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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

Rapporteur: Nicola Danti

CONTENTS

	Page
EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS.....	3
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION	7
INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE	14
FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE.....	15

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 (A8-0401/2017),
 - A. whereas the free movement of workers, 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 although services account for 71 % of GDP and 68 % of total employment, the full potential of the single market in services still remains unfulfilled;
 - C. whereas in the absence of harmonisation, Member States are free to decide on the regulation of professions, provided the national measures are transparent, non-discriminatory, justified and proportionate;
 - D. whereas smart regulation, duly justified by the protection of legitimate public interest objectives, can have positive effects on the internal market, ensuring a high level of consumer protection and better quality of the services provided; whereas, therefore, deregulation should not be an end in itself;
 - E. whereas in many cases regulation of professions is justified, but unjustified barriers to professional services are detrimental to citizens' fundamental rights and to the Member States' economies; whereas, consequently, professional regulation needs to be adjusted regularly in order to take into consideration technological, societal or market developments;
 - F. 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 for a number of professions on the basis of 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;
 - G. whereas Directive 2005/36/EC was amended in 2013, with the objective of achieving a proportionate regulatory framework justified by general interest objectives, 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;
 - H. whereas not all the provisions Directive 2005/36/EC, and in particular Article 59, have been fully implemented as yet by the Member States, even after the passing of the deadline;
 - I. whereas Member States were required to submit national action plans (NAPs) to the Commission by 18 January 2016 with information on decisions on maintaining or amending professional regulations; whereas there are still 6 Member States that have not submitted their NAPs;
 - J. 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;

- K. whereas on 10 January 2017 the Commission presented a communication on reform needs in professional services, analysing professional regulation in seven sectors of activity and addressing recommendations to Member States in this regard;
- L. Whereas the mutual evaluation exercise revealed that the level of regulation of professions varies significantly between Member States; whereas further clarification is needed, especially in those cases where Member States have announced the introduction of new forms of professional regulation after the completion of the exercise;

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, making a major contribution to the employment rate, as well as to labour mobility and added value in the Union; considers, furthermore, that high-quality professional services and an effective regulatory environment are of paramount importance for preserving the EU economic, social and cultural model and for strengthening the competitiveness of the EU in terms of growth, innovation and job creation;
2. Recalls that there are over 5 500 regulated professions across the EU, with significant variations between Member States, representing 22 % of the labour force in all sectors of activities, such as health and social services, business services, construction, network services, transport, tourism, real estate, public services and education;
3. Welcomes the initiative of the Commission providing guidance for Member States in the context of the mutual evaluation exercise, including the organisation of in-depth discussions carried out with national authorities, also pointing out the need for national authorities to involve all parties concerned in order to gather the relevant information on the impact of regulations;
4. Believes that the Commission communication of 10 January 2017 might help Member States to better regulate professional services and to exchange best practices in order to understand the regulatory choices of other Member States, taking into consideration the fact that some Member States provide for more intensive state regulation of professions than others; stresses, however, the need for an assessment of the quality of regulations, since elements beyond mere economic analysis are needed for a holistic assessment of the performance of the regulatory environment in each Member State;
5. Regrets that some Member States have failed to notify information about the professions they regulate and the requirements for accessing those professions; calls on Member States to significantly improve the notification process in the context of the Professional Qualifications Directive;
6. Underlines that improving transparency and comparability of the national requirements governing access to or pursuit of regulated professions could enable greater professional mobility, and that, consequently and in line with Directive 2005/36/EC, all national requirements should be notified and made publicly available in the Regulated

Professions Database, in a clear and intelligible manner;

