



CEPI-CEI Position Paper on the Single Market Strategy for Europe

A response to the European Commission Communication on Upgrading the Single Market: more opportunities for people and business dated 28 October 2015

SUMMARY

The real estate professions are semi-regulated with large differences in the level of regulation where it exists. On October 28 2015 the European Commission published a Communication on Upgrading the Single Market (the "Single Market Strategy"). The Single Market Strategy includes references to the regulation of professional services in the context of "making the market without borders for services a practical reality".

It is stated that the mutual evaluation exercise carried out in the previous two years further to the revision of the Professional Qualifications Directive has shown that the regulation of similar professions varies substantially between Member States, as do reserves of activities. Therefore the Commission will propose specific actions to improve access to, and the exercise of, regulated professions at national level and across the EU. Real estate agents are referred to as being a priority sector included on the first phase of this exercise.

In this position paper CEPI-CEI sets out various points which it asks to be taken into account in the conduct of this exercise for the real estate professions. In particular we see that:

- The real estate professions are increasingly technical and complex and need a supporting regulatory framework.
- There are reasons for the existence of professional regulation in different countries including the protection of quality of services and consumer rights.
- There is existing legislation in place promoting the greater mobility of service providers and the emphasis should be on greater understanding and implementation of the rules.

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 all those working within the sector.

We also caution that decisions on professional regulation at both EU and national level should not be made solely for political reasons. Deregulation should not be an aim in itself and must be considered very carefully. Care must be taken to understand the needs of the very different national real estate markets and legal and economic environments. A balance must be found between the needs of businesses and consumers and also the completion of the Single Market.

CEPI-CEI (1094652600-90) groups 32 national associations and represents over 250.000 real estate professionals in the EU and EFTA countries. Its objective is to voice the interests of the real estate sector and professions to the European institutions, improve market knowledge, strengthen working relationships between professionals, and oversee their professional ethics, professional practices and quality of education.

Access to the Real Estate Professions

Introduction

The European Commission has published a new Single Market Strategy. It foresees actions related to professional services including specific actions to improve access to, and the exercise of, regulated professions at national level and across the EU. These actions will identify concrete reform needs for specific Member States. This exercise will consider all issues relating to access to and the exercise of regulated professions. The Commission will also set out an analytical framework for Member States to use when reviewing existing professional regulations or proposing new ones.

The real estate professions are semi-regulated, with large differences in the levels of regulation where it exists. These differences have already been explored at length by the European Commission in the scope of the mutual evaluation exercise initiated by the modernised Professional Qualifications Directive¹. To this analysis we would add that 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.

In principle CEPI-CEI welcomes the proposal to review professional regulation and provide guidance to Member States and an analytical framework in the interests of transparency. Real estate agents are amongst the first professions to be assessed. However we caution 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. Professional regulations are not just a barrier, they exist in many countries for reasons of public interest including consumer protection and the avoidance of fraud. In conducting the assessment in the real estate sector 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.

It is also important to be clear about the EU agenda in terms of professional regulation. We caution that decisions on professional restrictions should not be made according to 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 Portugal the legislation concerning the regulation of the real estate professions was simplified, against the wishes of professionals and the market in that country. In Romania, where there is no specific regulation for real estate activities, efforts to implement a real estate law were unsuccessful in spite of a general consensus amongst Romanian associations and the national ministries concerned. We understand that the proposed introduction of regulation in Germany has been recently postponed due to political discussions. The overriding consideration should be that the introduction of regulation is in the public interest, as we believe has been argued.

By way of contrast, in Ireland, the licensing regime which existed previously for real estate agents has been broadened, by the introduction of the Property Services (Regulation) Act 2011 to include regulation to drive an increase in standards and to improve consumer protection and establish redress mechanisms. The Property Services Regulatory Authority was established under the Act to implement the Act, drive compliance, improve standards under

¹ Overview of the regulatory framework in the real estate sector GROW/D-4 19 January 2015

the Act and provide consumer protection for clients of property service providers. The Act came into effect on 5 July 2012, and we understand that, in Ireland, the regulation introduced has supported the achievement of the stated aims.

Increasingly technical and complex professions need a supporting regulatory framework

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, anti-money laundering, 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 supporting regulatory framework.

There is also a perception that the EU is keen to regulate where it sees risk. Notably the Fourth Anti-Money Laundering Directive requires criminal checks to be carried out on non-financial bodies which are obliged entities. Estate agents are obliged entities under the Directive and effective compliance with anti-money laundering rules is a big issue for the sector. 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.

Reasons for the existence of professional regulation

For the consumer the need for a high quality service is paramount. Removing professional regulation is not necessarily in the interests of consumers who need certainty and enforcement of rules. 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 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. Modern technology and the provision of information via the internet may well help better inform consumers but good quality service and advice is still necessary in order to make investment decisions. Easy access to information does not mean that everyone is able to use it effectively – proper use of its content is much more sophisticated. Consumers need professional guidance to take the right decisions.

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 successful.

However self-regulation and the use of standards may have their limitations due to variations in terms of quality and function as well as their voluntary nature. 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 both the national authorities and the EU regulators. It is also important to have greater co-operation between bodies in order to promote consideration of the best means of ensuring the provision of professional services.

A need for better understanding and enforcement of existing rules

The Single Market Strategy refers to making the market without borders for services a practical reality. The EU already has legislation in force which relates to the mobility of cross-border services in the Services Directive and the Professional Qualifications Directive. There should be an emphasis on the better understanding and enforcement of these two existing directives which support open markets and increased mobility. The Professional Qualifications Directive promotes free movement whilst respecting professional qualifications which protect quality of services. Respecting national specificities in this way gives flexibility.

Real estate agents are amongst the first professions to be able to apply for the European Professional Card, an initiative which CEPI-CEI has supported and which it hopes will result in greater mobility in the sector. This new initiative should be given time to work, without making further changes in the sector. With regard to the announcement in the Single Market Strategy concerning the introduction of a services passport, we ask for clarification of this idea and confirmation that it will not interfere with the operation of the European Professional Card

Ongoing differences between markets

There remains a perception 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. However the national housing markets and the national rules are still very different. This is reflected in the differences in legal systems and commercial practice between countries.

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 guarantee of quality service.

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.

The right of Member States to maintain regulation should be respected. 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.

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 Single Market. We call for a balanced approach and an informed debate about professional regulation in the real estate sector. We also encourage the European Commission to look carefully at other problems which remain and prevent businesses from crossing borders, such as differences in rates of VAT and company law, as well as the differences in markets and their stages of maturity within Europe.

Brussels, 4 April 2016