

ROADMAP			
TITLE OF THE INITIATIVE	Guidance on reforms needs for Member States in regulation of professions		
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<p style="text-align: center;"><b>This indicative roadmap is provided for information purposes only and can be subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.</b></p>			

## A. Context, Subsidiarity Check and Objectives

Context
<p>The present initiative is one of the actions the Commission has announced in the Single Market strategy adopted on 28 October 2015. It is based on and taking forward the mutual evaluation exercise. It aims at ensuring that continuous efforts are made by Member States to modernise or keep fit their regulatory framework.</p> <p>In March 2012, in its conclusions, the Council asked Member States to reduce the number of regulated professions and remove unnecessary or disproportionate barriers to entry to regulated professions. In its recommendation of June 2012 the European Parliament called on the Commission to identify areas where Member States are disproportionately blocking access to regulated professions. In the conclusions of its meeting on 24 and 25 October 2013, the Council stressed again the need for Member States to identify the remaining barriers to access to professions, assess their cumulative effect and take appropriate action.</p> <p>Directive 2005/36/EC on the recognition of professional qualifications (the Directive) was evaluated and subsequently amended and modernised in 2013. Amongst the new elements added is a transparency and mutual evaluation exercise (Article 59) which was aimed to address the concerns of the Council expressed in its conclusions outlined above. While this exercise started beginning of 2014, in January 2017 the Commission is expected to present its final report and findings to the European Parliament and European Council.</p> <p>The ongoing mutual evaluation exercise requires Member States to notify to the Commission all the professions they regulate and to justify the existing requirements and assess their proportionality. In particular, as set out in Article 59 §3 of the Directive, Member States should make sure that requirements are justified by overriding reasons of general interest and are suitable for securing the attainment of the objective pursued without going beyond what is necessary to attain that objective. By requirement, it is understood all conditions imposed on the access to and exercise of the profession such as activities reserved to the profession (activities no other profession can exercise), academic qualification required, compulsory membership in a professional organisation or incompatibilities of activities (the professional may not exercise certain activities). At the end of this process, by 18 January 2016 Member States should report back to the Commission and provide the result of their internal review in the form of national action plans. In particular, Member States should provide information: on the requirements they decide to keep and the reasons justifying these decisions; on requirements removed or made less stringent and on the actions they foresee to adapt existing regulation to comply with the principle of proportionality. Every two years after this date, Member States will have to inform the Commission about requirements made less stringent or abolished. In addition, new requirements introduced by Member States after this date shall be notified to the Commission within six months after their adoption as well as the justification of their necessity and proportionality.</p> <p>In the context of the European Semester, every year country specific recommendations are addressed to Member States. These recommendations target major structural issues in all sectors of the economy in line with the policy priorities defined in the Annual Growth Survey. This includes the priority to pursue structural reforms to modernise national economies. In particular Member States are asked to improve the functioning of their services markets by making them more competitive and open through, inter alia, the removal of disproportionate requirements. Some countries could therefore, as in previous years, be subject to specific recommendations on the lack of competitiveness of their services sector or the need to reform their regulation on professions. The guidance on reform needs in Member States which is the subject of this roadmap is in line with this Annual Growth Survey priority to address structural reforms. It will focus on restrictions in specific regulated professions</p>

and cover those Member States where given the level and severity of restrictions in place and where there is room and need for reforms. The evidence gathered in the context of this initiative would therefore obviously feed into the European Semester process, as appropriate.

## Issue

1. Regulated professions are important actors in the European economy.

An EU wide survey conducted in the first quarter of 2015 for the Commission targeting over 26,000 European citizens revealed that the equivalent of almost 50 million persons is directly affected by regulation of professions (22% of the European labour force). At present, based on what Member States notified in the regulated professions database, there are over 5,500 regulated professions in the whole EU. This corresponds to an average of 196 regulated professions per Member State with large disparities between countries: Lithuania reports only 76 regulated professions while Hungary has notified 543 regulated professions<sup>1</sup>.

2. Excessive regulation of professions can have negative impacts on the economy for the following reasons:

It can lead to a distortion of competition by keeping unnecessarily high entry barriers for newcomers, therefore limiting the number of people and businesses authorised to provide services. Reduced competition may lead to a suboptimal allocation of resources and excessive price mark-ups which can in turn be translated into higher prices of services for consumers. Disproportionate barriers can also: act as a deterrent to innovation by preventing new service providers with innovative solutions to compete with market incumbents; and reduce employment opportunities for professionals. Extensive academic research has been produced on these effects and is summarised in the Communication on evaluating national regulation on access to professions (COM(2013) 676) and in the Staff Working Document accompanying the Communication on Upgrading the Single Market (COM(2015) 550).