7. Acknowledges the improvements to the database of regulated professions made by the Commission, including the creation of an interactive map allowing citizens to check professional access requirements across the EU and to visualise more easily which professions are regulated in a given Member State; calls on the Commission to further improve the database for regulated professions, in order to facilitate timely and accurate notification of the information by the competent authorities and thus enhance transparency for EU citizens;
8. Takes note of the divergences across Member States as to the number of regulated professions and scope of activities covered by similar professions, which explains the different forms of regulation of professions chosen by each Member State; calls on the Commission to improve the comparability of different professions and to define a common set of activities for each profession notified in the database, with a view to facilitating voluntary harmonisation across the EU;
9. Regrets that a number of Member States have not submitted a National Action Plan (NAP) as required by Directive 2005/36/EC, and calls on those Member States to proceed without undue delay; notes that the levels of depth, ambition and detail of the NAPs submitted differ;
10. 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, this being crucial for the mobility of professionals across the EU since only with complete information from all Member States can a full picture of the professions regulated at national or EU level be made available;
11. Regrets that some Member States did not consult the relevant stakeholders in an appropriate manner when preparing the NAPs; believes that a transparent flow of information between public institutions and stakeholders is necessary to effectively address the issues and challenges affecting professions; calls for a broader involvement of all stakeholders in the future, not only with a view to preparing NAPs but also before reforming the regulation of professions, in order to allow all parties concerned to express their views;
12. Stresses that the effective regulation of professions should be beneficial for both consumers and professionals; recalls that Member States are free to introduce new regulations or to amend existing rules restricting access to or pursuit of regulated professions, reflecting their vision for society and their socio-economic context, as long as they are justified by public interest objectives; believes that regulation of professional services that is proportionate and adapted to market reality may result in improved market dynamics, lower prices for consumers and improved and more efficient sectoral performance;
13. Considers, at the same time, that discriminatory, unjustified and disproportionate requirements can be particularly unfair, especially for young professionals, and can hamper competition and negatively affect service recipients, including consumers;
14. Recognises the role of professional regulation in terms of achieving a high level of

protection of public interest objectives, whether those explicitly mentioned in the Treaty, such as public policy, public security and public health, or those constituting overriding reasons in the public interest, including those recognised by the case-law of the Court of Justice, such as preserving the financial equilibrium of the social security system, the protection of consumers, recipients of services and workers, the safeguarding of the proper administration of justice, fairness of trade transactions, combating fraud, prevention of tax evasion and avoidance, effectiveness of fiscal supervision, road transport safety, guaranteeing the quality of craft work, promotion of research and development, protection of the environment and the urban environment, the health of animals, intellectual property, the safeguarding and conservation of the national historic and artistic heritage, social policy objectives and cultural policy objectives; acknowledges the margin of appreciation of Member States in determining the ways to achieve the above, in line with the principles of non-discrimination and proportionality;

15. Notes that, in view of the risks for consumers, professionals or third parties, Member States may reserve certain activities for qualified professionals only, in particular where there are no less restrictive means to achieve the same result; highlights that in such cases profession-specific regulations must ensure effective supervision of the lawful practice of the regulated profession and of, where relevant, its ethical rules;
16. Acknowledges in this regard the relationship between the proposal for the proportionality test, laying down rules on a common framework for conducting proportionality assessments before introducing new or amending existing measures governing regulated professions, and the reform recommendations which are based on assessment of the national regulations in seven sectors of activities; calls on the Member States to assess and, where necessary, to adapt their regulation of professions in line with the specific reform recommendations;
17. Stresses that reform recommendations cannot replace enforcement action, and calls on the Commission as guardian of the Treaties to take action and initiate infringement procedures where it identifies discriminatory, unjustified or disproportionate regulation;

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

18. Takes note of the fact that the Commission has issued a new restrictiveness indicator, and welcomes the improvement compared to the OECD's existing PMR restrictiveness indicator through the detailed analysis of the sectors concerned;
19. Underlines that this indicator, showing the overall regulatory intensity in Member States solely on the basis of quantitative data related to existing barriers to free movement, should be seen as a purely indicative tool, and not as one permitting the drawing of conclusions as to whether what may be stricter regulation in some Member States is disproportionate;
20. Recalls that the overall 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, including the possible indirect benefits for citizens and the labour market; notes that the

restrictiveness indicator is accompanied by further analysis which provides additional information on the reality on the ground, and encourages Member States to consider this indicator, together with qualitative data so as to compare their performance in the selected sectors of activity;

