

**HIGH LEVEL WORKING GROUP ON
COMPETITIVENESS AND GROWTH**

3 May 2016

Delegations will find in Annex a discussion note on regulated professions.

High Level Group on Competitiveness meeting 3 May 2016

Discussion note on regulated professions

Table of content

1. Context (Art. 59/ NAPs/ SMS)
2. NAPs state of play
3. State of play on SMS actions, focus on guidance for reforms
4. Questions to HLG

1. Context: Mutual evaluation of regulated profession and Single Market Strategy

The mutual evaluation of regulated professions stems from Art. 59 of the Professional Qualifications Directive, as amended in 2013. The purpose of the mutual evaluation process was to improve understanding of the reasons underlying the regulation of professions and to encourage Member States to compare their regulatory approaches for regulated professions, sharing best regulatory practices with a view to reducing excessive or outdated regulation.

Empirical case studies commissioned during the mutual evaluation exercise provide useful examples of how the assessment of the impacts of regulation or a change thereof can be done and what the effects can be.¹ These studies show that the reduction or removal of regulatory barriers has led to: a reduction in the prices of the concerned services; positive effects on employment for the regulated professions as a whole; or a relative increase in the number of new entrants into the reformed professions. In macroeconomic terms, this translates into a better allocation of resources, as shown in e.g. a recent study by DG ECFIN². Moreover, the analysis presented by some Member States points to an increase in GDP to be gained from reforming the regulation of professions³ – confirming that the modernisation of the regulated professions can significantly contribute to growth and job creation.

In time for the transposition deadline of the Directive, by 18th January 2016, Member States were to submit **national action plans (NAPs)** presenting an overview of their regulated professions, the outcomes of their assessment of proportionality in their regulation and, as a result, identifying appropriate reforms. Even early in the mutual evaluation process the information gathered from Member States showed that the proportionality analysis is in many cases incomplete, not thorough enough or even entirely missing and that the criteria used for this, as well as the intensity of the assessments, vary widely across the Member States.

¹ The effects of reforms of regulatory requirements to access professions: country-based case studies

http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8525&lang=en

² http://ec.europa.eu/economy_finance/publications/economic_paper/2014/pdf/ecp533_en.pdf

³ Ecorys for NL government, 2015 (Frontrunners project)

As a follow-up to the mutual evaluation of regulated professions, the Commission announced two specific actions to improve access to regulated professions in the Single Market Strategy last October: (1) **a tool to analyse the proportionality of regulation** concerning the professions and (2) periodic **recommendations on specific needs for reforms** per country and per profession. The second of these is the main subject for the discussion in the HLG.

The aim of the discussion in the HLG is to share views and experiences with the National Action Plans to improve access to regulated professions and to look forward to the upcoming recommendations on specific needs for reform per country.

2. National Action Plans: state of play [1st part of the discussion]

- **17 NAPs received** up to date. Most of the remaining Member States intend to submit by May/June (The annex to this note provides an overview of the situation). Submission of a NAP is a legal obligation under Art. 59 of the Professional Qualifications Directive.
- **Content:** levels of ambition differ, with some Member States describing a comprehensive approach to reviewing legislation or targeted reforms in specific professions while others showing a rather limited willingness for reforms. For some Member States, actions mentioned in their plan refer to past measures because they already went through a reform process, although this does not necessarily mean that there is no scope for further reforms. In other cases, there seems to be a lack of political will to engage into a serious and open review of the current situation.

The measures covered in the national action plans received include:

- horizontal actions covering a range of sectors and professions. For example: Austria has introduced in 2013 a new post-evaluation instrument for every new legal act and a new uniform and electronic registration system for trades; Denmark has indicated in its action plan that it has recently undertaken or intends to do so in the near future a modernisation and simplification of the regulation for 41 of the 166 regulated professions in the country; France has adopted measures to facilitate the access to some legal professions and has recently taken or plans to take further measures to simplify the access to and exercise of several professions including the revision of legal form and shareholding structure requirements, the scope of reserved activities or the qualification requirements.
- targeted measures on specific professions or types of restriction. For example: Germany intends to take some actions to modernise professions in business services; the United Kingdom is exploring potential reforms around building regulations with regards to the architectural profession, in veterinary nursing and surgery and the healthcare professions. In Italy, state exams and training requirements are being revised for some professions to better reflect the competences required and adapt the activities reserved of the concerned professions.
- **Public consultation** on NAPs (and on the “Proportionality test”): online, open to all, in 24 EU languages, to be launched beginning of May, 12 weeks for replies. The consultation could be extended if necessary as regards NAPs coming in late. Results will feed into the “recommendations on reform needs” and into the impact assessment on “Proportionality test”.

