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DRAFT REPORT

on the implementation of Directive 2005/36/EC as regards regulation and the need for reform in professional services
(2017/2073(INI))

Committee on the Internal Market and Consumer Protection

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EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

Procedure

On 11 May 2017, the Rapporteur was entrusted with the task of preparing a report on the implementation of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications regarding the need to reform professional services pursuant to Article 59 of that Directive.

Directive 2005/36/EC - context, scope and transposition

Directive 2005/36/EC applies to all regulated professions, except those which are explicitly excluded from its scope, such as notaries.

Regulated professions represent an important element in the economy of Member States. Rules on regulated professions, requiring a specific professional qualification to practise an activity are usually imposed to protect general interest objectives, such as public health, consumer protection, protection of the environment etc. In areas, where the access to a profession is not harmonised at EU level, it is up to each Member State to decide whether to regulate a profession, within the limits of the principles of non-discrimination and proportionality.

To facilitate the free movement of professionals, Directive 2005/36/EC sets rules for automatic recognition for a number of professions based on harmonised minimum training requirements, a general system for the recognition of professional qualifications, an automatic recognition system of professional experience, as well as a system of cross-border provision of services in the context of regulated professions. The Directive also includes a number of provisions on knowledge of languages and professional academic titles, administrative cooperation, document requirements etc.

In 2013, Directive 2013/55/EU, amending Directive 2005/36/EC introduced in its Article 59 the so-called mutual evaluation process, requiring from Member States to notify by 18 January 2016 all regulated professions, together with the requirements restricting access to or pursuit of professions in a database, maintained by the Commission. Member States were also required to examine whether those requirements are suitable for securing the attainment of the objective pursued and do not go beyond what is necessary to attain that objective. Thus, the proportionality principle, established in the Treaty and in the case-law of the Court of Justice was incorporated in Directive 2005/36/EC. Concerning new requirements, introduced after 18 January 2016, the Member States have to notify them, together with the reasons for considering that those requirements comply with the principle of proportionality, within six months of the their adoption. Finally, every two years Member States have to notify to the Commission a report (a National Action Plan) listing the requirements which have been removed or made less stringent, based on case-by-case analysis of the professional regulations and the planned reforms.

On the basis of the information received, in line with Article 59(9), by January 2017 the Commission was to submit its final findings on the overview of national regulations of professions and on proportionality assessments conducted by Member States, accompanied by proposals for further initiatives.

To complement Article 59 of Directive 2005/36/EC, the Communication of the Commission of 2 October 2013 (COM(2013)676) laid down the work plan for the mutual evaluation process which started in 2014, requiring Member States to introduce their professional regulations into the Regulated Professions Database. On the basis of that information, Member States were required to review the justification and the proportionality of their regulation.

More than 1200 national competent authorities have contributed with information in the Regulated Professions Database to guarantee the transparency of professional regulations across Europe. Although the Regulated Professions Database has been subject to substantial modernisation, its interoperability with the Internal Market Information System (IMI), which could facilitate the task of national authorities, is still in progress.

Following a process of two years, the mutual evaluation revealed that Member States face challenges in assessing the proportionality of their regulations. Six Member States had not submitted their respective National Action Plans within the deadline.

As a result, the Commission presented its findings in two actions: the Communication of the Commission on reform recommendations for regulation in professional services of 10 January 2017 and the proposal on a Directive on a proportionality test for regulated professions.

Profession-specific recommendations

The Communication on reform recommendations for regulation in professional services identifies concrete areas where Member States are invited to consider some improvements in their regulation on specific professions in seven economically important sectors, based on analysis of the national legislation, as well as on complaints from EU citizens. The Annex to the Communication provides detailed information of the regulations in the 28 Member States for architects, civil engineers, accountants, lawyers, patent agents, real estate agents and tourist guides.

The Commission is expected to monitor the implementation of the recommendations and propose, where appropriate, measures to address the remaining barriers, including infringements in case of discriminations based on nationality and on residence, and in case of disproportionate regulations.

The Communication complements the Annual Growth Survey, as well as the European Semester.

Restrictiveness indicator

The Commission has developed a new indicator on the restrictiveness of professional regulation. According to the Commission, the regulatory barriers composing the indicator build on the OECD product market regulation (PMR) indicator and reflect the case-law of the Court of Justice. The indicator complements the qualitative analysis of the barriers and takes into account their cumulative effect, rather than focusing on measures in isolation. The Commission points out that individual restrictions cannot be analysed separately from all the existing mechanisms to protect the public interest objective. This holistic approach aims at estimating how restrictive a regulatory framework is for professionals.

The following groups of restrictions are covered:

- regulatory approach: exclusive or shared reserved activities, protected title;
- qualification requirements: years of education and training, mandatory state exam, continuous professional development obligations, etc.;
- other requirements, such as compulsory membership or registration in a professional body, limitation of the number of licences granted, other authorisation requirements, etc.;
- exercise requirements: restriction on corporate form, shareholding requirements, restrictions on joint exercise of professions, incompatibilities of activities.

