

# Appropriate regulation for the practice of civil engineering in Europe

ECCE's common perspective

*Position paper ratified by ECCE's 67<sup>th</sup> General Assembly Meeting  
held in Tallinn on June 1<sup>st</sup> 2018*

Introduction	2
<b>European Commission's previous initiatives</b>	<b>3</b>
Mechanisms for Automatic recognition	3
Common Platform - Art. 15 Directive 36/2005.	3
Common Training Framework - Art. 49a Directive 55/2013.	3
Cross-border services	3
European Professional Card - Art. 4a-4e Directive 55/2013	3
European Services e-Card Directive & legal's and operational framework Proposal	4
Transparency Exercise stance - Art. 59 Directive 55/2013	4
Proportionality Test Directive Proposal before adoption of new regulation of professions.	5
<b>Impact assessment</b>	<b>5</b>
Overestimated intra-regional impacts	5
Unassessed inter-regional impacts	6
EU-Canada Comprehensive and Economic Trade Agreement	6
EU-Mexico Global Agreement	6
Transatlantic Trade and Investment Partnership (TTIP) Status: Dormant	7
The Mercosur Free Trade Agreement Status: In negotiation	7
<b>Potential Enhancements to the current regulation framework</b>	<b>7</b>
Professional practice monitoring	7
Liability requirements	8
Involving Professional chambers in cross-border services	8
<b>Conclusions</b>	<b>8</b>

## Introduction

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, error which has not been replicated in the health professions. It is a pity that natural disasters, such as the late seismic episodes in Italy, or infrastructure failures, such as New Orleans levees' failure during Hurricane Katrina or Fukushima, are needed in order to bring awareness of the importance of the profession. Although these episodes may be considered extreme, operation, maintenance and design failures are not uncommon and mechanisms should prevent continued practice from negligent or unqualified professionals. Thus the need of new regulations to protect final consumers of such services is a must.

On the other hand, global shortage of engineering professionals across 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.

The professional mobility framework regulated by the EU under 2005/36 EC Directive on Recognition of Professional qualifications defined two mobility modes for civil engineers within: temporary cross-border services and a general system for professional recognition and free establishment in a host country. Such framework has been perfected by different European Court of Justice's case law rulings. The principles behind those rulings have been incorporated into the new directive 2013/55 EC which basically amends 2005/36 EC Directive on the recognition of professional qualifications.

The aim of this document is to brief stakeholders on the evolution of EU's professional recognition legislation since Directive 36/2005, including EC initiatives to encourage right of establishment of foreign civil engineering professionals in other countries. Most of these initiatives have overestimated intra-regional positive impacts overlooking inter-regional impacts derived from Free Trade Agreements. The document concludes with the European Council of Civil Engineers' views on the current framework in force and on the new initiatives proposed by the European Commission.

### *Compensation measures: an issue*

Compensation measures were provided within the directive 2005/36 to overcome the potential dissimilarities present in curricula from different member states. Compensation measures have always become an issue regarding professional recognition procedures. Biased interpretations from national authorities were finally brought up in court and the European Court of Justice in ECJ's ruling in the Colegio de Ingenieros de Caminos, Canales y Puertos case (2006) limited the maximum period assignable to compensation measures and ruled that professional recognition may not provide further areas of competence in the host country from those obtained in your country of origin, giving birth to the concept of partial recognition (fully incorporated in art. 4f 2013/55 EC).

## European Commission's previous initiatives

Contrary to the impression of being a subsidiary profession, Europe has shown almost obsessive interest to try out all the instruments available within the 2006/35 Directive and its amendments through Directive 2013/55 due to the statistical data which addresses civil engineers within the most mobile qualified professionals by EU's regulated profession database<sup>1</sup> according to the data provided by Eurostat.

Following are compiled the different initiatives which have addressed the civil engineering profession and the outcomes of its different iterations.

