



Council of the
European Union

Brussels, 4 November 2016
(OR. en)

13768/16

COMPET 547
MI 667
ETS 41

NOTE

From: Presidency
To: The High Level Working Group on Competitiveness and Growth
Subject: Discussion note on regulation of professional services

Delegations will find in Annex a discussion note on regulation of professional services in view of the meeting of the High Level Working Group on Competitiveness and Growth on 10 November 2016.

Discussion note on regulation of professional services

1. Mutual Evaluation's rationale

Today, Europe has over 5,500 regulated professions, if one considers the different regulatory regimes applicable throughout the 28 Member States. About **22% of the labour force in the EU (47 million people) can be considered as working in a regulated profession.**

OECD studies show that labour mobility is a key determinant of productivity which enhances economic growth¹. Not only does **labour mobility help close skills gaps and labour shortages, it also balances demand for labour between Member States.** 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.

The regulation of professions is the prerogative of the national authorities, subject to the principles of non-discrimination and proportionality. However, **access to professions and mobility could be improved by Member States through increasing the transparency of their regulations of professional services.** An important aspect initiated by the revised Professional Qualifications Directive² tries to address the root causes of these challenges in a spirit of cooperation between the Commission and Member States.

To have a comprehensive overview of regulations of professional services in the EU and conditions to access these professions, EU countries agreed to conduct a **'mutual evaluation and transparency' exercise** between 2014 and 2016. By January 2016 Member States had to submit to the Commission reports, also referred to as national action plans (NAPs), presenting the results of their internal screening of professional regulation and outlining the actions to be taken to address unfit regulation. To date 23 national action plans have been submitted to the Commission.

¹ <http://www.oecd.org/eco/growth/OECD-2015-The-future-of-productivity-book.pdf>

² Directive 2013/55/EU amending Directive 2005/36/EC

A **public consultation** was carried out between May and August 2016 to provide respondents with an opportunity to comment the proportionality of professional regulations and on the content of Member State's national action plans. A total 420 responses were received and 21 separate submissions. When controlled for the organised views of interests **around 37% found that NAPs were based upon the most relevant information on the impact of regulation on the market and/or professionals and around 35% that 'all impacts of regulation were thoroughly analysed'**.

When asked what proportionality related assessing was already in place in their Member State: around 38% said there was a systematic methodology, 38% that it was done on a case by case basis and **24% that no methodology exists**. Regarding existing criteria according to EU law **39% were unaware** of any, of these were 43% of those who responded as a 'public authority'.

2. What will the Commission propose as next steps?

The mutual evaluation and transparency exercise was broadly concluded in early 2016 and the challenges and experiences with this exercise have been discussed in the HLG on 3 May 2016. According to the Commission, 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**. While the Professional Qualifications Directive requires Member States to assess proportionality of their regulations ex-post, the mutual evaluation exercise also reinforces the perception that proportionality tests may in some cases not be conducted appropriately, due to a lack of a common set of criteria, while disproportionate measures cannot be prevented from being adopted.

On the basis of the mutual evaluation's findings and in the context of last year's **Single Market Strategy**³, the Commission announced several actions to facilitate more cross-border activities in services, including a European Services Card, (a) a proportionality test and (b) a Guidance on reform needs in regulations of professional services.

³ http://ec.europa.eu/growth/single-market/strategy_en.

a. *Proportionality test*

The Commission indicated that it would address this issue through its **Proposal to introduce a proportionality test for the regulation of professions**. The objective of this initiative is to clarify the minimum criteria to be used for proportionality analysis by creating a transparent and predictable framework for Member States to assess proportionality before adoption of new regulation of professions. It aims at preventing disproportionate measures being adopted or maintained. The voluntary approach tested with the Mutual Evaluation shows that many Member States still have not delivered their proportionality assessment for a significant number of professions and that the pertinence of the assessments themselves is often weak and evidence is missing. For example, the need to increase business reliability (clothes launderer), the protection of creditors (hairdressers) or the risk of wrist injury and small explosions (watch maker) were given as justification to regulate.

