

The normative of the European Commission for liberal professions and business environment

Professor Sulejman AHMEDI¹
Gjulsume SULEJMANI²

Abstract

The liberal professions today in many countries make a substantial contribution to provide high quality provisions in the field of “social goods” as health and judicial services, well in general public services for the protection of citizens' rights and economic prosperity.

The liberal professions are a component of every democratic community and a significant potential to increase employment and gross domestic product of each country-GDP. In this thesis we have presented the normative of the European Commission for liberal professions, their service offering, organization of the work, supervision and ensuring the quality of competent state institutions.

The unitary concept of "liberal professions" in some EU member countries is not used, but the system of the respective professions with their social problems and their solutions can be found in every EU country.

Liberal professions even though many states have evolved and now they have an important role in the classification of the professions, however in many developed countries still encounter these professions as closed systems, to maintain great privileges for its members in order modern efforts to increase competition in these sectors have faced serious resistance.

Recently, the limitations in this field have been increasingly criticized for their consequences anti corruption related and lack of legitimacy of the European Commission, namely the Organization for Economic Cooperation and Development -OECD.

On the base of group work, the Commission has highlighted specific lines of acting in favor of convenient entrepreneurial ambient for them who perform liberal professions in the above mentioned fields.

The Examination of the concerned issue will be based on a multi-dimensional approach, using all typical methods of judicial, social researches, especially will be used the comparative, analytical, statistical, normative methods, based on the literature relevant to the subject, and other judicial acts.

Keywords: liberal professions, European Commission, The normative of the UE, business environment, potential

JEL Classification: K20, K33

¹ Sulejman Ahmedi – The State University of Tetovo, Macedonia, sulejman.ahmedi@unite.edu.mk

² Gjulsime Sulejmani – Court collaborator on the Basic Court of Gostivar, Macedonia, gjylsime.sulejmani86@gmail.com

1. Introduction

To better understand the term "*free professions*" is needed a definition that will contain general characteristics of these professions and their division into different categories. While such a definition should be general in order to include new professions.

The Court of Justice of the European Union defines the liberal professions as "*professional activities with intellectual character that requires qualification of a certain level.*" Another definition that often occurs in the legal literature for liberal professions defines them as activities that require specified education in their direction, such as lawyers, notaries, doctors, accountants, architects and engineers. Most of these occupations are supervised by the state that regulates the exercise of the profession and services through legal provisions³.

The state sets the rules assigned to each free profession different criteria for practitioners of these professions as: the number of such professionals based in the region where they work, on the basis of needs for their services, their fee structure, the organization structure of their work and publicity for the activity they perform.

Because recently liberal professions are very important services that have received state organ function, and at the same their services play an important role, as per customers and in relation to different institutions, in this paper we will present the role and importance of these services to the state and society, and the norms of the European Union which are unified the rules to define the activity of freelancers in the Member States.

To better understand this normative implementation by member states, we first used the analytical method by analyzing the legislation of the states which regulate the activity of the liberal professions. Meanwhile historical comparative method is used to having a clearer picture of the development of the liberal professions in different periods.

The purpose of this paper is to offer an overview of the classification free professions and regulation of their activity with the norms of the European Union and its implementation by member states.

2. The history of the development free professions

In the past as a synonym of "the liberal professions" different states have used the term "*artes liberales*", which meant professional social activities as legal assistance given by lawyers, teachers, architects, and especially the business conducted by the doctors. Liberal professions belonged mainly to the free citizens of bourgeois class. The activity of some liberal professions was conducted by the state, which made impossible such professionals to exercise their activities independently. An example of this might be the activity of lawyers who were

³ From the Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the Recognition of Professional Qualifications.

appointed by the competent court, which often also carry out supervision in their work, the work of forensic experts.

During the nineteenth century the spirit of liberalism, in different states, now members of the EU was established considerable independence of professionals who exercise free professions, creating autonomous professional organizations, independent from the state⁴. The profession of advocate, notary, engineering, medicine may were exercised exclusively by suitably qualified persons who took a relative freedom from state control over their activities.

3. Principles

Member States have set with their legislation, the principles for regulation of the liberal professions.

The main principles are:

- The principle of *professional ethics*. Ethics in the exercise of the liberal professions is a very important characteristic which makes these professions differ from other occupations practiced in the private sector, since they are closely related to the public interest.

- The principle of *professionalism*. As talking about the protection of some primary human rights protected by the constitution of each member state and the rules of the European Union, or of assisting these free professional services, requires a professional attitude.

- The principle of *independence*. Free professionals are independent in the exercise of their professions, in determining the mode of operation and service delivery. Their independence is reflected not only in self-regulation of their work, but also in terms of accountability to clients, which is a reflection of a free and democratic society.