3. State of play on SMS actions: Guidance on reform needs [2nd part of the discussion]

The Single Market Strategy announced two initiatives to further improve access to professional services. One of them would consist in the Commission issuing periodic recommendations that **identify concrete reform needs** for specific Member States and/or professions where particularly burdensome and unjustified regulations are identified. The aim would be to focus national efforts in improving access to, and the exercise of, regulated professions at national level and across the EU.

In a **first phase**, the focus will be mainly on **selected professions** (e.g. civil engineers, architects, accountants, lawyers, real estate agents, tourist guides and patent agents), without however excluding other professions, to be determined on a case-by-case basis. As appropriate, depending on the Member State and subject to an individualised prioritisation assessment, reform priorities could also be addressed in the context of the European Semester.

The guidance will be based on a detailed assessment of the regulation and the different forms of barriers in place to the access and exercise of regulated professions. This assessment would primarily be based on the **information collected through the mutual evaluation process**, namely the information submitted by Member States to the Commission via the database of regulated professions, empirical studies, the national sector reports and the subsequent discussions in the mutual evaluation meetings (12 professions were discussed in 6 meetings in 2014 and 2015⁴). It would take due account of the information reported in the submitted national action plans.

In order to support a qualitative analysis of the barriers and in view of taking into account the accumulated burden of multiple requirements rather than focus on measures in isolation from their wider ramifications, **an indicator on the restrictiveness** of occupational regulation could be designed. This indicator will aim at providing an objective and measurable basis for comparing Member States' performance in the selected professions. It should be a measurable monitoring tool of the evolution of the level of restrictiveness of regulation over time.

Initial **recommendations will be issued end 2016**. These will be accompanied by an assessment of each Member State's regulatory framework for the professions under review, drawing on the indicator described above, as well as a more general assessment of national action plans. Once the recommendations have been issued, to realise our many shared goals captured by this initiative, it is critical that Member States respond appropriately to these recommendations and take proper action on their implementation. To this end a monitoring process should be setup to trace and evaluate progress made. The HLG could play a major role in this monitoring.

⁴ The following professions were discussed: architect, driving instructor, optician, civil engineer, physiotherapist, psychologist, hairdresser, tourist guide, sports instructor, electrician, real estate agent and dental hygienist. Reports are available on Europa: http://ec.europa.eu/growth/single-market/services/free-movement-professionals/transparency-mutual-recognition/index_en.htm

4. HLG involvement in the work on guidance for reform needs

Member States will be consulted during the preparation of the recommendations for reforms. This will be done through the national coordinators on the recognition of professional qualifications but also via the HLG. In view of maximising the ownership of the recommendations, the Commission believes it would be useful to present to the HLG the results of its analysis forming the basis for these recommendations. This should be done before the recommendations are actually published to allow for exchanges and interactions between members of the group and with the Commission. It would allow the possibility for reviewing the assessment before the publication of the recommendations. In this sense the discussions on the profession specific recommendations should be relevant and of interest for the HLG.

5. Questions for discussion

In the context of the National Action Plans and the HLG involvement in the recommendations, it could be interesting to get the HLG views on the following questions:

- Which challenges have Member States come across in the assessment of proportionality of regulations for professions? When the assessment shows a need for reform, what challenges have Member States come across when taking reform measures?
- How could the HLG discuss the analysis of the Commission for the upcoming recommendations to ensure maximum cooperation and commitment between the Member States and Commission once the recommendations have been published?
- What role could the High-Level Group play in the monitoring of the follow-up to the recommendations on reform needs in regulated professions?

Overview of the National Action Plans (state of play: 14 April 2016)

This overview is based on the reports received and on the information communicated by the national coordinators responsible for the Professional Qualifications Directive at the meeting of 17 March 2016.

