



## **Access to the Real Estate Professions**

### Position

Response to European Commission Communication on evaluating national regulations  
on access to professions dated 2 October 2013

CEPI, the European Council of Real Estate Professions

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The mission of CEPI, the European Real Estate Council, is to support European and cross-border transactions by enhancing and strengthening the work and activities of real estate professionals. We represent twenty-three national professional associations of estate agents and property managers based in sixteen EU and EFTA countries.

## SUMMARY

### Access to the Real Estate Professions

CEPI takes a strong interest in the topic of access to the real estate professions which are semi-regulated with differences in the level of regulation where it exists. On October 2 2013 the European Commission published a Communication on access to the regulated professions relating to the mutual evaluation exercise foreseen in the revised Directive on the recognition of professional qualifications. Real estate is part of the first cluster of sectors for assessment and in this position paper CEPI sets out various points which it asks to be taken into account in the conduct of the mutual evaluation exercise for the real estate professions. In particular we see that:

- The real estate professions are increasingly technical and complex.
- There is a need for frames for the provision of professional services.
- Real estate professionals face ongoing differences and difficulties.
- There is a need for minimum common rules in the European Union. Such minimum common rules should encompass minimum educational requirements, liability insurance, financial guarantees, codes of conduct and charters of quality care all subject to effective forms of control.

We are concerned that to remove national regulations where they exist in the real estate sector could risk creating a vacuum which is not in the interests of professionals or consumers. It is necessary to look carefully at the reasons for the existence of regulation and to consult fully within the sector.

We also caution that decisions on professional regulation should not be made solely for political reasons. Care must be taken to understand the needs of the different real estate markets and legal and economic environments. In this way we hope that a way can be found to enable professional regulation to develop to meet the needs of professionals and consumers and also the completion of the EU Internal Market.



## Access to the Real Estate Professions

### *Introduction*

The European Commission has published a Communication on access to the regulated professions<sup>1</sup>. It relates to the transparency, or mutual evaluation, exercise foreseen in the revised Directive on the recognition of professional qualifications, whereby Member States are required to examine any remaining professional restrictions to determine whether or not they are justified.

The real estate professions are semi-regulated, with large differences in the level of regulation where it exists. These differences are reflected in the diversity of professional practice and structures applicable in the different national housing markets. It is not desirable to make policy decisions concerning regulation without being aware of the differences which exist and also the reasons for them.

CEPI welcomes the proposal to review professional regulation. The real estate professions are in the first cluster for assessment and CEPI has already produced a report on regulation in the sector together with the characteristics of the national property markets<sup>2</sup> in order to highlight some of the important differences and concerns. We think that it is very important to look also at the reasons behind the existence of regulation. This calls for a process which is both transparent and consultative.

In conducting the mutual evaluation a balance must be found between the requirement to remove professional restrictions where they amount to barriers to mobility and growth and the continuing need to ensure protection and quality services for the consumer. The need to find such a balance leads us to conclude that, whilst recognising the right of Member States to introduce or maintain stricter national requirements, there should be minimum rules at EU level together with a systematic approach to ensure that the rules in different countries may be compatible instead of the variations which currently exist.

### *Increasingly technical and complex professions*

The real estate professions are becoming increasingly technical in the content and nature of their tasks and require skills and knowledge in fields such as law, economics, taxation, insurance, mortgage credit, town and country planning etc. In part this is to do with the requirements being imposed in legislation originating from the EU. Whilst the real estate market and professional services remain matters of national competence, it is clear that decisions made at EU level are having more and more influence on national policy. This is particularly the case in respect of issues relating to energy, structural and investment funds, state aid and the Internal Market. The fact that the tasks involved are more and more complex increases the need for there to be a regulatory framework.

There is also a perception that the EU is keen to regulate where it sees risk. Notably the current proposal for the revision of the Third Anti-Money Laundering Directive<sup>3</sup> requires criminal checks to be carried out on non-financial bodies which are obliged entities. We have to ask how such checks can be imposed realistically if a profession is not regulated. Effective controls need a system to be in place so that the relevant professionals can be readily identified and controlled.

For the consumer the need for a high quality service is paramount. The risks linked to poor quality service in the sector are high with the acquisition of property being for many consumers the most important financial transaction of their lives. Taking into account also the different levels of knowledge and access to information available it

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<sup>1</sup> Communication on evaluating national regulations on access to professions 02/10/13 COM(2013)0676 final

<sup>2</sup> The Real Estate Professions and National Housing Markets in the European Union CEPI 22/10/13 [www.cepi.eu](http://www.cepi.eu)

<sup>3</sup> Proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing 2013/0025(COD) Article 44(3)

becomes readily apparent that there is a need to ensure that the increasingly technical and complex services being provided are and remain of a high level.

### ***A need for frames for the provision of professional services***

There is a general feeling within the sector that frames are necessary within which to provide services for professional activities in order to provide for an element of certainty for both professionals and consumers. In countries where that frame is provided by regulation that system is seen on the whole as working well. Otherwise those frames can be provided by self-regulation or co-regulation (co-operation between state and private regulators including professional associations), and there are examples in the real estate sector where these systems are working well, although self-regulation is seen to have its limitations due to variations in terms of quality and function. Also, whilst there are some large corporations in the sector, the real estate professions are exercised mainly by self-employed professionals giving regulation of the professions an important role in the guarantee of quality services. Where none of the systems mentioned exist, there is perceived to be a real problem with ensuring quality services and consumer protection.