3. Regulated professions are regulated in different ways across the EU which may create barriers to the free provision of cross-border services and restrict the free movement of professionals within the internal market.

Results from the mutual evaluation exercise conducted in the 28 Member States show that regulation of similar professions varies substantially between Member States. Differences observed concern amongst others: the scope of activities reserved to qualified professionals, i.e. activities which can only be performed by qualified professionals, restrictions imposed on corporate form and voting rights, mandatory membership in professional associations, insurance requirements and territorial restrictions.

At macroeconomic level this sums up to reduced economic growth and loss of employment creation for the Member State directly concerned but also for the internal market as a whole because of the interrelationships between neighbouring economies whose exports depend on the accessibility of their neighbours' markets. It has therefore an impact on Europe's competitiveness as a whole. In this context these issues need to be tackled at a European level.

4. The analysis made and the actions proposed by Member States in the context of the mutual evaluation exercise and in the context of the European Semester indicate that there is room for more ambition.

In accordance with the reporting obligations set out under Article 59 §4, Member States were due to submit a report presenting the outcome of their review of the necessity and proportionality of all the professions regulated at national level. These reports were subsequently referred to as national action plans in the Communication of October 2013<sup>2</sup>. By end May 2016, 18 Member States have submitted to the Commission their final national action plans outlining the results of their assessment and their intended actions to address unsuitable or disproportionate restrictions uncovered.

While many of the regulations in place can be justified, in particular when it comes to health professionals or education, the level of the restrictions imposed varies significantly between Member States in similar professions and for the same public interest objectives to protect. In addition, there are also regulations which were introduced decades ago and may no longer correspond to the current sociological and economic context.

Justification and proportionality considerations differ for one and the same activity with some Member States stating clearly the ability to rely on the functioning of the market and general legislation such as on consumer protection whereas others argue for stringent professional regulation. In view of addressing this question of the quality of proportionality analyses, the Commission is preparing in parallel to this initiative an analytical

<sup>1</sup> It must be noted the number of professions should be treated with caution. The definitions of most regulated professions are not harmonised at EU level and that the Member States define the way they notify professions into the Database. The numbers of professions are hence not directly comparable across the countries. However, the number of regulated professions does illustrate the diversity and multitude of activities covered or reserved to different professions, access to which is conditional upon recognition of the professional qualification by the relevant Member State.

<sup>2</sup> COM(2013) 676

framework to assess proportionality (“proportionality test”). This action was announced together with the guidance on reform needs in the Single Market Strategy adopted in November 2015<sup>3</sup>.

In conclusion, alongside the proportionality test which should establish a common and systematic approach to proportionality analyses performed by Member States when introducing or reviewing regulation on professions and the launch of infringements in situations where there is a clear breach of community laws, there is a need for a tool to address situations where the regulation of certain professions appear too burdensome and inappropriate. The development of such a tool at European would enable to compare similar situations in various Member States.

### **Subsidiarity check**

The Guidance on reform needs for Member States in regulation of professions is enshrined in areas of Union policy on free movement of professionals, covered by Directive 2005/36/EC, Article 49 TFEU on the freedom of establishment and Article 56 TFEU on the freedom to provide services. An EU action in this area is necessary and justified, because national regulations restricting the access to a professional activity or its pursuit have an impact not only at regional or national level, but also have significant cross-border implications. Mobility of professionals within the EU is increasing. The number of positive decisions taken by Member States when receiving a demand from an EU professional seeking recognition of his professional qualifications has increased from 6,000 in 2007 to 18,000 in 2014<sup>4</sup>. Looking at the mobility of labour in the EU in general, the share of EU workers residing in another Member State as a percentage of total labour force has increased from 1,6% in 1995 to 3,6% in 2015<sup>5</sup>. Trade integration of services is low (6%) compared to goods (22%) and cross-border investment in services (11%) is weaker than in goods (17%)<sup>6</sup>. This problem cannot be sufficiently addressed by an action of individual Member States because part of the problem concern the different regulatory landscapes prevailing in Member States. The impact of the initiative will be significantly strengthened through a more strategic and better coordinated approach.

### **Main policy objectives**

The general objectives are: to ensure and safeguard the freedom of establishment and the freedom to provide services in order to guarantee mobility of businesses and professionals within the EU in accordance with Article 49 and 56 TFEU.

The specific objectives aim at supporting reforms in Member States to address unfit regulations which impede competition in professional services and create unnecessary obstacles to the mobility of professionals and the provision of cross-border services and establishment. A corollary to the facilitation of provision of services is the specific objective of supporting a competitive environment for all professionals, conducive to employment creation in particular for young professionals and to wider diversity of services to the benefit of consumers. The action should also contribute in reducing administrative burdens for professionals and companies when seeking to offer their services both domestically and in other Member States.