### Mechanisms for Automatic recognition

#### Common Platform - Art. 15 Directive 36/2005.

Since the coming into force, 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 from outside the profession was committed for the civil engineering profession to become the first proposal for a common platform under Directive 36/2005. The restrictive requisites for its implementation bore no fruit in the end, but the EC stills considering valid such approach, has reduced the implementation requisites and a new effort has been applied through the Common Training Framework.

#### Common Training Framework - Art. 49a Directive 55/2013.

Following 'Common Platforms', previous experience, European Commission formulated a potential automatic recognition on the basis of common training principles by implementing a 'common training framework' -CTF. Preliminary studies provided by the European Council of Engineering Chambers through its EC's funded Common Training Principles for Engineers' Final Project Report<sup>2</sup> (491/PP/GRO/IMA/15/15123), which begun as an assessment for all EU's engineering profession and narrowed itself to the civil engineering profession of on CTF have shown the difficulties to implement such framework, among others, addressed by ECCE's contribution to such discussion.

### Cross-border services

#### European Professional Card - Art. 4a-4e Directive 55/2013

The European Professional Card (EPC) 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 2013<sup>3</sup>, asking national and EU-wide professional organisations and associations whether they were interested in introducing the European Professional Card (EPC).

---

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

<sup>2</sup> Common Training Principles for Engineers - Final Project Report [\[+\]](#)

<sup>3</sup> Consultation on introducing the European Professional Card (EPC) [\[+\]](#)

After reviewing the main features of the professions interested in introducing the EPC, the Commission discarded engineering as a whole from these first implementations and declared that civil engineering should be differentiated from other engineering branches during its implementation.

## European Services e-Card Directive & legal's and operational framework Proposal

The European Commission considers there is still a large potential for growth and jobs that remains to be captured and that EU services markets would benefit from faster productivity growth and a more efficient allocation of resources through a better cross-border services framework. This proposal offers this e-card scheme to service providers under Section F-Construction rev.2 codes from *Nomenclature statistique des activités économiques dans la Communauté européenne*. - Statistical classification of economic activities in the European Community - NACE, including construction of buildings, civil engineering and other specialised construction activities.

Prior to any deep analysis on the Directive's text, ECCE would be interested in clarifying the role of professional chambers, either as competent authorities or registration institutions its involvement in the monitoring of professional practice and the potential overextension of scope of authorization on host countries by unqualified professionals to destination countries professional scope of authorization. Another concern arisen among professional chambers is who will be responsible for updating any changes in the data provided by stakeholders or the service provider itself into this system.

Any proposal should be fully compliant to the procedure it aims to substitute such as the communication of cross-border services to a destination country. We are pending to exchange our views with the *Fédération de l'industrie européenne de la construction* - FIEC, European social partners of the construction sector, which has expressed some other fundamental concerns about the legislative proposals on the European services e-card, questioning their real added-value to strengthen the European Single market.

## Transparency Exercise stance - Art. 59 Directive 55/2013

EU countries requested clarification of the status of regulated professions in the EU. At their request, the European Commission included on Directive 55/2013 the obligation of Member States to conduct a transparency and mutual evaluation exercise. The aim is to provide a comprehensive overview of regulated professions in the EU.

Once more, European Commission decided to address the civil engineering profession among the first professions to be evaluated. On such Transparency exercises, Member States examine whether requirements under their legal system restricting the access to the civil engineering profession were compatible with the following principles of non-discrimination, justification by overriding reasons of general interest, suitable and not overly restrictive.

Such initiative has been developed throughout 2014 up to 2016, being the later stance several recommendations issued by the Commission to member states. The first report on

the transparency exercise regarding the civil engineering profession<sup>4</sup> was heavily amended by European Council of Civil Engineers' member organizations due to some “*misreadings or misunderstandings*” stated by the authors in the report, within the analysis of the transparency exercise contributions.

Unfortunately, the Commission has interpreted the several claims of general interest by a big number of contributors, bringing some recommendations to member states to justify themselves for the need for the following initiative.

