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### 1. A Services Package that works for Europeans

On 10 January the European Commission published its long awaited legislative package on services. Real estate agents are amongst those regulated professions directly targeted. Therefore this edition of the newsletter will focus entirely on the provisions of this package. The Commission is not re-opening the Services Directive, it is basing this package on existing legislation, notably the Services Directive and the Professional Qualifications Directive. The package itself contains a number of measures, some are in the form of legislation and, once passed, will be legally binding, others are recommendations addressed directly to Member States. The overriding objective is to make it easier for companies and professionals to provide services throughout the EU. Services represent two thirds of the EU economy and generate 90% of new jobs, but there remains concern that the single market for services still does not function properly. The Commission hopes that this package will provide the services sector with the boost which it needs.

The package consists of four concrete initiatives. They contain their own separate provisions but are intended to complement each other. Each will be referred to in detail below, but briefly they consist of:

- A new European Services e-card;
- A proportionality assessment of national rules on professional services;
- Guidance on national reforms in regulation of professions (including real estate agents);
- Improved notification of draft national laws on services.

### 2. A New European Services E-card

The European services e-card (previously called the European services passport) is an electronic procedure to make it easier for providers of business services and construction services to complete the administrative formalities required to provide services in another EU country. It follows a similar procedure to that already established for the European Professional Card which is available for estate agents. The application will be made in the home country and national language. The home country will verify the data and transmit it to the host Member State (with automatic translation) via the Internal Market Information System. The host Member State will assess the application, applying its domestic requirements, and can reject it if justified. A service provider can request an e-card for a specific service activity in a given EU Member State. The e-card will be available both for temporary provision of services and for opening up branches and agencies (secondary establishment). It is a voluntary procedure, and will be available to both self-employed people and companies.

### 3. A Proportionality Assessment of National Rules on Professional Services

The proportionality test aims to guide the way Member States assess whether new service regulations are needed. It is intended to be used when new legislation is proposed, or changes are made. The Commission, together with Member States, has completed an extensive mutual evaluation exercise concerning existing legislation. The proposed directive will require Member States to:

- Clearly identify the risk to consumers, the level of that risk and how specific measures work to guard against it;
- Consider the effects of the new measure on business, job creation and consumers, taking account of the measures already in place;
- Consider the accumulation of various layers of regulation to ensure that each is justified and guard against the real risks the specific measures aim to guard against.

The test is to be conducted as part of the decision making process before new legislation is adopted. It is up to the Member State to decide exactly and at what level (central or regional) the test is carried out. The decision to regulate remains the responsibility of the Member State, not the Commission. The decision to regulate needs to be evidence-based following a thorough, transparent and objective assessment.

#### 4. Guidance on National Reforms on Regulation of Professions

The guidance indicates to Member States where regulation in professional services can be improved. It focuses on professional services such as architectural, engineering, legal and accounting as well as patent agents, real estate agents and tourist guides (chosen because of their economic importance and potential scope for further growth and employment creation). The guidance presents an analysis of the selected sectors and specific recommendations to Member States on how to improve access to and exercise of those professions at national level.

The recommendations are published in a communication from the Commission, which is a policy document and not legally binding. However the Commission will monitor the implementation of the recommendations together with the Member States and propose, where appropriate, measures to address remaining barriers. This could include enforcement action as regards possible violations of EU law or legislative proposals to address remaining burdensome requirements.

The communication contains an analysis of the selected professions and also per country, including a quantitative and qualitative assessment of the level of restriction. With regard to real estate agents it notes that the regulatory approaches in the real estate sector vary significantly across countries. In some countries the profession has been regulated for some time (e.g. since 1973 in Austria), in others regulation was introduced more recently (e.g. in 2011 in Ireland). There are three countries which intend to regulate access to the profession (the Czech Republic, Germany and Slovakia). However the Netherlands, Poland and Portugal have recently deregulated.

At present estate agents are regulated in fourteen Member States: Austria, Belgium, Croatia, Cyprus, Denmark, Finland, France, Hungary, Ireland, Italy, Luxembourg, Slovakia, Slovenia and Sweden, with some regional regulation of real estate agents' activities in Spain. Most countries have similar activities reserved for real estate agents (acting as an intermediary between buyers and sellers of real property including giving advice). In some countries real estate agents perform additional tasks, with licenced real estate agents in Nordic countries providing legal advice within their level of expertise.