In parallel, the Commission has initiated studies on the quality of professional services.

The Rapporteur's position

The Rapporteur highlights the fundamental role played by the professions in the EU economy and believes, furthermore, that the quality of professional services is of paramount importance to preserve the European economic, social and cultural model;

Within an overall evaluation of the Communication of the European Commission, the Rapporteur identifies the main aspects of the implementation of Article 59 of the Directive 2005/36/EC and recalls the importance of professional regulations in safeguarding legitimate public interest objectives.

The Rapporteur further analyses the usefulness of the restrictiveness indicator developed by the European Commission and the need to promote high quality of services in Europe. It is important to stress that the indicator should be used only as an indicative tool and does not automatically imply that a regulation which scores highly is automatically disproportionate.

Moreover, it is fundamental for the Rapporteur to recall that the analysis of the impact of the regulations in Member States should be subject not only to a quantitative but also to a qualitative assessment encompassing the general interest objectives and the quality of the service provided.

The Rapporteur also highlights the need to reflect on the impact of scientific progress, innovation and digitalisation in the area of regulated professions, while preserving the quality of services, jobs and ensuring a high level of protection for service recipients, including consumers.

Sources:

- Workshop on Reforming professional services, held in the Committee on 11 July October 2017¹;
- Meetings with the following stakeholders: Architects' Council of Europe (ACE); European Federation of National Engineering Associations (FEANI); European Council of Civil Engineers (ECCE); Accountancy Europe (AE); European Tax Adviser Federation (ETAF); European Federation of Accountants and Auditors for SMEs

¹ <http://www.europarl.europa.eu/committees/fr/events-workshops.html?id=20170607WKS00601>

(EFAA); Council of Bars and Law Societies of Europe (CCBE); European Association of Real Estate Professions (CEPI); European Federation of Tourist Guide Associations (FEG); European Tour Operators Association (ETOA); European Council of the Liberal Professions (CEPLIS); Consiglio Nazionale degli Ingegneri (CNI); Consiglio Nazionale dei periti industriali e dei periti industriali laureati (CNPI); French Ministry of Economy (Directorate General for Enterprise - Department of Tourism, Commerce, Craft Industries and Trades, and Services); Permanent Representation of France to the EU; Permanent Representation of Denmark to the EU; EUROCADRES; Chamber of Architects Baden-Württemberg; BusinessEurope; Confederazione Generale Italiana delle Imprese, delle Attività Professionali e del Lavoro Autonomo (CONFCOMMERCIO); French Order of Physiotherapists; Confederazione Nazionale dell'Artigianato e della Piccola e Media Impresa (CNA) Associazione degli Enti Previdenziali Privati (ADEPP).

- Relevant studies and other documents:
 - White Paper: “Digital Transformation Initiative. Professional Services Industry”. (World Economic Forum)
 - Report: “Action Lines for Liberal Professions: final report of the working group” (European Commission)
 - OECD ‘Priorities for completing the European single market’ (2016)
 - World Bank Group (2016), “EU Regular Economic Report – 3: Growth, Jobs and Integration: Services to the Rescue”
 - Briefing by Parliament’s EPRS services
 - Studies of the Policy Department:
 - Role of advisors and intermediaries in schemes revealed by PANA schemes
 - Rules on independence and responsibility regarding tax advisers and legal services.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the implementation of Directive 2005/36/EC as regards regulation and the need for reform in professional services (2017/2073(INI))

The European Parliament,

- having regard to Articles 45, 49 and 56 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 15 and 16 thereof,
- having regard to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications¹,
- having regard to the Commission communication of 10 January 2017 on reform recommendations for regulation in professional services (COM(2016)0820),
- having regard to the Commission communication of 2 October 2013 on evaluating national regulations on access to professions (COM(2013)0676),
- having regard to the Commission communication of 28 October 2015 entitled ‘Upgrading the Single Market: more opportunities for people and business’ (COM(2015)0550),
- having regard to its resolution of 26 May 2016 on the Single Market Strategy²,
- having regard to its resolution of 15 June 2017 on a European Agenda for the collaborative economy³,
- having regard to its resolution of 15 February 2017 on the Annual Report on the Single Market Governance within the European Semester 2017⁴,
- having regard to the opinion of the European Economic and Social Committee of 31 May 2017⁵,
- having regard to the final report of the Working Group on Bolstering the Business of Liberal Professions,
- having regard to Rule 52 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,

¹ OJ L 255, 30.9.2005, p. 22.

² Texts adopted, P8_TA(2016)0237.

³ Texts adopted, P8_TA(2017)0271.

⁴ Texts adopted, P8_TA(2017)0040.

⁵ Not yet published in the Official Journal.