National Action Plans Overview	
 Austria	<p>Report's overall line: little need for reform</p> <ul style="list-style-type: none"> • Presents a new post-evaluation instrument introduced in 2013 for every new legal act and a new uniform and electronic registration system for trades • Announces changes for a limited number of professions • Includes an economic analysis of the impact of liberal professions on the Austrian economy
 Belgium	<p>Report's overall line: commitment to further in depth analysis for liberal professions; no major reforms foreseen at this stage</p> <ul style="list-style-type: none"> • Concludes that current regulation is appropriate on the basis of study results and/or internal analyses • Underlines that many professions were regionalised, de facto since January 2015. • States that several of these professions are being analysed for eventual changes in the future (including a study on liberal professions)
 Bulgaria	<ul style="list-style-type: none"> • Final action plan to be submitted to Commission in April. Intermediary National action plan was sent in 2015
 Croatia	<ul style="list-style-type: none"> • National action plan to be submitted to Commission by end of May
 Cyprus	<ul style="list-style-type: none"> • National action plan to be submitted to Commission in next couple of months
 Czech Republic	<p>Report's overall line: little need for reform</p> <ul style="list-style-type: none"> • Announces the introduction of regulation for additional professions (real estate, tourist guide) • Announces changes for some professions (mainly administrative) • Focuses mainly on qualification requirements, whereas other aspects are not included (such as scope of reserves, protected title)

 Denmark	<p>Report's overall line: review concludes need to modernise existing regulation</p> <ul style="list-style-type: none"> • Refers to the Governmental Growth Act/ 2014 containing requirements for certain levels of simplification of the rules for access to regulated professions. • Changes done or to be made to regulation of 44 professions; no changes needed for 78 professions following review (remaining professions +/- 41 are medical specialities) • Changes refer to: abolishment of the scheme (translator and interpreter), simplification of authorisation scheme (electrical, gas, plumbing and sewer fields), reduction of scope of reserved activities (real estate agent), easier renewal of certificate (measurement and control technologist), modernisation (fertiliser sample expert), new rules simplification of system (auditor), abolishment of certain price rules (building expert). • Plans to increase regulation in certain cases (driving instructor, security guard)
 Estonia	<p>Report's overall line: limited number of regulated professions, no need for reforms</p> <ul style="list-style-type: none"> • States that number of regulated professions in Estonia is quite low; it tends to regulate the education/training or particular activities/job • Announces very limited changes, no general commitment to deregulate or reduce overall level of regulation • Note that voluntary certification system run by Qualifications Authority is being increasingly used as <i>de facto</i> qualification requirement
 Finland	<p>Report's overall line: little need for reform</p> <ul style="list-style-type: none"> • Announces few measures • Ambitions to review regulation of positions in the public sector to link them to competence rather than qualification • Plans to introduce joint legislation for social and healthcare professionals
 France	<p>Report's overall line: recent reforms and planned ones to simplify and modernise existing regulations</p> <ul style="list-style-type: none"> • Refers to Macron law and its implementation (legal professions) • Refers to several simplification measures recently adopted in the area of construction ((architects, surveyors, crafts), services (accountant), real estate, transport (driving instructor), retail (wine tradesman, cycle technician), tourism (travel agent) • Announces further reforms in retail (optician), sport (monitor), services (veterinarian), social services (social assistant), health (orthoptist, pharmacist, medical biologist), agriculture • Many of these measures have to do with the simplification of the legal form and shareholding structure, the qualification requirements and an easier access to the professions
 Germany	<p>Report's overall line: some targeted reforms in liberal professions, overall little need for reform</p> <ul style="list-style-type: none"> • Reflects the positions taken during mutual evaluation process • Develops arguments to defend the system of the Meister degree for craft professions • Announces a limited number of actions for certain professions, in particular in business services
 Greece	<p>No information as to when the Greek national action plan will be submitted to the Commission</p>

 Hungary	National action plan in preparation. Expected submission to the Commission: end April/May. Intermediary National action plan was sent in 2015
 Ireland	No information as to when the Irish national action plan will be submitted to the Commission
 Italy	Report's overall line: need for modernisation of training requirements and to improve the existing system <ul style="list-style-type: none"> • Announces the revision of the training courses of some technical professions (engineers, industrial experts 'periti') to better define reserved activities and competencies currently overlapping with other activities • Announces the evaluation and adjustment of the State exams to the reality of the professional activities • Refers to the establishment of a technical working group for the definition of minimum national standards for those professions whose training is a Regions' competence and to identify those professions that, not descending from State law, cannot be considered properly legitimate • Announces concrete measures indicated for touristic professions and beauticians. The teacher professions were recently reformed
 Latvia	National action plan under preparation. Expected submission to the Commission: second quarter 2016
 Lithuania	Report's overall line: little need for reform <ul style="list-style-type: none"> • Bases its conclusions on commissioned analysis/impact assessment of each individual profession (number of regulated professions in LT is quite low) • Has added after review, 5 new professions to the official list (all in business sector); changes foreseen mostly in health care and education sectors
 Luxemburg	Report's overall line: no need for reform, new evaluation will start <ul style="list-style-type: none"> • Describes the situation for the 12 professions discussed during the mutual evaluation meetings • Does not new measures to adapt the existing regulation for those professions • Announces some simplification measures for the recognition of professional qualifications, in particular for the access to the teacher profession • Refers to the foreseen adoption of a plan in favour of SMEs in Q1 2016 to ease SMEs' administrative burdens as well as to the preparation of a programme to simplify and improve the regulation (no concrete timing mentioned)
 Malta	National action plan in preparation. Expected submission to the Commission: second quarter 2016