## **B. Option Mapping**

### **Option 1: no action – Baseline scenario**

Under this scenario, the national action plans presented by Member States at the end of the transposition deadline of the revised Professional Qualifications Directive on 18 January 2016 will announce the foreseen actions to modernise national regulatory frameworks. These action plans will be submitted for consultation with other Member States for a period of six months after which the Commission will submit its findings to the Council and European Parliament by 18 January 2017 in accordance with Article 59 of the Directive. There will be no specific follow-up to the reforms announced in the National Action Plans or the lack thereof.

### **Option 2: reinforced monitoring under the European Semester**

Member States are subject to close attention under the European Semester process. Country Specific Recommendations can only address a limited number of issues per Member States. Country reports which accompany the CSRs provide a detailed assessment and analysis supporting the CSRs.

Under this option, regulated professions would continue to be subject to a close analysis from the Commission.

<sup>3</sup> COM (2015) 550

<sup>4</sup> European database of regulated professions: <http://ec.europa.eu/growth/tools-databases/regprof/>

<sup>5</sup> Eurostat, Labour Force Survey

<sup>6</sup> [http://ec.europa.eu/europe2020/pdf/themes/2016/services\\_201605.pdf](http://ec.europa.eu/europe2020/pdf/themes/2016/services_201605.pdf)

Depending on the macro-economic relevance of the issue encountered for a profession or group of professions and depending on the number of other important issues in other policy areas requiring a CSR, the issue concerning regulated professions could be part of the CSRs adopted by the Commission under the European Semester.

In situations where the regulated profession issue would not make it into a CSR, it could still be part of the Country report if of sufficient relevance. It would however not indicate what the Member State should do to address the problem.

These analyses would be based on the information collected through the mutual evaluation process and via the reports and notifications foreseen under Article 59 of the Professional Qualifications Directive.

While this option could build on the existing economic coordination process in the context of the European Semester, it would not allow for a systematic approach and coverage to deal with existing restrictions across all Member States. This is due to the fact that in the European Semester CSRs focus on a limited number of issues per Member State and therefore the regulation of professions may not be considered important enough to figure amongst the priorities a given Member State should address. As a consequence, while some Member States would deserve a recommendation based on an analysis of the professional regulation levels, they would not receive one while other Member States with relatively less problematic professional regulation levels could receive a CSR because of fewer competing issues.

**Option 3: guidance on reform needs to Member States** Under this option, the Commission would issue periodically (e.g. biennially) guidance on specific professions to those Member States where, based on a Commission analysis, requirements imposed on the access to and/or the conduct of a regulated profession would be considered unnecessarily high when compared to other Member States or similar professions. A guidance would therefore not necessarily be issued to all Member States for a specific profession. It could be the case for example that a country does not receive any guidance.

The guidance would indicate for specific professions in given Member States, which access and/or exercise requirements would need to be reviewed. It would be based on a qualitative and quantitative assessment of the specific situation in the Member State targeted and compared with the situation in all the other Member States and/or similar professions. For this purpose an indicator measuring the restrictiveness of regulation would be calculated. The guidance would also be accompanied by an analysis of the regulatory context applying to professions in every Member State.

The indicator and the analysis underpinning the guidance would be based on information collected through the mutual evaluation process and via the reports and notifications foreseen under Article 59 of the Professional Qualifications Directive.

These guidelines would focus mainly on a limited number of professions. The professions selected would belong to priority sectors (e.g. civil engineers, architects, accountants, lawyers, real estate agents, tourist guides and patent agents), sectors economically important and with potential for substantial gain in economic growth from reforming regulated professions. In a second stage, other sectors and professions would also be targeted.

As regards the format, it would take the form either of Commission recommendations or communication accompanied by a staff working document.

The level of implementation of the guidance by Member States would be monitored over time: as part of the reporting obligations under Article 59 of the Directive, Member States will have to notify every two years to the Commission the introduction or the removal of regulation. The group of national coordinators on the Professional Qualifications Directive and the High-Level Group on Competitiveness and Growth from the Council could be fora where discussions on the degree of implementation of the guidance could be organised.

Compared to option 2, option 3 would propose a much more detailed analysis at the profession level. Member States would be subject to guidance on the basis of a rigorous analysis of the regulatory level, without the constraint in option 2 of having to compete with other economic issues. The underlying analysis per Member State would be systematic and for all Member States.

Under option 2, in those countries where the economic situation is impacted by a structural issue of a more macroeconomic dimension such as the lack of competition in some services sector, the issue could also feed into the recommendations proposed by the Commission under the European Semester. Option 3 would in reality include also option 2. The guidance would be more specific than the CSRs but where appropriate the guidance could still be upgraded to the level of a CSR.

