

Appropriate regulation for a mobile (civil) engineering profession in Europe

Common Statement of the European Council of Civil Engineers (ECCE) and the European Council of Engineers Chambers (ECEC)

A. Background:

The importance of the engineering profession and civil engineering in particular, has been wrongly assessed by the European authorities in the later years, on the assumption that the only concept of engineering provides holistic capacities on the technology issues and multidisciplinary capacities, an error which has not been replicated in the health professions.

It is a pity that only natural disasters, such as the late seismic episodes in Italy, or infrastructure failures, such as New Orleans levees' failure during Hurricane Katrina or Fukushima or even the current Grenfell Tower fire are required to bring awareness of the importance of the profession and the need of regulations to protect final consumers of such services. Although these episodes may be considered extreme, operation, maintenance and design failures are not uncommon and consequent regulatory measures should prevent continued practice from negligent or unqualified professionals.

Such events show that engineering quality is a matter of health and safety. Lowering the standards of necessary knowledge, skills and competences considerably increases the risk of weak design and thus of personal damages and damages in buildings and infrastructure. The same applies to the elimination of legal systems protecting the independence of professional engineering services.

It is a fact that also the appropriate handling of today's society's challenges – from the consequences of climate change to extensive migration movements, a rapidly ageing population in Europe and a complete automatization of the working environment - will, to a considerable degree, depend on the availability of high quality engineering solutions.

And although it is true that professional regulation is by no means a guarantee for engineering excellence, it is certainly an indispensable basis for its growth. High quality engineering solutions require a solid basis of theoretical know-ledge, skills and competences and the legal framework.

Due to ever more rapid technical developments consumers/clients are faced with engineering services that are highly complex with fast-changing and innovative technologies. The information asymmetry between consumer/client and engineer is growing thus adequate professional regulation for the protection of consumers/clients is a growingly important part of professional regulation.

Global shortage of engineering professionals has underscored the need for intra-regional and inter-regional agile professional mobility frameworks. This is even more intense for the civil engineering sector, which represents almost half of the engineering population in Europe. Such has been the final objective of the European regulations regarding professional recognition in the last twenty years. Although we have to mention that if there is

a global shortage this will even increase in countries from where professionals are moving to another country. It is our common responsibility to find the ways and means to make engineering studies more attractive for the young generation, not only beginning at University but also starting in elementary and secondary education. Therefore a wide cooperation is required.

ECEC and ECCE together with FEANI do their best to draw attention of public, politics and legislators to the importance of engineering professions by periodically organizing Engineers Days in Brussel and again this year on 5 October 2017 in Vienna.

The professional mobility framework within the EU is regulated by Directive 2005/36/EC on Recognition of Professional qualifications amended by Directive 2013/55/EU.

The aim of this statement is to explain the interrelation between the evolution of EU's professional recognition legislation - including EC initiatives to encourage right of establishment of foreign civil engineering professionals in other countries – and the enforcement of independent high quality engineering services.

B. The main EC mobility enforcement approaches:

The European Commission has shown almost obsessive interest to try out all the instruments available within the Directive 2005/36/EC and its amendments through Directive 2013/55/EU due to the statistical data which addresses civil engineers within the most mobile qualified professionals by EU's regulated profession database¹ according to the data provided by Eurostat. The current “reform recommendations for regulation in professional services” and the EC services package as such – and the discussions about it - show the difficult struggle to find an appropriate balance between the necessity to enhance mobility and market access and thus the functioning of the internal market and at the same time protect public interests where necessary.

The results of the implementation of these Directives have shown that the horizontal approach of the Directives makes the adequate consideration of the differences between different professions sometimes difficult but very essential. For the evaluation of the adequate consideration of professional specialties competent authorities and professional Chambers are necessary partners.