The communication notes that both the countries with a relatively low level of regulation and those with higher requirements have additional means to ensure consumer protection and fraud prevention. In countries which do not regulate the profession, the interests of consumers are protected by other means such as general legislation on consumer protection, civil and criminal law and professional conduct rules. Self-regulation and voluntary certification systems serve as an alternative to regulation (e.g. in the Czech Republic, Lithuania, the Netherlands, Poland and the UK).

The specific recommendations addressed to Member States are:

- Austria, Cyprus, Ireland, Luxembourg, Slovenia and Sweden should take into consideration the possibility of opening to other professionals the activities currently exclusively reserved to estate agents.
- Austria, Belgium, Cyprus, Denmark, France, Ireland, Slovakia and Sweden should evaluate to what extent the duration of mandatory qualification requirements is indispensable in view of the tasks pursued by estate agents and the objectives of regulation.
- Belgium, Croatia, Cyprus, Finland, Italy and Sweden should consider the possibility of alternative pathways to access the profession.
- Belgium should evaluate the need for shareholding and voting rights restrictions.
- Slovenia should reconsider its citizenship requirement for real estate agents.
- As part of the forthcoming reform, the Czech Republic should avoid multiple layers of regulation and assess in detail whether the objective of consumer protection could be ensured by less restrictive means, such as introducing a protected title.
- Germany should monitor ongoing debates to introduce new regulation and base any change in regulation on solid proportionality assessments.
- Italy should evaluate the necessity and proportionality of prohibitions on incompatible activities.
- Spain should review existing regional regulations, as they could lead to confusion regarding access to and exercise of this profession and could create obstacles to mobility.
- Slovakia should remove the requirement for the holders of qualifications from other EU Member States to undergo a procedure for academic recognition of diplomas.

With the communication the Commission has published a staff working document which provides background information for the recommendations made by the Commission. This includes the economic impact, information about the work undertaken by the Member States and the Commission in the framework of the mutual evaluation exercise, the regulatory situation in each Member State and explanations of the methodology used. Most Member States have already published national action plans, as part of the mutual evaluation exercise, however Cyprus, Greece, Hungary, Ireland, Malta, Slovenia and Spain have not yet done so.

## 5. Improved Notification of Draft National Law on Services

At present Member States must notify the Commission of certain new requirements covered by the Services Directive concerning both the establishment of a services provider in a Member State and the cross-border provision of services. If necessary the Commission can take a legally binding decision requesting the Member State to bring the notified measures into line with EU law.

Evaluation of the existing procedure identified a number of difficulties, with the scope of the obligation being unclear. The proposal for a new notification procedure will oblige Member States to notify measures before the final adoption when adjustments to the new rules can still be made. Member States will continue to notify the draft measures to the Commission and other Member States in the Internal Market Information system, but a new interface will be created so that external stakeholders will be able to see proposed measures. There will be a three month consultation period, during which time stakeholders can also issue comments. If, after the consultation period, the Commission still has substantive concerns over the compliance of the notified measure with the Services Directive, it may issue an alert followed by a Commission decision on the legality of the notified measure. The decision would require the Member State to bring its national rules in line with the Services Directive.

The draft legislative proposals on the services e-card, proportionality test and services notification procedure will now be sent to the European Parliament and Council for adoption. The implementation of the guidance on reform needs will be the responsibility of the Member States. The Commission will monitor and assess progress, and may turn to other enforcement measures if progress is unsatisfactory. The European Council called for the different Single Market strategies (of which this package forms part) to be completed and implemented by 2018.

### Useful links

[www.cepi.eu](http://www.cepi.eu)

A Services Package that works for Europeans

[http://europa.eu/rapid/press-release\\_IP-17-23\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-17-23_en.htm?locale=en)

Proposal for a European Services E-card

[http://europa.eu/rapid/press-release\\_IP-17-23\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-17-23_en.htm?locale=en)

Proposal for a Services Notification Procedure

<http://ec.europa.eu/DocsRoom/documents/20502>

Proposal for a Proportionality Test

<http://ec.europa.eu/DocsRoom/documents/20504>

Guidance on reform needs for Member States in regulation of professional services

<http://ec.europa.eu/DocsRoom/documents/20505>