- having regard to the report of the Committee on the Internal Market and Consumer Protection (A8-0000/2017),
 - A. whereas the free movement of workers, the freedom of establishment and the freedom to provide services within the EU constitute the backbone of the single market and bring many benefits to citizens and businesses;
 - B. whereas in the absence of harmonisation, it is for the Member States to decide on the regulation of professions, albeit in a non-discriminatory, justified and proportionate manner;
 - C. whereas Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications provides for automatic recognition of a number of professions based on harmonised minimum training requirements, a general system for the recognition of professional qualifications, an automatic recognition system for professional experience, and a new system of cross-border provision of services in the context of regulated professions;
 - D. whereas Directive 2005/36/EC was amended in 2013, introducing in Article 59 a transparency and mutual evaluation exercise for all regulated professions in the Member States, whether they are regulated on the basis of national rules or on the basis of rules harmonised at EU level;
 - E. whereas according to Article 59 of Directive 2005/36/EC the Commission was expected to present by 18 January 2017 its conclusions on the mutual evaluation exercise, together with proposals for further initiatives where necessary;
 - F. whereas on 10 January 2017 the Commission presented a communication on reform needs in professional services, analysing the professional regulation in seven sectors of activity and addressing recommendations to Member States in this regard;

Regulation of professions in the European Union and the state of play of the implementation of Article 59 of Directive 2005/36/EC

1. Stresses that regulated professions play a fundamental role in the EU economy, representing a significant part of the occupation rate as well as an important share of the added value in the Union; believes, furthermore, that the quality of professional services is of paramount importance for preserving the EU economic, social and cultural model;
2. Welcomes the Commission initiative providing guidance for Member States in the context of the mutual evaluation exercise, including the organisation of in-depth discussions with national authorities;
3. Believes that the Commission communication of 10 January 2017 might help Member States to better regulate professional services; stresses, however, that elements beyond mere economic analysis are needed for a holistic assessment of the performance of the regulatory environment in each Member State;

4. Notes that Member States have faced significant challenges in notifying information about the professions they regulate and the requirements for accessing those professions;
5. Underlines that improving transparency and comparability of the national requirements on the access to or pursuit of regulated professions is key to ensuring safe mobility and that consequently, in line with Directive 2005/36/EC, all national requirements should be notified and made publicly available in the database for regulated professions;
6. Notes that not all Member States have submitted a National Action Plan (NAP) as required by Directive 2005/36/EC and that the levels of depth and detail of the NAPs submitted differ;
7. Calls on the Member States to fully implement Article 59 of Directive 2005/36/EC and to step up their efforts to guarantee more transparency of their professional regulations, which is crucial for the mobility of professionals across the EU;
8. Acknowledges that some Member States did not consult the relevant stakeholders in an appropriate manner while preparing the NAPs; calls for a broader involvement of all interested parties in the future;
9. Stresses that effective regulation of professions contributes to the development of a fair society; recalls that Member States are free to introduce new regulations or to amend existing rules restricting the access to or pursuit of regulated professions where justified by public interest objectives, including overriding reasons of general interest, reflecting thus their vision for society and their socio-economic context;
10. At the same time, considers that discriminatory, unjustified and disproportionate requirements can be particularly unfair for young professionals, hamper competition and negatively affect service recipients, including consumers;
11. Recognises the role of professional regulation in achieving a high level of protection of public interest objectives, such as the protection of consumers, recipients of services and workers, the safeguarding of the proper administration of justice, the protection of the environment, and the preservation of national historic and artistic heritage and social and cultural policy objectives; acknowledges the margin of appreciation of Member States in determining the ways to achieve this;
12. Notes that profession-specific regulations pursuing objectives in the public interest aim to ensure effective supervision of the lawful practice of the regulated profession, and of its deontological rules where relevant;
13. Points out that better comparability of the level of professional qualifications is needed in order to increase the homogeneity of the evidence of formal qualifications across the European Union and to create a level playing field for young Europeans entering the professions, as well as promote their mobility;
14. Calls on the Commission and the Member States, together with professional organisations in their respective areas of competence, to follow up adequately the recommendations of the Working Group on Bolstering the Business of Liberal

Professions;

Usefulness of the restrictiveness indicator and the need to promote high quality of services in Europe

15. Takes note of the fact that the Commission has issued a new restrictiveness indicator, seeking to improve on the existing OECD Product Market Regulation restrictiveness indicator as regards the detailed analysis of the sectors concerned;
16. Underlines that this indicator, based on numerical data and including merely an analysis of the barriers to free movement, is to be used as a purely indicative tool and does not determine automatically whether a possibly stricter regulation in some Member States is disproportionate;
17. Recalls that the analysis of the impact of the regulations in Member States should be subject not only to a quantitative but also to a qualitative assessment encompassing the general interest objectives and the quality of the service provided;

Innovation and digitalisation in professional services

18. Notes that scientific progress, technological innovation and digitalisation have a considerable impact on professional services, bringing new opportunities for professionals as well as challenges for the labour market and the quality of services;
19. Welcomes the acknowledgement by the Commission of the need to reflect on the impact of new technologies on professional services, especially in the legal and accounting sectors; notes in particular that close attention needs to be paid to the consequent risks for service recipients, including consumers, of such a transformational change;
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20. Instructs its President to forward this resolution to the Council, the Commission and the parliaments and governments of the Member States.