Following are compiled the different EC initiatives in regard to the improvement of mobility and market access which have addressed the (civil) engineering profession:

- **Mechanisms for automatic recognition**

Since the coming into force of Directive 2005/36/EC, the European Commission has promoted the implementation of common platforms in order to waive any compensation measures derived from the professional recognition procedures. Great effort was committed for the civil engineering profession to become the first proposal for a common platform under Directive 2005/36/EC. The restrictive requisites for its implementation bore no fruit in the end, but the EC - still considering valid such an approach - has reduced the implementation

¹ Regulated professions Database - Professional moving abroad: [\[+\]](#), Temporary mobility: [\[+\]](#)

requisites and a new effort has been applied through the Common Training Principles (Common Training Test or Common Training Framework). In April 2016 the EC has contracted ECEC to develop – in cooperation with ECCE and other engineering organizations - proposals for Common Training Principles for Engineers covering all EEA countries. Although the interest of stakeholders in CTP for civil engineers was enormous, it was not possible to reach a common approach during the project period. As automatic recognition touches the foundation of national systems and their different ways of protecting public interests it is a very sensitive issue.

The professions of engineers have a complex history, evolution and characteristics correlated with the organization of the production of each country and thus a common approach is difficult.

For project results see: <http://www.ecec.net/common-training-principles-for-engineers/news/>

- **Digital recognition procedures**

The European Professional Card (EPC) as a simplified digital recognition procedure is considered a key element of Directive 2005/36/EC on the recognition of professional qualifications, as amended by Directive 2013/55/EU. On such grounds, the Commission launched a call for expressions of interest on 18 October 2013² and did indeed receive several such expressions also from national and European professional engineering organizations such as ECEC. After reviewing the main features of the professions interested in introducing the EPC, the Commission discarded engineering as a whole in the first implementation phase and declared that civil engineering should be differentiated from other engineering branches during its implementation. The decision about the implementation of the card is still awaited and is especially important in regard of the potential implementation of the European Services e-card.

Irrespective of the detailed position of ECEC and ECCE on the current European Services e-Card it is important to stress that the proposed system does not sufficiently ensure that justified professional requirements by the host Member State can be applied and that it is not possible to circumvent requirements of professional recognition by using the service – e-card.

While simplified digital recognition procedures can indeed bring benefits for engineering mobility, they will only work effectively when host Member States competent authorities / professional chambers are in the position to evaluate national professional requirements adequately.

- **Non-discrimination enforcement**

EU countries requested clarification of the status of regulated professions in the EU. Once more, the European Commission decided to address the civil engineering profession among the first professions to be evaluated. According to Article 59 of Directive 2005/36/EC and the EC communication on "Evaluating national regulations" from October 2013 Member States have examined whether requirements under their legal system regulating the access to the

² Consultation on introducing the European Professional Card (EPC) [\[+\]](#)

civil engineering profession were compatible with the principles of non-discrimination, justification by overriding reasons of general interest, suitable and not overly restrictive.

The first report on the transparency exercise contained a lot of mistakes and had to be amended in several phases and hearings. The process clearly showed once more the difficult balance between public interest and enforcement of mobility/market access by deregulation.

Beside the approaches based on Directive 2005/36/EC the EC has addressed professional (de)regulation also in its country specific recommendations since several years and has – based on the Services Directive 2006/123/EC and following extensive peer review procedures - also launched several infringement procedures against national professional regulations.

The Commission has become aware that there is strong opposition to a regulatory change on national professional recognition. On such grounds, the EC announced in the Single Market Strategy and - based on this - presented in January 2017 the services package with different approaches (services e-card, reform recommendations, and notification procedure and proportionality test) all of which aim to further open the internal market for professional services such as engineering services. Especially relevant for the professions are of course the legal proposal for a proportionality test for professional regulations and the “EC reform recommendations for regulation in professional services”.

Once again the current very intense and controversial discussion about the services package clearly shows the difficult balance between the interests of further opening the markets by de-regulation – which as the EC still firmly believes is the way to enforce mobility and stimulate economic growth - and the economic and safety interests of safeguarding public interest.

C. Impact assessment

- **Overestimated intra-regional impacts**

All these previous initiatives launched by the Commission are based on the main assumption that professional regulations have a negative impact on the provision of services and the mobility of professionals in EU's internal market.