 <p>The Netherlands</p>	<p>Report's overall line: room for modernisation for some professions</p> <ul style="list-style-type: none"> • Considers that greater part of national professional regulation does not cause serious barriers to access • Reports that several professions are being evaluated to see whether modernisation is necessary. This concerns business services accountants, legal professions and architects. Other sectors concerned are social affairs and employment, animal welfare, public health and transport • Refers to a new horizontal better regulation instrument, i.e. a regulation analysis framework (need for regulation, kind of regulation, public policy interest, consequences on consumers), including a proportionality flow chart was presented. This framework will be integrated in the general assessment framework allowing policy makers to determine how regulation can be developed effectively
 <p>Poland</p>	<p>Report's overall line: no need for further reform after recent major liberalisation</p> <ul style="list-style-type: none"> • Provides a detailed description of more than 160 professions or group of professions • Explains the recent reform effort undertaken, as a result of which access to 70 professions was opened and requirements to access the other 180 was facilitated • Plans to introduce new regulation for some professions (e.g. physiotherapist, psychologist)
 <p>Portugal</p>	<p>Report's overall line: no need for further reform after major work done under the assistance programme</p> <ul style="list-style-type: none"> • Refers to major reforms and review of the regulated professions done since 2011, , when 188 professions were deregulated • Does not envisage major modifications in coming years • Gives a succinct presentation of regulated professions distinguishing between those regulated by law (not-highly regulated) (139 in total) and those regulated under professional organisations (highly regulated) (100 in total). • Describes in a succinct manner the latest legislative developments: new horizontal law for non-highly regulated professions in 2015 and new horizontal law for professional association (2013). No detailed description of the 2015 pack of by-laws regulating different professions
 <p>Romania</p>	<p>Report's overall line: no need for reform</p> <ul style="list-style-type: none"> • Explains that the low/limited number of regulated professions – 157 - (of which almost half are based on EU regulations in specific sectors, like transport) • Provides an overview and description of the regulated professions • Explains that regulation of professions is very much linked to the socio-economic realities (construction because of high risk of natural disaster – seismic, for instance; babysitter – because of lack of kindergartens, there is a high demand for babysitter, but without a contract – undeclared revenues) • Refers to the deregulation of the profession of labour law inspector • Suggests more cooperation between Member States in order to establish a common methodology for assessing the impact of regulation, the interest to be protected etc.

 Slovakia	<p>Report's overall line: Limited intention to explore reforms for deregulating certain professions</p> <ul style="list-style-type: none"> • Admits a higher than average number of regulated professions but the report ascertains that this is due to the fact that the criteria (e.g. the level of education) for regulated profession were too broadly defined in the past • Has re-defined the notion of a regulated profession on the basis of the Brouillard/ Morgenbesser case law • Does not plan a major reform • Is reviewing specific professions (e.g. university professor, ferryman, captain, masseur, sports manager), details have not been communicated on the substance of the reform are communicated or the change is due to amendments of EU Directives (e.g. boat masters/skippers in inland navigation)
 Slovenia	<p>National action plan in preparation. Expected submission to the Commission: beginning of May</p>
 Spain	<p>Timing uncertain concerning final action plan due to the ongoing negotiation to form a new government. Partial intermediary action plan was sent in 2015 for three professions</p>
 Sweden	<p>Final report to be sent to the Commission by mid-April. Intermediary national action plan was sent in 2015</p>
 United Kingdom	<p>Report's overall line: intention to explore further for reforms certain professional spheres</p> <ul style="list-style-type: none"> • Envisages reforms in the multidisciplinary legal/accountancy (for alternative business models such as accountancy firms as an example, and for some home buying functions) • Considers reforms around building regulations with regards to the architectural profession, in veterinary nursing and surgery and the healthcare professions • Reports that the authorities are undergoing a consultation and review process
