.²⁷

In accordance with Article 60(2) of the PQD, the Commission should publish its report on the implementation of this directive by 18 January 2019.

3. The new restrictiveness indicator

In order to provide a quantitative analysis of national regulations in seven professions (architects, civil engineers, accountants, lawyers, patent agents, real estate agents and tourist guides), the European Commission constructed a restrictiveness indicator²⁸ in the context of the reform guidance under the Single Market Strategy.²⁹

The EU indicator is based on four elements, each contributing with a different strength to the overall result:

- regulatory approach (on reserved activities and title protection): 31 %
- qualification requirements (including education and exams): 17 %
- other entry requirements (such as compulsory membership of a professional body): 21 %
- exercise requirements (including incompatibilities of restrictions): 30 %.

In the view of the European Commission, this indicator provides 'a holistic comparative understanding of the different regulatory requirements in place',³⁰ but contrary to its claim that the category of 'regulatory approach' 'has a higher weight whereas the three other categories have similar weights',³¹ the weight of exercise requirements is almost equally high. As explained by the Commission, the attributed weights reflect an assessment based on case law experience and discussions with Member States.

The methodology of **the EU indicator** is explained in part V of the Commission's staff working document accompanying the Communication.³² Most importantly, the use of detailed data provided by Member States within the evaluation exercise described above (point 2), complemented by the additional collection of information and their double verification, should have allowed for an up-to-date result. The approach taken towards activities falling under the detailed listing of the seven professions covered by the EU indicator, namely that they are taken into account regardless of the formal profession that is entitled to exercise them, also ensures the effect of reliability. In addition to the detailed explanation of all categories of restrictions that make up the new EU indicator (pointing out also which elements were not previously covered by the Commission's assessment), the scoring of restrictions is briefly described – with the limitations noted above.

The composite character of the EU indicator - in the sense that it covers various regulatory barriers – should be appreciated, but some criticism has also been expressed by the representatives of the regulated professions. For example, the Architects' Council of Europe considered the new indicator to be a 'step in the right direction, permitting a finer grain of analysis of regulation', but objected to listing continuing professional development as a restriction (with the argument that this obligation allows for the improvement of skills in the interest of staying globally competitive).³³ However, it should be highlighted

²⁷ A succinct explanation for its rationale was already available in the relevant [Roadmap](#) published in June 2016.

²⁸ Further referred to as the EU indicator.

²⁹ http://ec.europa.eu/growth/single-market/strategy_en.

³⁰ COM(2016) 820 final, p. 8.

³¹ [SWD\(2016\) 436](#), p. 167.

³² SWD(2016) 436 final, pp. 154-170.

³³ http://www.ace-cae.eu/fileadmin/New_Upload/5_Policies/LSP/Reform_reomm_EN-idp.pdf.

that according to established case law, imposing continuous professional development may constitute a restriction on competition.³⁴

The obvious comparative reference for the EU indicator is the one used by the OECD in its Product Market Regulation project (PMR).³⁵ With regard to regulated professions, **the OECD indicator** covers only four sectors (legal, accounting, engineering and architectural), and the estimations are currently provided for the years 1996, 2003, 2008 and 2013.

The Commission's own comparison to the OECD indicator underlines the broader range of professions covered, the weighting of restrictions depending on their type,³⁶ and the use of most recent data by the EU indicator. A table listing restrictions taken into account by both indicators (as well as the Commission's 2015 assessment of barriers in business services) shows that the new EU indicator covers more than twice the number of elements in comparison to the OECD.³⁷ In effect, the EU indicator is indeed more detailed and more nuanced than the PMR used by the OECD. Further improvement was supported by the Architects' Council of Europe, which considered the EU indicator to be 'an improvement on the OECD PMR', but incomplete without considering ex-post regulation (for example planning permissions).³⁸ It must be stressed in this regard that the EU indicator is based on the terminology and the concepts used in the PQD, while elements such as urban planning remain outside its scope. The European Commission admitted that non-regulatory barriers, or some possibly influential rules or mechanisms (such as those concerning consumer protection), are not covered by the EU indicator, making its use subject to a necessary addition of other information and analysis.³⁹

Accordingly, the EU indicator is considered to reflect 'the relative intensity of the regulation in place' (for the specific profession in each Member State), whereas the recommendations for reforms are also based on qualitative elements such as complaints and on-going infringements.

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³⁴ Case C-1/12 *Ordem dos Técnicos Oficiais de Contas v Autoridade da Concorrência*, see also [Court of Justice of the EU press release 21/13](#).

³⁵ Further referred to as the OECD indicator, available at the [OECD iLibrary](#).

³⁶ The OECD indicator attributes the same weight to each restriction.

³⁷ SWD(2016) 436 final, pp. 168-169.

³⁸ http://www.ace-cae.eu/fileadmin/New_Upload/5_Policies/LSP/Reform_reomm_EN-idp.pdf.

³⁹ COM(2016) 820 final, pp. 9-10.

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