Future for regulated professions

21. Highlights the need not only for an effective regulatory framework in the EU and the Member States, but also for effective and coordinated policies aimed at supporting professionals in the EU and strengthening competitiveness, innovation capacity and the quality of professional services in the EU;
22. Stresses that professionals can exercise regulated professions either as natural persons or as legal persons in the form of a professional company, and that consideration from both perspectives is important when implementing new policies; in this light, is convinced that economic tools should be combined with policies aimed at strengthening entrepreneurship and human capital in the professional services;
23. 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;
24. Highlights the importance of education, skills development and entrepreneurial training in order to ensure that professionals in the EU remain competitive and able to face the transformational changes that are affecting the liberal professions as a consequence of innovation, digitalisation and globalisation; stresses the close connection between the knowledge of a professional and the quality of service provided; notes the important role that should be played by higher education and research institutions in this regard, including through digital literacy projects;
25. 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 EU and thus create a more level playing field for young graduates entering the professions, thereby facilitating their mobility across the EU;
26. Calls on the Member States to undertake proper market analysis with a view to ensuring faster adaptation of providers of services to market needs, as well as to develop policies for making EU professional services globally competitive in future decades;

Innovation and digitalisation in professional services

27. Notes that scientific progress, technological innovation and digitalisation have a considerable impact on the professional services, bringing new opportunities for professionals but also challenges for the labour market and the quality of services;
28. 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, where procedures could be improved; notes in particular that close attention needs to be paid to the consequent risks for service recipients, including

consumers, of such a transformational change, who must not be excluded from new technologies;

29. Stresses that new technologies will be unlikely to replace human beings in making ethical and moral decisions; points out, in this regard, that rules on the organisation of professions, including rules on supervision by public bodies or professional associations could play an important role and contribute to the more equitable sharing of the benefits of digitalisation; notes that in certain areas market-driven mechanisms such as consumer feedback can also contribute to improving the quality of a particular service;
30. Stresses that regulations on professional services must be fit for purpose and should be reviewed regularly in order to take account of technical innovation and digitalisation;
31. Calls on the Commission to continue to keep Parliament regularly informed on the state of play regarding compliance with Directive 2005/36/EC by the Member States;
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 - ◦
32. Instructs its President to forward this resolution to the Council, the Commission and the parliaments and governments of the Member States.

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	4.12.2017
Result of final vote	+: 32 -: 2 0: 2
Members present for the final vote	Pascal Arimont, Dita Charanzová, Sergio Gaetano Cofferati, Lara Comi, Daniel Dalton, Nicola Danti, Dennis de Jong, Pascal Durand, Evelyne Gebhardt, Sergio Gutiérrez Prieto, Robert Jarosław Iwaszkiewicz, Liisa Jaakonsaari, Antonio López-Istúriz White, Nosheena Mobarik, Jiří Pospíšil, Virginie Rozière, Christel Schaldemose, Andreas Schwab, Olga Sehnalová, Igor Šoltes, Ivan Štefanec, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Mylène Troszczynski, Anneleen Van Bossuyt, Marco Zullo
Substitutes present for the final vote	Biljana Borzan, Birgit Collin-Langen, Kaja Kallas, Roberta Metsola, Lambert van Nistelrooij, Sabine Verheyen
Substitutes under Rule 200(2) present for the final vote	Jonathan Bullock, Rupert Matthews, Bogdan Brunon Went, Flavio Zanonato

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

32	+
ALDE	Dita Charanzová, Kaja Kallas
ECR	Daniel Dalton, Rupert Matthews, Nosheena Mobarik, Anneleen Van Bossuyt
EFDD	Marco Zullo
PPE	Pascal Arimont, Birgit Collin-Langen, Lara Comi, Antonio López-Istúriz White, Roberta Metsola, Jiří Pospíšil, Andreas Schwab, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Sabine Verheyen, Bogdan Brunon Wenta, Lambert van Nistelrooij
S&D	Biljana Borzan, Sergio Gaetano Cofferati, Nicola Danti, Evelyne Gebhardt, Sergio Gutiérrez Prieto, Liisa Jaakonsaari, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Catherine Stihler, Flavio Zanonato
Verts/ALE	Pascal Durand, Igor Šoltés

2	-
EFDD	Jonathan Bullock
ENF	Mylène Troszczynski

2	0
EFDD	Robert Jarosław Iwaszkiewicz
GUE	Dennis de Jong

Key to symbols:

+ : in favour

- : against

0 : abstention