## Proportionality Test Directive Proposal before adoption of new regulation of professions.

The Commission has become aware that there is strong opposition to a regulatory change on professional recognition through a Directive itself. On such grounds, the EC announced in the Single Market Strategy an initiative laying down a proportionality test to be used by Member States before adopting or amending national regulations of professions. This proportionality test has been laid out as a time trap as any other EU regulation may trigger a potential new regulation scheme for professions in the member states, requiring compliance to this new proportionality test Directive.

This Single Market Strategy encompasses too diverse professions to be addressed in accordance to some general principles to be interpreted by the Commission, rather than by its member states. Assumptions of employment increase through simplified econometric models cannot provide enough momentum to reform delicate professional regulations schemes such as the civil engineering profession without the agreement and compliance of all stakeholders, in which professional chambers need to be included.

## Impact assessment

### Overestimated intra-regional impacts

All these previous initiatives launched by the Commission are based on several assumptions which have been repeated during the last months which may lack good foundations in regards of the civil engineering sector.

EC's position states that uneven professional regulations have a negative impact on the provision of services and the mobility of professional in EU's internal market. On such principles, several studies have been promoted and funded by EC's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, one of which highlighted<sup>5</sup> 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*

---

<sup>4</sup> Overview of the regulatory framework in the construction sector by using the example of civil engineers [\[+\]](#)

<sup>5</sup> Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU [\[+\]](#)

*employment.” or “We find no such significant relationship between licensing and employment.”*

In any case, such studies are not specific to the engineering profession, as can be concluded by the two quotes provided in the study on the engineering profession, but if applicable, the study assesses a potential 3 per cent positive impact on employment under the category of ‘professionals’ if such regulation could be optimized. Bearing in mind, that such benefit would be applied to professionals requesting free establishment, and taking into account EU’s Regulated Professions Database 2010-2015 figures for civil engineers - 1.833 / 1.421 (ex UK) would provide an increase on employment of 3% = 55 / 42 new professionals.

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 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.

## 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. On such grounds, EU’s trade policy declares the need tackle a wider range of issues if the EU is to secure its place in global value chains, such as providing support for the mobility of professionals. Not addressing such aspects would clearly bring momentum to Free Trade Agreement critics.

Following have been compiled the professional framework 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

**Status:** In force

EU-Canada Comprehensive and Economic Trade Agreement’s Chapter 11 provides a framework for recognition professional qualifications between both territories through the implementation of a Mutual Recognition Agreement - MRA. Currently, Canada’s experience in MRA’s through North American Free Trade Agreement - NAFTA has entitled full competence temporary licensure to any signatory competent authorities. This treaty has only been confirmed by the State of Texas, and requires undertaking the same procedure as nationals for final recognition for free establishment. Professional practice of civil engineering in Canada, as well as all other branches of engineering, is thoroughly regulated through Professional Engineering provincial licensure bodies coordinated under the umbrella organization Engineers Canada.

## EU-Mexico Global Agreement

**Status:** In force and in current renegotiation

Since 2013, Mexico and EU have been updating EU-Mexico’s Global Agreement signed in 2001. Professional licensure of civil engineering is regulated in Mexico through its competent

authority, Dirección General de Profesiones coordinated under Mexico's Secretary of Education. Further regulation and monitoring is provided by regional professional chambers.

## Transatlantic Trade and Investment Partnership (TTIP)

**Status:** Dormant

Although TTIP's future is uncertain, prior TTIP negotiations addressed inter-regional provision of engineering services on the same grounds as NAFTA MRA protocols, as Professional Engineering licensure schemes are in the US through Professional Engineering licensing boards coordinated under the National Council of Examinations of Engineers and Surveyors - NCEES. NCEE's Position Statement 35<sup>6</sup> enforces higher education requirements for licensure.