In considering the potential benefits and also the drawbacks of all such systems there is a need for greater understanding of the sector by the national authorities. It is also important to have greater co-operation between bodies in order to promote consideration of alternative means of ensuring the provision of professional services.

### ***Ongoing differences and difficulties***

Yet there remains a feeling that the current system within Europe as a whole does not provide sufficient certainty for real estate professionals and consumers because of the extent of the differences between countries as regards professional qualifications. CEPI's report on regulation in the sector together with the characteristics of the national housing markets confirms that the national rules are still very different. This is reflected in the differences in legal systems and commercial practice between countries. There is also a lack of transparency for professionals who may face uncertainty as to requirements when they cross borders and which does not enhance the free movement of services.

However, it is important at the same time to recognise the reasons for the existence of different forms of professional regulation which often reflect differences in national traditions and also the markets in which these professionals provide their services. To remove national requirements where they exist in the real estate sector would create a vacuum which would not serve to guarantee free movement of services but would reduce protection for the consumer because of a lack of certainty and guarantees of quality service. Those restrictions which are reasonable should be consolidated at EU level.

### ***A need for minimum common rules***

Therefore it is our considered opinion that the best way to secure professional skills and quality service for the consumer is to first prepare and implement minimum common rules at EU level leaving the possibility for each EU Member State to go beyond these minimum criteria if they wish to do so and to retain a higher form of regulation where it exists and is justified. Establishing common rules would provide a more transparent and level playing field by way of minimum harmonisation.

### ***Important issues to be addressed in minimum common rules***

Having said that there need to be minimum common rules we need to identify the most important elements which these rules should cover. In particular we would like to highlight the following important issues:

- Minimum educational requirements



CEPI has long had an interest in this issue and has developed basic educational requirements for European property agents and managers which have been approved and adopted by its members and continues to develop and be applied by means of its Eureduc programme which began in 2002. Eureduc is a European common education programme for real estate agents and property managers set up and coordinated by CEPI together with more than fifty European educational establishments. Minimum educational requirements must also incorporate continuing or lifelong learning.

- Insurance

Insurance is vital for the protection of the consumer in transactions with extensive financial consequences. For this reason CEPI has prepared minimum requirements on civil liability insurance and embezzlement committed by staff members.

- Financial guarantees

Financial guarantees are necessary to guarantee the restitution of funds in the event that a real estate professional is no longer able to honour commitments to clients when holding clients' money on their behalf in a professional capacity. Such a requirement already exists at national level in a number of EU Member States in the event that real estate professionals are legally entitled to hold such funds. The funds deposited and managed by property agents and property managers may amount to large sums. Therefore CEPI has prepared a recommendation on financial guarantees which requires both property agents and property managers to be able to prove that they have a financial guarantee as security for the funds deposited on behalf of third parties.

- Code of conduct

Consumers must be fully informed as to the standard of conduct which they can expect from professionals. All CEPI member associations have a code of conduct and must abide by CEPI's European Code of Ethics.

- Charter on Quality Care

Ultimately quality is the most important element in professional services. It means understanding the client's needs, acting in a professional manner and providing an efficient service. CEPI has prepared a Charter on Quality Care for both property agents and property managers<sup>4</sup>.

- Control

All of the elements highlighted require a form of control at national level both for access to and the exercise of the profession in order to function effectively. This must include both the effective imposition of sanctions in regulated systems and also the provision of a system of complaints handling or alternative dispute resolution. There are different forms of control and different procedures including arbitration and the existence of an ombudsman in, for example, Germany. Whatever format they take they should provide a way of making sure that decisions are imposed.

### **Conclusion**

To remove national regulations where they exist in the real estate sector could risk creating a vacuum which is not in the interests of professionals or consumers. Undeniably professional associations have a role to play in the implementation of professional regulations and there is potential for schemes of collaboration between such associations and regulators. It is necessary to look carefully at the reasons for the existence of regulation and to consult fully within the sector.

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<sup>4</sup> For details of all CEPI Codes and Charters see [www.cepi.eu](http://www.cepi.eu)



Whilst respecting the right of Member States to maintain stricter levels of regulation, if minimum rules do not exist at national level they should be introduced at EU level. It is also important to recognise that the legal and commercial environment for the provision of professional services differs throughout the EU and this should be remembered when restrictions are assessed.

We caution that decisions on professional restrictions should be made according to economic rather than solely political considerations. We refer in particular to the deregulation of the real estate professions in Poland as of the beginning of 2014 which appears to have been decided largely for political reasons without taking into account the needs of the market. It should be recognised that the needs of the relatively recently established free markets in certain countries are not the same as those of the more established markets in Western Europe. In the newer free markets the regulatory framework needs to be developed to support the market structure with a place for professional associations in the free market economy. In Spain the debate concerning the regulation of the real estate professions is also affected by additional considerations, in this instance the role of the colegios, which could lead to decisions being made for political reasons alone.

In conclusion a way has to be found to enable professional regulation to develop to meet not only the needs of professionals and consumers but also the completion of the EU Internal Market. CEPI believes that it is in setting clearly defined minimum common rules harmonised at EU level that the EU can provide the right foundations for such development. Therefore, in conducting the mutual evaluation of professional restrictions, attention must be paid to the importance of ensuring that such minimum rules are fully respected. In this way they may provide a benchmark against which to assess the justification of professional restrictions in the real estate sector.

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