- The principle of *bona fides* and professional confidentiality. This means that in providing the services of free profession is required above all, to respect the personality of the client or recipient of these services, storage of personal data and privacy of their lives. In exercising these professions must exist mutual confidence between the givers and recipients of services.

- The principle for performing their service *personally*. Free professionals perform services personally. In terms of their work have the right to authorize other persons to perform their tasks, but always taking full responsibility for such actions.

- The principle of *transparence*. During their work the liberal professionals should be efficient and transparent and aimed to their clients/ patients and at benefitting the society.

Liberal professions *support an innovative Europe*: Liberal professions form a key sector of the European economy. As a driving force behind innovation

⁴ European Economic and Social Committee, INT/687, from the thesis: *The role and future of the professions in the European civil society of 2020*, Bruxelles, 25 March 2014.

they make an important contribution to the realization of the Europe 2020 goals. The medium-sized structure of the liberal professions enables them to ensure the future of high quality services in Europe. Due to their direct interaction⁵.

4. Characteristics of the liberal professions

Features of the liberal professions that makes them distinct from other private sector activities, are providing services based on intellectual character of professional qualification, public interest data services, professional and economic independence in practicing of their function, giving service under the professional title under their responsibility.

Also the liberal professions activity is characterized by trust between the recipient and the service provider, the interest of service providers to provide optimal assistance in terms of interest to acquire the complete reward, always within professional norms and law rules for the liberal professions.

In most states is not an obstacle the fact that activities "free profession" is practiced on the basis of an employment relationship existing on the condition that such service to be provided as an independent profession. In today's times as free professions are considered the services provided by psychologists, services provided by the Centre for Social Work, tax advisors, counselors bankruptcy, geometry and mediators.

Regarding the *economic aspect* the liberal professions give a special contribution to the creation of new employments on the one hand and on the other hand increase the revenue to the state coffers through the payment of taxes. Also the independence of these professions has led to increase the service quality provision, setting certain fees for services rendered and the creation of associations for the advancement of professionals who belong to the subject. In the period from 2008-2012 has increased the number of autonomous professionals in the sector of the economy as practicing a free profession. Their quota is about 45% which is much higher than the quota of autonomous workers overall economy - 31.1%. Contribution of liberal professional's in the economic sector gross product exceeds 10%. While during the 2009 crisis was a decline in the value sector "business services" and engineering studies respectively 600,000 and 550,000 companies, legal services and "accounting services", office of architecture and engineering enterprise 315,000 and 270,000 as opposed to the sum of all sectors of the EU economy⁶.

CESE approves the fact that the European Commission recognizes free professionals as qualified entrepreneurs and aims to support the liberal professions

⁵ Directorate-General for Enterprise and Industry, SMEs and entrepreneurship and the social economy, Report of the Working Group: *Lines of action in favor of the liberal professions*, Bruxelles, ENTR/D1/-entr.d.1, 31.03.2014.

⁶ Iain Paterson, Marcel Fink, Anthony Ogus et al., *Economic impact of regulation in the field of liberal professions in different Member States* at http://ec.europa.eu/competition/sectors/professional_services/studies/prof_services_ihs_part_1.pdf, last accessed date: 20.11.2014

sector by implementing intensive programs of development of small and medium-sized enterprises (SMEs). Such support from the European Commission means to improve the structural conditions for the exercise of the liberal professions as required by the directive on services in the internal market.

The most important of these are the professionals in the field of justice such as lawyers, notaries, bailiffs, legal services who despite their professional services perform as independent bodies, however, are part of the totality of state bodies. These professionals with their legal services contribute to the development of a democratic state to protect the rights of citizens and their obligations at the same time having to the state.

Also in the field of health care the professionals have an important role as a freelance, which besides that are regulated by the state they are favored enough to improve the conditions for granting aid to population health.

Among the services that protect and safeguard the property rights of citizens and the state are financial services category accounts reviewers. Who provide direct development of economic processes in the country.

Architects and engineers protect collectivity from the risks related to construction, develop and maintain public urbanism, also promote innovation in the quality of infrastructure and new technological inventions.

In Member States which have not yet adopted a code of ethics concerning the liberal professions, professional organizations should elaborate ethical codes based on European norms in order to fulfill the conditions necessary to satisfy the requirements of the liberal professions. Processing of ethical codes is encouraged in Article 37 of the directive on services⁷.

Considering relevance of the services provided, in the exercise free professions for users of these services and the confidence that professionals should have towards these occupations are performed by professionals such people with their own presence.

5. European normative of liberal professions

With the development of the liberal professions on a national level as well as at the international level, as well as their important role in the state and customer service, bringing benefits in economic terms, but also in the added the interest of professional European Commission drafting normative for liberal professions.

