

De-regulation EU Trend vs Physiotherapy

(Informative note)

Brussels, 21 May 2015

DE-REGULATION EU TREND VS PHYSIOTHERAPY

How the EU Directive on Recognition of professional qualifications, the single market act to create jobs, TTIP and REFIT may affect our profession and its practice

Table of Contents

1.- Background.....	1
2.- Direct reason for the revision of the professions regulation.....	2
3.- ER-WCPT following up this implementation process. Current situation.....	3
4.- How the European Commission, with the Member States, understands and is doing this evaluation and mutual evaluation exercise	3 - 5
5.- Indirect EU Actions also supporting this trend of de-regulation	
5.1.- TTIP	5 - 6
5.2.- Work programme of the Commission 2015 – REFIT.....	6 - 7
6.- Conclusions.....	7

1.- Background

EU Treaties endow citizens of the Member States with the right to live and work anywhere in the single market and to be treated in the same manner as citizens of the host Member State (MS) when they seek to provide their services, either temporarily or through permanent establishment.

Differences in the qualifications required by each MS as a condition for the exercise of a profession can act as barriers to the realisation of these rights. Effective mechanisms for the mutual recognition of qualifications between MS are thus essential building blocks of the single market.

A legislative framework on recognition of professional qualifications has been developed since the 1960s.

The directive which will regulate the recognition of the professional titles during the next years is the Directive [2013/55/EU](#), which entered into force on 17 January 2014 and must be implemented by all MS at the latest by 16 January 2016. Further information on the Directive, see this [LINK](#)

2. – Direct reason for the revision of the professions regulation (Transparency and Mutual Evaluation of regulated professions)

Article 59 of the [Directive says](#):

“Member States shall examine whether requirements under their legal system restricting the access to a profession or its pursuit to the holders of a specific professional qualification, including the use of professional titles and the professional activities allowed under such title, referred to in this Article as ‘requirements’ are compatible with the following principles:

- (a) requirements must be neither directly nor indirectly discriminatory on the basis of nationality or residence;
- (b) requirements must be justified by overriding reasons of general interest;
- (c) requirements must be suitable for securing the attainment of the objective pursued and must not go beyond what is necessary to attain that objective”;

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MS agreed to a **transparency and mutual evaluation exercise**, which has basically two aims:

- Simplifying and improving citizens' access to information on regulated professions and
- Committing Member States to review the requirements they impose as regards access to and pursuit of regulated professions.

In this context the European Commission (EC) would like to recall that in order to improve access to professions and to facilitate the mobility of qualified professionals within the internal market as well as the cross-border provision of professional services, a more flexible and transparent regulatory environment in MS should have a positive impact on the employment situation.

3. ER-WCPT following up this implementation process. Current situation.

The ER-WCPT, through its EU Matters WG, is following the EC actions on this topic and has contacted the EC in order to clarify the scope of this evaluation and evaluation exercise, since in our understanding **regulatory national restrictions to access to the profession** could refer to unnecessary bureaucratic procedures and processes that impede the recognition process to facilitate mobility across the Member States.

Examples of such bureaucratic processes could include compulsory registration with a professional body in the host MS for which a (high) fee is required, or requirements which are not usually required within that MS for its nationals. But a good example of evaluation procedure could be a members' fee to the professional body to support evaluation procedures for CPD portfolio of the professionals.

Furthermore, colleagues and staff of ER-WCPT Member Organisations have attended events on behalf of the ER-WCPT events to continue mapping and presenting the above position of the European Region for Physiotherapy.

(For further information and Besides EU WG minutes and plans, please see correspondence from the secretariat on this topic sent on 10/10/2014 & Newsletter 46, October 2014).

All ER WGs have also been working and collaborating since September 2014 till date.

4. How the European Commission (EC), with the Member States, understands and is doing this evaluation and mutual evaluation exercise.

According to the EC words, the purpose of the evaluation is to review the relevant national regulations and to arrive at the removal of unjustified barriers. Thus, the national measures that are proportionate and non-discriminatory shall pass the test.

- For the **transparency exercise**, each MS has to report the list of professions it regulates, including those at regional level. The EC has published the information on the [Regulated Professions Database](#) (an online index of all the professions regulated within the EU) that allows citizens to learn more about professional access requirements across the Union.

- To **review of national regulations on access to regulated professions and evaluation between MS¹** the process invites MS to conduct between 2014 and 2016 a mutual evaluation of the respective barriers they have in place limiting the access to certain professions.

The second aspect of this agreement, the **Mutual Evaluation**, is now underway and due to be completed in spring 2016.

For practical reasons the professions have been grouped into two clusters. The Health Professions are under cluster 2. For each cluster, 6 professions have been chosen for discussion and physiotherapist is one of them.

A meeting of the MS national authorities took place on 6 March 2015. At the meeting the following topics have been discussed:

- Many MS explain that the measures taken aim to ensure that the patients will not be exposed to health services provided by unqualified persons which could result in health damage.
- Some countries indicated that a referral from the doctor is needed for the physiotherapists to intervene while in other countries physiotherapists can be consulted directly and formulate themselves the diagnosis.
- Countries that regulate the physiotherapeutic activities by way of protecting the professional title without reserves of activities have been invited to share with the others why they consider this type of regulation sufficient in terms of health protection/patient safety. Conversely, countries with reserves of activities have been invited to explain whether they have considered the use of less restrictive means, such as protecting the professional title.
- Countries which require the completion of mandatory traineeships/state examinations or mandatory membership in professional organisations have been invited to share their points of view as to the necessity of these requirements.
- Some countries indicated that they only regulate the publicly-funded physiotherapeutic services while some others insist that the same level of regulation applies to all the professionals no matter the setting in which they provide their services. The countries that have not provided this kind of information have been invited to do so and everyone is invited to discuss the issue of consistency with regard to safeguarding the public interest in this context.

