

Appropriate regulation for the practice of civil engineering in Europe - Abridged version

ECCE's common perspective

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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 required to bring awareness of the importance of the profession and the need of new regulations to protect final consumers of such services. 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.

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.

Contrary to the impression of being a subsidiary profession, the European 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 database¹ 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

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.

Cross-border services

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 2013². 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.

Prior to any deep analysis to the European Services e-Card Directive & legal's and operational framework proposal 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.

Non-discrimination enforcement

EU countries requested clarification of the status 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.

The first report on the transparency exercise regarding the civil engineering profession³ was heavily amended by European Council of Civil Engineers' member organizations due to

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

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

³ Overview of the regulatory framework in the construction sector by using the example of civil engineers [\[+\]](#)

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.

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.

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 highlighted⁴ 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 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. Following have been compiled the professional framework for engineers in the

⁴ Measuring Prevalence and Labour Market Impacts of Occupational Regulation in the EU [\[+\]](#)

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 provide a framework for recognition 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.

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. Professional practice monitoring should be a must regarding professional mobility. Liability and personal indemnity requirements for professional practice should be desirable respecting current national legislation on professional practice.

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. The involvement of professional chambers would reduce costs and will commit them chambers in bringing awareness of the existing procedures to potential infractors.

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.

Further information on the topic may be consulted in the report's full version: http://www.ecceengineers.eu/position_papers/files/Appropriate-regulation-for-the-practice-of-civil-engineering-in-Europe.pdf

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

ECCE Executive Board
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