With these norms were defined terms of free professions creation, sharing them in different categories, method of service delivery, specified the qualifications that should achieve providers of these services, the creation of international and national bodies will carry out control over such activities, tariff determination of their work, etc.

⁷ The Resolution of the European Parliament of 13th October 2006 supported the adoption of codes of conduct by professional service providers and added that these should be drawn up with the involvement of all relevant stakeholders.

The European normative of free professions includes:

- Directive over services⁸.
- Directive over professional qualifications.⁹
- European normative about the concurrence as: The violation of services by the professionals or normative reform of the services of professionals implemented by the national authorities to implement EU norms on competition.

In the meanwhile the European Commission divides the free professions in some categories¹⁰:

- Service enterprises to customers.
- Enterprise services to enterprises.
- Recognition of professional qualifications.

With Directive 2013/55 / EU of the European Commission in effect from January 17, 2014 was amended The Directive on professional qualifications. With this envisaged that member states must implement new rates in January 2016¹¹. The European Commission will prepare the adoption of necessary execution to operate under the new mechanisms provided for by this Directive, such as vocational Card and mechanism supervisor.

6. Lines of action

1. Integrate Entrepreneurship in education and training of professionals, to improve competitiveness and economic success among all. In this case, professionals, organizations should intensify cooperation with universities and other organizations that deal with training them to develop programs and teaching methodologies.

2. To establish contacts between liberal professionals and operator, to create projects in the education sector for entrepreneurship. European Commission in the field of political action has collaborated with various organizations such as academic institutions, foundations, etc., already active in this field. By adopting Directive 2006/123 / EC on services in the internal market and its approval by the Member States, are eliminating a number of barriers about the provision of services in the domestic market. European Commission in its communication of 27 January 2011 "*for a better functioning single market services*" by which are shown the results of the mutual evaluation process regarding the services directive, has announced ambitious work plan to improve further practical functioning of the internal market.

⁸ Directive 2006/123/CE, 12 December 2006, on services in the internal market

⁹ Directive 2005/36/CE, for recognition of professional qualifications

¹⁰ Directorate General Internal Market

¹¹ Directive 2013/55/UE of 20 November 2013 amending Directive 2005/36/CE on the recognition of professional qualifications and Regulation (UE) nr.1024/2012 related on administrative cooperation through the Internal Market Information System "regulation IMI"

Today mobility of professionals in European Union represents 9% of people who have experience working outside their home country and that since 2007/2013. Member States have decided over around 278,000 requests for recognition, allowing 230,000 professionals free to exercise their activities in different countries from the origin. The free mobility of free professionals within the European Union enables growth while providing quality services and at the same time exchange of knowledge from the practice of the countries from which they come. Another feature of this directive is transparency and mutual evaluation exercise described in a press release of the European Commission on 2 October 2013. The purpose of this procedure is to be clearly identifiable free professions regulated by the Member States and to discuss the necessity of existing rules. Free professionals of the European Union often encounter difficulties to operate outside the European market due to the variability of the rates in non-member states of the European Union, due to lack of procedures and criteria regarding these professions.

3. Another line of the European Commission is supplying support services to professionals free about the obligation to their services through public tenders, internet, fairs, etc.

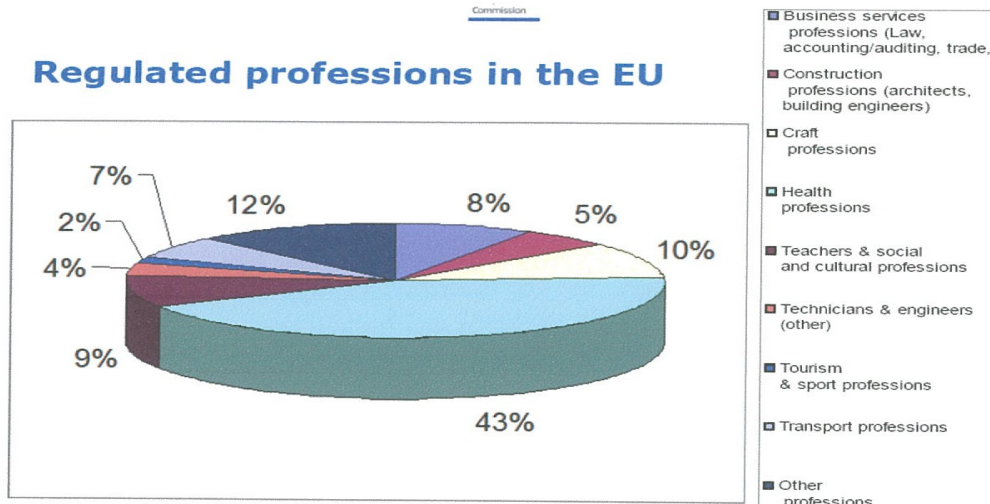
4. Simplification of procedures about achieving such qualification, again to pursue free profession activities.

