



## **ECEC opinion on “Services Package”**

**July 2017**

### **EC Communication on reform recommendations for regulation in professional services:**

**Background:** The European Commission regards professional deregulation as an effective measure to diminish obstacles for the functioning of the Single Market and thus to enforce economic growth, job creation and trade in services. In this communication it therefore presents a new “restrictiveness indicator” and an analysis of national professional regulations of several professions - among them Chartered (Civil) Engineers - including indications about their proportionality / legal justification.

### **ECEC opinion:**

#### **[Legal context]**

It is in the competence of the Member States to decide whether there is a need to intervene and to impose rules and restrictions for the access to or the exercise of a profession, as long as the principles of non-discrimination and proportionality are respected. The EC even stresses that the difference between national regulatory concepts as such do not necessarily indicate a need for reform.

So theoretically the Member States can define the public interest objective they want to protect and choose the most appropriate way to achieve this when the regulation is not discriminating and proportionate.

Nevertheless it is a fact that the questions which public interest objectives are accepted as justification for national professional regulation is interpreted in a very restrictive way. The (legal) backgrounds of this narrow interpretation are court rulings, legal definitions and interpretations by European Commission etc. Also the EP contributed to this development with its

resolution of 11 September 2013 on the Internal Market for Services, in which it calls upon Commission and Member states to remove existing regulatory burdens for service providers and accuses Members States of often using overriding reasons of public interest to protect and favour their domestic market.

So the currently existing approach in regard to justification of national regulation in fact leaves very little leeway for a Member State to adequately decide about if and how a profession is regulated.

Especially in regard to independent and highly qualified professions such as Chartered (Civil) Engineers who have a special role in regard to public trust and responsibility, in regard to health, safety and good living conditions of society, in regard to consumer protection and many other aspects, this is very problematic. It becomes more and more difficult to “defend” professional regulation against “deregulatory attacks” because justification reasons are very limited. This narrow approach partly hinders adequate proportionate national regulation for high quality professions services.

There is a tendency visible to further narrow this leeway: The EC expresses the belief that in some areas as clients become better informed, the asymmetry of information will decrease - and therefore no longer be a justification reason - but actually in a technical area such as Civil Engineering, fast developing new technologies are very likely to increase the asymmetry of information.

**Therefore the ECEC want to appeal to the European Commission to reconsider this narrow and restricted approach. The ECEC believes that the aim must be a broadly accepted balance of interests in order to ensure the effective implementation of the internal market of services. This requires a change of attitude in regard to the question which public interest objectives are accepted as justification for national professional regulation even if this would mean a slight adaptation of existing regulation.**

**Professional organisations such as the ECEC could contribute to this re-consideration process with their expertise in regard to national professional regulations.**

#### **[Economic Context]**

The reform recommendations are based on the fact that the European Commission firmly believes in deregulation – formulated as reduction of service barriers – as an adequate mean to considerable

enhance economic growth in regard to the professional services sector. This is again stressed in the reform recommendations.

The 2015 study quoted in the document (Page 6 ff) is of a very general nature and focused on the labour force while professions like “Chartered Engineers” are mainly conducted in self-employment. So this is one of the reasons why the applicability of a study with such a different focus - also in regard to the examined regulations - for professions such as Chartered (Civil) Engineers seems more than questionable.

Apart from this the ECEC would like to stress that there are more and more expert voices questioning the assessment of the economic impact of deregulation measures and that relevant studies on that topic often overestimate the positive economic effects, partly in a very general way. Additionally they mostly they do not evaluate the negative economic side effects sufficiently although negative effects in some cases would even swallow any positive effects.

EUROSTAT figures show that while countries without mandatory Chamber registration appear to have less prima facie legislation, the cost of services in these countries has risen more sharply than in countries with mandatory Chamber registration.

The “Study on the Effects of Liberalisation in Austria Using the Example of the Liberal Professions” showed the effects of reduced market entry barriers were negative for freelance architects (which may explain the delayed publication of this report)

**Thus the ECEC appeals to the European Commission to rethink and to re-evaluate the economic impacts of de-regulation also with a better focus on negative economic effects and also negative effects regarding other than economic values.**

**The ECEC wants to stress that precisely because professional services constitute a very important element in the economy of Member States and the EU it is problematic to destroy their well proven national systems.**

#### **[Analyses and guidance: The new restrictiveness indicator]**

In principle the ECEC welcomes the fact that the EC has tried to improve the OECD indicator but would like to point out some problems:

Unregulated countries very often do have market access criteria (such as in building law) but as there is no professional regulation such regulation is not covered at all. This seems to make the fairness and the comparability questionable.

Another practical problem seems to be that the form in which the information was given by Members States in the regulated profession data base and the sector reports vary considerably. This is based on slight interpretation differences. (e.g. one country says 7 years of education when it means 4 + 3 years professional practice (in the monitoring tool 8 years counted for education, 3 years for professional practise) , the other one says 4 years of education + 3 years of professional practice. So the output in the indicator would differ considerably although the reality is the same). This means that before using any data this would have to be made comparable. The ECEC believes that this did not happen and so there might be mistakes in the results.

Additionally the ECEC does not understand why “Continuing Professional Development” is now listed (along with Reserved activities) as a negative restriction – although this has been encouraged as a way of maintaining and developing skills also in the interest of staying globally competitive. The ECEC is also not happy about the inclusion of Reserved Activities as negative restriction although the 2012 DG MARKT “Study to Provide an Inventory of Reserves of Activities linked to Professional Requirements” concluded that “the economic analysis ... does not show that there is a clear impact of reserved activities on economic performance”. Where activities are reserved to certain professions it is usually because they hold specific skills or competences as already explained above.

**So although a tool to analyse professional regulation can be helpful the restrictiveness indicator certainly still needs improvement.**