Next steps

Reports summarizing the main findings and outcomes of the discussion topics listed above, between the EC and the MS will be made public on the [Commission's website](#), where you can also find detailed information about the ongoing mutual evaluation process itself and the action plan. The report of the physiotherapist meeting will become publicly available no sooner than May/June 2015.

¹

The mutual evaluation exercise was introduced as a consequence that conditions to access professions can vary significantly between countries of the Union. The reasons behind those differences are often not well understood and certain requirements may no longer be adapted to the current situation.

The Commission will organize a conference to discuss the intermediary results of the mutual evaluation in the fourth quarter of 2015 (the format and content have not been decided, yet).

It can be added that the final meeting for the Single Market Forum was held at Riga on 26 March 2015. This was an opportunity for the Commission to present its findings on what the single market looks like on the ground - what works but mostly where barriers remain.

The two main subjects of discussion were the **provision of services across borders** and the **necessity for the regulation of professions**. The conclusion was that since regulation is a barrier to get a single market the way forward is the harmonisation, standardisation of definitions and formulas by letting the member states choose parameters.

Besides, and for information purposes, it must be pointed out that in the single market-working framework, there are several working processes currently going on that should be taken into account as they could interfere in the deregulation process in the future.

5. Indirect EU Actions also supporting this trend of de-regulation

5.1 TTIP

How the Transatlantic Trade Agreement (TTIP) and how the EU health sector could be impacted by it. TTIP will be a free trade agreement, currently being negotiated, between the European Union and the United States. The aim of the agreement is to create growth and jobs on both sides of the Atlantic by removing trade barriers. The question on many people's mind is whether TTIP will have an impact on national healthcare services? It is difficult to answer this at the moment because the extent to which publicly funded healthcare services will be covered by the agreement is still uncertain. It is a fact that the free movement of goods and services is a matter for the EU's internal market, so healthcare services will be within the overall scope of TTIP.

However, it seems unlikely that healthcare professions are going to be included in the current intra-EU 'mutual evaluation' process given many reasons. Firstly, it must be pointed out that one of the outcomes of a consultation run by the Commission last year was a recommendation that they should protect Member States' right to regulate (for example on issues such as public health), - a given for most of us - but worth stressing to the Commission. Moreover, at a meeting in London on Tuesday 17 Feb. EU Commissioner for trade Cecilia Malmstrom tried to alleviate these concerns. She said, "*Health services will not be affected by TTIP*".

Furthermore, Members of the Parliament's Committee on the Environment, Public Health and Food Safety (ENVI) want health excluded from TTIP talks, as they showed in a voting which calls for five health-related areas to be excluded from the TTIP negotiations (to exclude public health services). It is not clear whether extending this area to all US states would allay existing anxieties about patient safety and, in the US side, the wide variation in state practice will constitute a major barrier.

But even the mentioned above and if TTIP supporters and negotiators incessantly reassure civil society that TTIP would not affect the Member States' sovereign right to regulate and would not lower our public health or safety standards, there are legitimate concerns about

risks for standard maintenance and setting in the fields of health systems (among others topics), which are based on evidence and solid arguments.

5.2 - Work programme of the Commission 2015 – REFIT

On the other hand, the Work programme of the EC 2015 includes a strong commitment of better regulation to improve our single market and its competitiveness. The work programme says: "This is at the heart of the Commission's Regulatory Fitness Programme which seeks to cut red tape and remove regulatory burdens". However, in a recent opinion (30.3.2015) of the Committee on the Environment, Public Health and Food Safety for the Committee on Legal Affairs on Regulatory Fitness and Performance Programme (REFIT)² the committee makes some valuable points aimed at safeguarding regulation in healthcare where it is necessary. The opinion states in particular that "expresses, however, its concern about potential deregulation, in particular in the field of health [...]" and stresses that certain administrative burdens are necessary if the objectives of the legislation and the required level of protection are to be complied with appropriately, in particular with regard to the protection of public health.

6. Conclusions

Due to this risk for the profession (Title, recognition, scope of practice, education requirements...) the ER-WCPT Executive Committee calls its MOs to continue being aware of these issues by contacting their national authorities or being prepared for a possible contact. We do also kindly ask all of you to continue informing the secretariat on those contacts or meetings for which you are invited to participate. The ER-WCPT will continue advocating and providing information to the EU Commission.

For the ER-WCPT Executive Committee

David GORRIA
General Secretary
European Region of the WCPT

Rue de Pascale, 36
B-1040 Brussels
Tel: (+32) 2 231 5063
Email: gorria@physio-europe.org
<http://www.erwcpt.eu>

² Under REFIT, the Commission regularly screens the entire stock of EU legislation for burdens, inconsistencies and ineffective measures and identifies corrective action aiming at making sure that the policy objectives are achieved and the benefits of EU legislation are enjoyed at lowest cost and with a minimum of administrative burden.