The Proportionality test will be a common, EU-wide methodology which will clarify and put together the minimum criteria for compliance with the existing legal requirement to analyse proportionality of new or reviewed regulation of professions; it will be based on the existing case law and will take due account of economic aspects. The test should consist in basic better regulation practices: problem (risk) identification, impact of measure on business and consumer factors, evidence rather than assumption based decision making – the process and steps through which this may be achieved.

b. *Guidance on reform needs in regulations of professional services*

Based on the exercise referred to above (transparency, mutual evaluation, indicator), the Commission also announced it would adopt a "**Guidance on reform needs in regulations of professional services**". The Guidance, to be released by end of this year (to be confirmed), will look at all the regulatory barriers in business services, construction, real estate sector, tourism in all Member States and is expected to be addressed to those Member States for which the regulation in place appears too heavy, in particular when compared to other Member States. The Guidance would not be competing with the Country-specific recommendations (CSRs), as it would be more focused and would allow more systematic approach. It is instead expected to reinforce the European Semester⁴ for those countries concerned by a CSR by providing profession specific orientations which would help in addressing the more structural issues identified under the CSR.

⁴http://ec.europa.eu/economy_finance/economic_governance/the_european_semester/index_en.htm.

In the same context, the Commission has used the data collected from national instances to develop a so-called **composite restrictiveness indicator**. The purpose of the indicator is to **measure the intensity of restrictiveness of national regulation as regards access to and exercise of regulated professions and to allow for benchmarking regulatory differences across Member States and professions**. It looks at a large number of restriction types, from qualification and authorisation requirements to conduct restrictions, such as limitations on multidisciplinary activities and corporate structure restrictions. It brings them into one figure. The level of restrictiveness of every measure is assessed and quantified. The indicator will be updated periodically.

Member States have been consulted during the preparation of the recommendations for reforms, through the national coordinators on the recognition of professional qualifications but also via the HLG. The Commission welcomes the opportunity to present the methodology and preliminary results of its analysis to the HLG on 10 November. This gives the possibility for **reviewing the assessment before the publication of the recommendations**.

3. What can the HLG and Member States do?

Analysis done by the Commission, but also the OECD, the World Bank and other institutions shows the relevance of this topic. Together with the European Semester and CSRs, the Guidance on reform needs in regulations of professional services will help Member States understand the issue better and find, together with the Commission, the right answers.

As stressed in the European Semester 2016 exercise there are a number of **avenues open to Member States to reform the regulations of professional services**. In the first instance, existing regulation could be replaced with a lighter form of regulation such as the use of the protection of professional title instead of reserve of activities. It is important for Member States to assess the overall cumulative impact of all restrictions imposed on the professional and the professional activity.

To **further improve our understanding of regulations of professional services** in the EU and conditions to access these professions, EU countries are invited to continue to report the list of professions they regulate and to inform citizens about it, and also to carry out their mutual evaluation of the barriers in place, reviewing any restrictions to access to and exercise of professions, and finally assessing whether these are excessive or if they constitute barriers to economic growth.

This exercise, relying on continuous and **close coordination between the European Commission and national authorities**, will **benefit** not only the good functioning of the internal market as such, but consumers and professionals themselves, i.e. **European citizens**.

4. Questions for discussion

On 3 May 2016, the HLG held a discussion about the mutual evaluation exercise and its National Action Plans for regulations of professional services. It was concluded that the HLG could have a strategic role by looking at issues of overall importance for the competitiveness of the European economy, for example in the upcoming proportionality principle and by giving input for upcoming recommendations and their implementation.

In the context of the National Action Plans and the HLG involvement in the recommendations, the HLG is being asked for its views on the following questions:

- *How can the HLG, together with the Commission, support Member States to apply the recommendations formulated in the forthcoming **Guidance** in the best possible manner?*
- *How can **relevant Ministers** be supported to oversee and discuss regulations of professional services in their respective Member State, coordinating work across departments?*
- *Some Member States asked for guidance from the Commission on the methodology necessary to evaluate a need for regulation of a profession. What criteria could be helpful to create a transparent and predictable framework to assess proportionality?*
- *What is your view on the assessment of the Commission so far?*