## The Mercosur Free Trade Agreement

**Status:** In negotiation

Different from all other examples as MERCOSUR is an economic bloc, mobility schemes for inter-regional provisions of engineering services need to connect both EU and MERCOSUR professional recognition schemes. Such schemes are far from similar although MERCOSUR countries regulate the engineering profession in its 6 countries through their respective competent authorities and professional mobility within MERCOSUR is addressed by a specific mobility authority for the engineering profession called COMISIÓN DE INTEGRACIÓN DE LA AGRIMENSURA, AGRONOMÍA, ARQUITECTURA, GEOLOGÍA E INGENIERÍA PARA EL MERCOSUR - CIAM.

# Potential Enhancements 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 honour the EU's internal market requirements for temporary services provision and free establishment. Following are several issues to be addressed and articulated within the different instruments the Commission has presented in the last months.

## Professional practice monitoring

Professional practice monitoring should be a must regarding professional mobility. Non communication of professional malpractice to IMI would entail negligence by all the stakeholders in the process. Current wording sidelines national registration providing access to the framework by non-registered professionals. Non-registration would entail risks of inter EU practice provided by professionals with forbidden or restricted country in their original country or professional returning to their home country once restricted in another host country.

---

<sup>6</sup>NCEES Position Statement on Future Education Requirements for Engineering Licensure - PS 35  
<http://ncees.org/about/publications/ncees-position-statement-35/>

Such topic has been addressed for health professionals and primary education in the establishment the European Professional Card, but needs to be clarified if it will also be included for the civil engineering profession.

This position has been also assumed by ECEC in its Common Training Principles for Engineers' Final Project Report (491/PP/GRO/IMA/15/15123) declaring that *The idea of a malpractice check in the way that the CTF certificate (to be further defined) from the home country has to state also that the applicant is not subject of an occupational ban or disciplinary procedure in the home country as already provided for in the Directive with Art. 50 and Annex VII. of the 55/2013 Directive.*

## Liability requirements

It is desirable that liability and personal indemnity requirements for health professions within the Directive 55/2013 should be applicable to civil engineering; cross-border services should require proof of license certificate for professional practice but also proof of liability insurance. The current framework does not cover such requisites, providing a breach of recognized professionals who may not be compliant to professional liability according to destination country's rules, an issue which would not happen if requesting cross-border services temporary licensure.

## Professional chambers role within the EU regulation framework

Although EU's Regulated Professions Database provide 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 implemented in all EU countries (i.e. UK), such mechanism is less known by the civil engineering profession and has unclear effectiveness in public procurement procedures, giving preference to the professional recognition scheme. To overcome such situation, the involvement of professional chambers is crucial to provide guidance and counsel to civil engineering professional in their activity of its country of origin.

Such involvement would reduce costs and will commit professional chambers in bringing awareness of the existing procedures to origin-registered professionals practicing civil engineering on another country ignorant of such obligation and enable better practice monitoring of the profession as a whole.

## Conclusions

ECCE is open to provide any EU stakeholder its views on any regulation regarding the civil engineering profession and is committed to contribute through its members organizations to achieve a robust, transparent, agile, efficient and failsafe regulation compliant with EU's global needs for the civil engineering profession, both intra-regional and inter-regional in order to cope with the global shortage of civil engineering professionals. On such grounds, ECCE considers:

- **New EU regulation will lack applicability without the committed involvement of professional chambers, concurring views with the European Council of**

**Engineering Chambers - ECEC**, and other stakeholders in its discussion, implementation and operation.

- Any **new EU regulation on professional issues is to be discussed and agreed after a thorough assessment**, taking into account both intra-regional and inter-regional mobility.
- **EU regulations should provide a balanced framework as primary requisite to implement extra-EU professional mobility** under the coverage of EU's current and future Free Trade Agreements - FTAs.
- All **professional recognition regulations regarding civil engineering should bear in mind the specifics of this public service oriented and highly-qualified professional sector** with a duty of care towards all users of any public infrastructure or service.

Specific documents will be developed regarding ECCE's views on each European Commission's initiative in the following months.

ECCE Executive Board  
June 2018