#### **Proportionality check**

Issuing guidance on reform needs for Member States could be considered as an appropriate instrument to reach the defined objectives. Proportionality can be ensured through the flexibility of the non-binding instrument as to the means of implementation, which guarantees that the initiative does not go beyond what is necessary to

achieve the objectives.

## C. Data collection and Better Regulation instruments

### Data collection

Article 59 of Directive 2005/36/EC on the recognition of professional qualifications imposes reporting obligations on Member States. Reports (referred to as national action plans in COM(2013) 676) to be submitted by Member States on 18 January 2016 will form the basis for the analysis of the reform needs in Member States. These action plans should constitute the outcome of the national screening of regulated professions. It should include the measures each Member State intends to take to modernise its regulatory framework where such a need has been identified. Further on, every two years Member States will have to report back to the Commission on those restrictions which have been lifted or made less stringent. In addition within 6 months of the adoption of new regulatory measures, Member States should inform the Commission. These reports will be duly analysed in view of potential guidance.

Information will also be collected through the database of regulated professions<sup>7</sup>. The database of regulated professions contains detailed information on professions regulated at national level. In the context of the transparency exercise, Member States have notified to the Commission via the database all professions they regulate. National competent authorities have been feeding the database with detailed information on the characteristics of each profession, conditions of entry and other restrictions. The information can easily be extracted and processed. It should serve as a basis for analysing and assessing the regulatory intensity of a given profession in each Member State including the cumulative effect of all barriers to entry and exercise. It should enable to make comparisons between Member States and professions.

During the mutual evaluation exercise 12 professions<sup>8</sup> were analysed more in detail and discussed during mutual evaluation meetings. These professions were selected as examples of the regulatory framework in which the professions of a given sector operate at national level. National reports were submitted by Member States, discussions took place with experts and the Commission wrote summary reports for each of the professions<sup>9</sup>.

The information collected in the context of infringement proceedings and the existing case law evidence concerning the regulation of professions will also be exploited to identify and shape guidance in specific areas.

Additional sources of information include an EU survey conducted in 2015 which provides comparable evidence on the prevalence of regulated professions at Member State level<sup>10</sup>. Academic studies, and in particular case studies analysing the economic impact of specific reforms of regulated professions will also be used (see e.g. [http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item\\_id=8525&lang=en](http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8525&lang=en)). Statistics, where available at the profession level, could be used to measure the performance of the profession/sub-sector with respect to other professions or Member States on the basis of multiple indicators (such as productivity or profit rates).

### Consultation approach

Discussions have already started in the course of the mutual evaluation exercise during which the Commission has brought together representatives from all national authorities as part of the Group of coordinators for the recognition of professional qualifications.

Discussions have also begun in Council formations where the Single Market Strategy was presented. For instance this initiative was presented and discussed on 9<sup>th</sup> November 2015 in the Competitiveness and Growth working party and in the High Level Group for Competitiveness and Growth on 3<sup>rd</sup> May 2016.

A major conference was organised on 18<sup>th</sup> May 2016 which gathered 300 participants composed of representatives from professional organisations, competent authorities and other stakeholders during which the outcomes and next steps of the mutual evaluation exercise were discussed.

Further to the events gathering targeted groups of stakeholders, the initiative will also benefit from the ongoing

<sup>7</sup> [http://ec.europa.eu/internal\\_market/qualifications/regprof/index.cfm?action=homepage](http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?action=homepage)

<sup>8</sup> architect, driving instructor, optician, civil engineer, physiotherapist, psychologist, hairdresser, tourist guide, sports instructor, electrician, real estate agent and dental hygienist

<sup>9</sup> Reports are available here : [http://ec.europa.eu/growth/single-market/services/free-movement-professionals/transparency-mutual-recognition/index\\_en.htm](http://ec.europa.eu/growth/single-market/services/free-movement-professionals/transparency-mutual-recognition/index_en.htm)

<sup>10</sup> To be published in July 2016 and available here: [http://ec.europa.eu/growth/single-market/services/free-movement-professionals/index\\_en.htm](http://ec.europa.eu/growth/single-market/services/free-movement-professionals/index_en.htm)

public consultation held in the context of the mutual evaluation exercise and which also include consulting the public on Member States' national action plans.

**Will an Implementation plan be established?**

Yes  No

No implementation plan is foreseen as the initiative does not entail implementing/transposition measures. Guidance will be developed on the basis of the data collected and the information gathered through the consultation process.

**Will an impact assessment be carried out for this initiative and/or possible follow-up initiatives?**

No impact assessment will be carried out for this initiative.

The initiative concerns an economic governance instrument (similar to recommendations) that provides country specific guidance/clarification with the aim of removing specific regulatory and non-regulatory barriers for specific professions in individual Member States. As such, it would not have direct impacts since the impacts depend on the degree of implementation by the Member States of the guidance provided. There is no environmental impact expected from this initiative.