

CEPI Position Paper on the Implementation of Directive 2005/36/EC as Regards Regulation and the Need for Reform in Professional Services

Introduction

On 10 January 2017 the European Commission published a Communication on reform recommendations for regulation in professional services. This is part of the legislative and non-legislative measures presented together and known as the “services package”. The Communication refers to regulation, whichever regulatory framework is chosen, as creating obstacles for the functioning of the Single Market and holding back the potential for growth and job creation in the EU economy. The objective of the Communication is to assist Member States with the removal of specific unjustified substantive restrictions and to create a “virtuous” regulatory awareness by Member States. The recommendations made include a number addressed to Member States concerning the regulation of real estate agents. When dealing with an issue as complex as professional regulation it is important to consider the reasons for its development with a particular view to the protection of quality of services and consumers.

The services package as a whole is now under discussion at the European Parliament and on 19 July a draft report was published by Nicola Danti MEP on the implementation of the Professional Qualifications Directive as regards regulation and the need for reform in professional services. We welcome the emphasis of the rapporteur on the fundamental role played by the professions in the EU economy, the importance of the quality of professional services and the need to go beyond mere economic analysis when looking at the performance of the regulatory environment in each Member State. We also welcome the emphasis in the report on the role of professional regulation in achieving a high level of protection of public interest objectives and its recognition of a need for a qualitative, not only quantitative, assessment of the impact of regulations in Member States reflecting both general interest objectives and the quality of the service provided.

Differences in regulatory approaches in the real estate sector

The real estate professions are semi-regulated with many differences between countries where regulation exists, including various self-regulation models. When examining the reasons behind this, it is important to take into account national needs due to different legal systems and differences between markets. It is also important to recognise that there are differences in activities within the real estate professions in different countries, in some countries real estate professionals act solely as brokers, in others they are responsible for giving advice on complicated issues, editing contracts (sales and rental agreements) which are binding for both parties. Therefore it is important to look at the sector as a whole taking into account national differences.

These differences in regulatory approaches in the real estate sector are acknowledged in the Communication. It also recognises that in some countries regulation has been in place for some time, in others including Ireland it is more recent. Some countries, the Czech Republic, Germany and Slovakia are currently intending to introduce regulation. Reference is made to the relative position of Member States in terms of restrictiveness as to the access to and exercise of the profession of real estate agent, according to the new restrictiveness indicator developed by the Commission as detailed in the Communication.

The restrictiveness indicator

The new indicator on the restrictiveness of occupational regulation is intended to provide an objective and measurable basis for comparing Member States’ performance in relation to the seven professions selected. It is intended to support

qualitative analysis of the barriers but does not in itself provide a basis for the assessment of the quality of services provided.

Furthermore, the restrictiveness indicator does not take into account the body of work completed by the Commission and the European Court of Justice in the form of legislation and case-law concerning the free movement of services and rules on cross-border mobility. These include the Services Directive and the Professional Qualifications Directive. Estate agents are also among the first five professions to be able to apply on a voluntary basis for a European Professional Card which is intended to be a tool increasing mobility and making it easier for professionals in the sector to work cross-border. We would suggest that any full evaluation of the restrictiveness of professional regulation in terms of its effects on growth and the single market should also take into account all the measures which have been put in place to promote it.

Specific recommendations concerning the regulation of real estate agents

With regard to the specific recommendations addressed to Member States concerning the regulation of real estate agents, we understand that in Germany in general there are strong objections to the services package as a whole on the grounds of subsidiarity. In Austria, there are existing proposals for reform of professions including real estate but concerns on the part of professional associations that these proposals (in the form of a new trade law) are of general application and not specifically intended or tailored for estate agents. There is a risk that opening up access for other professions (as recommended in the guidance) would encourage the emergence of inadequately qualified actors, with irreparable harm to the public. Estate agents in Austria carry out an extensive range of activities which justify regulatory mechanisms. The duration of training only plays a subordinate role in assessing the quality of training, whilst existing mechanisms guarantee that the Austrian qualification system for real estate agents remains dynamic. Accordingly no need is seen by professional associations to call into question the duration of the mandatory qualification requirements with regard to the role of agents and the objectives of regulation.

In Ireland, where regulation of the real estate professions was introduced in 2011, rules about client money and insurance are considered to be important by Irish real estate professionals who also have to know about trends, valuations, law, hold and account for finances and deal with many other aspects of real estate transactions that are covered by current training or education. Estate agents are required to have professional indemnity insurance for a minimum of €500,000, and must pay into a compulsory government fund to compensate clients in the event of an agent's fraud. Prior to the recent introduction of regulation those seeking to exercise the real estate professions simply had to apply for a licence to the courts which would be granted on condition that they could prove that they were of good standing. Buying or selling a home is for many people a once in a lifetime experience and prior to the introduction of regulation many consumers felt let down by the services provided leading to many complaints being raised by consumer representatives. A review group was set up to examine the real estate process as a whole in 2004. After very careful consideration the regulation which exists today was put in place. It required real estate professionals in Ireland to undertake a lot of additional training, but now it is considered that the regulation has created a proper environment for the real estate profession in which professionals can work and gain the confidence of consumers.

Particular concerns of the real estate sector

Overall within the EU we remain concerned that there are difficulties in understanding the different levels of regulation which exist. The ability of many professionals to work cross-border remains restricted by other issues such as the difficulty of obtaining insurance to work in other countries and the existence of different legal systems and national rules. It has also to be said that the professions are more organised in some countries than others and this is frequently reflected both in terms of levels of regulation and strength of institutions.

There are also particular concerns for the real estate sector which are not reflected in the Communication, For example, the sector has been recently assessed by the Commission as being of significant risk of money laundering. The oversight and enforcement of the anti-money laundering legislation is more difficult in countries where there is no regulation or strong self-regulation in place.

There also remains a lack of common rules in the real estate sector, which has no common points of reference for education and qualifications other than the existing CEN standards for estate agents which are considered to be of a low level. There is a general need to raise standards in the sector which the recommendations do not address. Consumer protection is of great importance in the real estate sector and no reforms should be considered without taking this factor fully into account.

We remain convinced that there is potential for more cross-border mobility in the sector. The uptake of the European Professional Card by estate agents is still low, but is likely to be limited by the lack of automatic recognition or common points of reference to add to its value. This needs to be addressed in the follow up to its introduction and assessment. Above all we do not want to see deregulation of professional services being carried out for political reasons. The importance of the subject dictates that no such discussion can take place without a proper understanding of the sector and the rules which exist in certain countries.

CEPI aisbl

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CEPI (1094652600-90) groups 24 national associations representing real estate professionals in 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.