Several studies have been promoted and funded by EC's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, one of which highlighted³ among its conclusions that around 700.000 more jobs could be created in the EU through addressing unnecessary and disproportionate regulations. Without assessing the study's quality, careful reading shows up a rather simplistic approach to achieve such figure, and what is even worse, authors declare “*we cannot provide any exact estimates of the impact of licensing on employment.*”

Such benefit and its potential externalities would have to be opposed to potential increases in professional liability insurance fees due to an increased risk assessment by the insurance

³ Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU [\[+\]](#)

sector which will be finally transferred as a cost to the client as well as the potential risk due to negligent or unqualified professional practice

Alternative case studies have shown, that with concrete examples the estimated huge positive economic effects could not be reproduced at all (e.g. Chini, Leo and Reiner, Elisabeth and Minichberger, Andreas and Grafl, Hannah. 2016: "Effects of Liberalization in Austria using the Example of Liberal Professions")

- **Unassessed inter-regional impacts**

Most of the unassessed inter-regional impacts require taking into consideration EU trade policy. EU's 2015 new trade policy is aware of the need to address not just interests but also values. Following have been compiled the professional frameworks for engineers in the signatory countries of Free Trade Agreements with the EU and other countries in negotiation.

- EU-Canada Comprehensive and Economic Trade Agreement
- EU-Mexico Global Agreement
- Transatlantic Trade and Investment Partnership (TTIP)
- The Mercosur Free Trade Agreement

All these Free Trade Agreements would provide a framework for recognition of professional qualifications between both territories through the implementation of a Mutual Recognition Agreement - MRA. All of those countries or regions regulate civil engineering licensure at least on current EU terms and in some cases even more strictly. So in fact strong professional regulation is a key requisite for reaching market access internationally.

- **Potential improvements to the current regulation framework**

The current professional recognition and mobility framework is far from perfect. There are still several topics that need to be addressed in order to provide a transparent, robust and efficient regulation and implementation which can respect the EU's internal market requirements for temporary services provision and free establishment. Professional practice monitoring and liability requirements for professional practice should be a must regarding professional mobility.

Although EU's Regulated Professions Database provides the following figures for civil engineers in the 2010-2015, Temporary mobility - 691 in contrast to Free establishment - 1.833 / 1.422 (ex - UK), it is clear that the temporary mobility has lower figures due to several reasons: temporary mobility schemes have not been correctly implemented in all EU countries and have unclear impacts on public procurement procedures. Where professional chambers also have the role of competent authorities the systems work better as they are better suited to check correct implementation and application for their professions. Their involvement is also cost effective and safeguards quality of services and good conduct.

Another relevant restriction of professional mobility is the fact that many – especially so called unregulated - countries have ex-post restriction e.g. in building laws etc. that practically hinder market access. Such "hidden regulations" are unfortunately not covered by

the new EC restrictiveness indicator, presented in the “EC reform recommendations for regulation in professional services”.

D. Conclusions

The legal proposals of the services package which all – partly or fully – relate to professional services such as engineering services will require the committed involvement of professional chambers in order to ensure effective implementation and application. This is also true for putting the “EC reform recommendations for regulation in professional services” into practice.

High qualified professions such as Chartered Engineers / Civil Engineers constitute a substantial element of the European civilization, as they have shaped the modern world and the traditions created by them are part of our heritage. In this perspective we believe that it is wrong approach, to attempt to disassembly into simple series of activities the practice of an historical professional institution, in which the cognitive parameters, ethics and the self – awareness of the members compose an essential element of the occupational profile.

Re-considering the reasons for justification of national professional regulation might therefore be an important next step in order to come to a broadly accepted and well-functioning balance of interests.

ECCE and ECEC are open to provide their views on any regulation regarding the (civil) engineering profession(s) – especially in regard to the descriptions in the “EC reform recommendations for regulation in professional services” and are committed to contribute through their national members organizations to achieve a robust, transparent, agile, efficient and failsafe regulation compliant with EU’s global needs for the (civil) engineering profession(s). It is though necessary to bear in mind the specifics of this public service oriented and highly-qualified professional sector especially in regard to the security and protection of all users of any public infrastructure or service. In this regard it is our common responsibility to draw attention to the importance of (civil) engineering education, in order to get more students to the profession. Global shortage can be cured by education only.