



European Council of the Liberal Professions

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CEPLIS wishes once more to welcome the initiative of the European Commission to reduce red tape and to simplify administrative formalities within the Single Market in order to foster the mobility of professionals and of services.

The following remarks are aiming at contributing to the logistical improvement of the Commission's proposals.

1. Regulation of the European Parliament and of the Council introducing a European electronic service card and administrative structures

1.1 Services e-card and European professional card

One of the main problems identified is the possible confusion that could arise with other existing digital tools, such as the European professional card, still being tested. Indeed, the absence of a clear distinction between the material uses of the service card and the professional card (and a general and automatic system of qualifications recognition in general) is not sufficiently clarified and the Commission's reply to CEPLIS' earlier statement, by which it excludes any possible interference, does not take into account the composite nature of services offered by professionals in the market, even throughout the company forms in which they operate. It is therefore considered appropriate to avoid the proliferation of different instruments, which may create confusion and additional administrative obligations. It is also considered important that the professional world keeps the differentiated treatment obtained at the time, with the exclusion from the system of Services Directive and the subsequent implementing and review acts, as also highlighted by the EESC in its opinion.

1.2 "State of origin" principle

Another critical issue identified is the potential loss of control by the State of destination on services performed on its territory. CEPLIS considers extremely important to avoid the "principle of the State of origin", so that the State of destination may retain the power to not authorize the issuance of e-cards for reasons of public interest and to guarantee the quality and safety of professional services offered. One last critic is the lack of any indication of the document's life. In order to avoid abuses, it is necessary to indicate the validity of the e-card.

2. Directive of the European Parliament and of the Council on the enforcement of the Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services, and amending Directive 2006/123/EC and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System

CEPLIS acknowledges that the content of the Commission's proposal about the notification procedure is an attempt to make the notification procedure more effective and to increase transparency, especially through the publication of Member States' notifications on a dedicated website.

Furthermore, we must point out that the proposed system does not appear to ensure any effective utility and that on the contrary, it risks entailing an excessive influence/ interference of the European Commission on the decisions of Member States when it comes to new measures and changes to regulations, which are their own exclusive prerogative. The introduction of a three-months consultation on notified measures, as stated by the proposal, appears to be excessively intrusive in decisions on matters which are the prerogative of the Member States. Finally, the measures included in the proposal could create additional administrative obligations for Member States.

3. Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions

The reasons for this proposal for a directive that, especially in art. 5 and 6, tends to codify the principles developed by the case-law of the Court of Justice are found in the need to comply with the legislative activity of the Member States since the adoption of national legislative measures, in order to prevent national legislation from being against to such case-law, and, subsequently, being subject to declarations of incompatibility with the European law. However, the use of the instrument of the Directive is valuable, since it leaves the member States the choice of concrete ways to articulate this form of control.

CEPLIS agrees with the basic philosophy that tends to harmonize professional regulations to make more effective the mobility of professionals within the Union, which at the moment is not satisfactory yet, but it has to point out some of the critical issues contained in the European Commission's proposal.

3.1 Individuation of the criteria of merit

First, regarding the criteria, the initiative appears to overlap with the requirements already laid down in the Qualification Directive, with particular reference to the proportional, necessary and non-discriminatory character of any regulation. Moreover, as is the case with the codification of case-law, there might be an excessive crystallization of principles which, in European jurisprudence, are constantly changing. Finally, it is noticed that the list of criteria relating to the proportionality test reflects the fundamental reasons for the traditional regulations of the professions governed by professional orders, while different may be the impact on so-called new professions or on regulated professions existing in different fields, which often have no justification based on the contents of art. 5 and 6 of the proposed Directive.

3.2 Proportionality test, procedure, independent scrutiny bodies

CEPLIS also points out the criticality of a possible weakening of the Member States' decision-making power in relation to regulations, in particular when it comes to the procedure and to the monitoring mechanism on the proportionality test, to be carried out by an independent scrutiny bodies. In most cases, restrictions on access to professions derive from legislative measures at national or regional level, therefore the test should be articulated in the course of legislative procedures of States and regions, as a constraint to the legislative function. This expectation is certainly limited by constitutional provisions since no proportionality-testing mechanism involving authority that are external or independent from national or

regional legislators with binding effect on the legislative process, can be considered eligible. In this respect, we agree with the amendment 22 proposed by the Legal Affairs Committee of the European Parliament, which tends to abolish the reference to the “independent supervisory authority”, as set out in the Commission proposal. In this context CEPLIS notes the need for the application of the Subsidiary Principle in the spirit of the EU Treaties and in the light of the several times expressed wish of the European citizens for EU rules designed to be efficient and fair.

3.3 Common criteria: generalization

Another critical issue to be eliminated is that the harmonization of the proportionality test may tend to an over-generalization of the criteria with the consequent risk of not meeting the specificities of certain professional regulations and of being incompatible with the principle of self-regulation of the professions.

3.4 The Role of Professional Associations in the procedure

Finally, we must point out that for the professional associations represented by CEPLIS, the provision of art. 7 of the proposal for a Directive, which binds in any case the early procedure for testing the proportionality test while transposing the Directive in the sense of providing means that establish the involvement of concerned professional associations. We therefore oppose the Amendment 26 of the Legal Affairs Committee of the European Parliament, proposing to abolish this reference to associations. We believe that such involvement of the “professional organisations” is necessary, appropriate and binding, as also EESC referred to in his opinion.

4. Communication from the Commission to the European Parliament, the Council -, the European Economic and Social Committee and the Committee of the Regions on reform recommendations for regulation in professional services

CEPLIS believes it must point out that some of the reform recommendations for regulation in professional services, contained in the Communication from the Commission, don't seem to adequately take into consideration the specificity of liberal professions, in particular when it comes to the recommendations about the reserves of activities and the existence of different regulatory models within EU. While welcoming the efforts made by the Commission, we consider that for the liberal professions, the adoption of new indicators should be accompanied with the need to guarantee the high quality of the professional services, to best protect the public interest.

The “restrictiveness indicator” introduced by the Commission will therefore have to avoid excessive generalisation. Therefore, possible regulatory actions required to the Member States and aiming to reduce or eliminate the restrictiveness of their regulations in the key economic sectors identified by the Commission, will nevertheless have to guarantee that the professional performances keep high quality and safety standards in the overriding public interest.

Final Remarks: CEPLIS reminds that the Regulated Professions of healthcare were excluded from the scope of the Directive on Services in the Internal Market. We feel it is only logical that they should be excluded from the scope of the present proposals of the European Commission for the very same reasons that led to their exclusions from the said Directive.