5. To improve the access of liberal profession into the financial instruments of programs in favor of competition and SMEs. SME program disposes 1.4 billion Euros for the period 2014-20 to finance through investments and credits professionals free of member states, with aim of advancing them.

6. During 2014 Enterprise Europe Network began with its capacity of SMEs offered financial advice regarding the financial terms, negotiations with creditors and investors, the financing of various projects, as well as other forms of alternative financing as Crowd Funding, structural financiamente, etc.

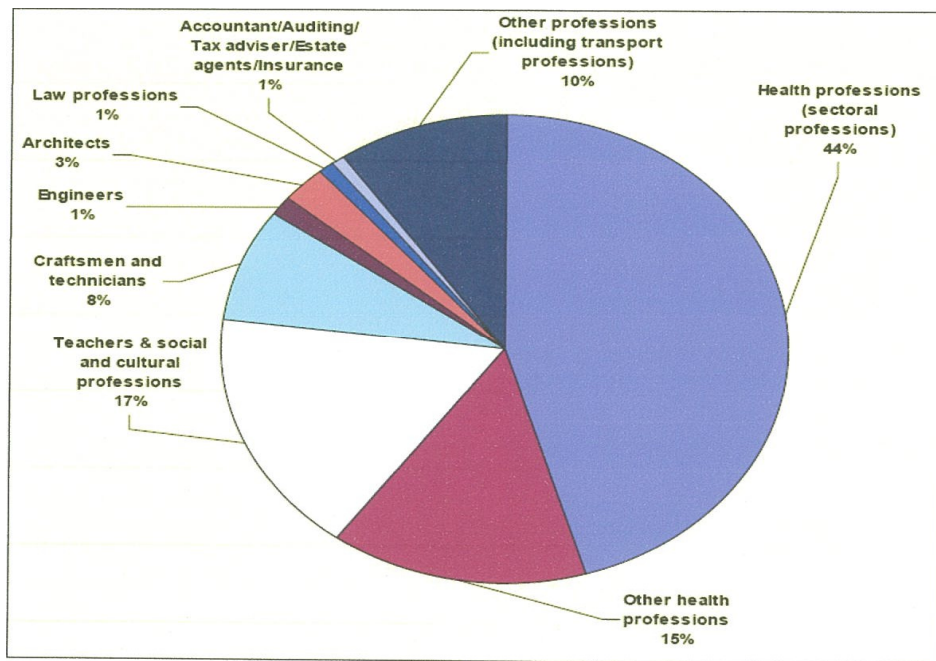
7. The European Commission will be engaged to create committees that would represent the free professional's European working group "promotion of free professional's activities". Members of this committee will present different sets of free professionals, such in the field of medicine, law, economics, engineering, natural sciences, arts, culture, media, etc.

8. It is also envisaged that on the European level to create a forum where they will gather representatives of European associations of free professionals. This will give them the opportunity to discuss the policy and action of the European Commission about problems that belong to the category of their own and make proposals related thereto.



Source: Regulated Professions Database:
http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=stats.total

Distribution of the recognition decisions (positive and negative) by sector 2007-2010



Source: Regulated Professions Database:
http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=stats.total

7. Conclusion

The arguments that were discussed in this paper, the historical and practical analysis of the Member States concerning free professions and the norms of the European Commission we can draw some conclusions.

In the future development and implementation of the normative over free professions should not only give prominence to the economic aspect and the State benefit from these professions. In our opinion should be given importance of service provision to citizens by providing them with professionals from practitioners of the free professions. So should set conditions about their professional qualifications in order to achieve the objective in any particular area about which they were created. Should also be checked if the existing norms are able to guarantee the achievement of the purposes mentioned in this paper.

Despite the definitions provided by different jurists about free professions should define a unique definition, which will be valid for the entire European Union that will find application in the Member States' legislation that will regulate the rights and obligations providers of these services. Such a definition should include the general characteristics of free professions doing their classification into different categories. A "fair" model proposal may be over free professions card processed by European professional dentists Council of Europe (Council of European dentists).

Member States must ensure the creation of national organizations which will have a duty to control the development of their work, respecting the main principles on which to base the activity of free professions. Member States should also provide professional disciplinary norms which will contain sanctions for professionals who will not act according to the national and international normative, which will increase the confidence of users of these services.

Member States on the initiative of the European Council should permanently organize conferences and seminars where will take part the free professionals from different fields in order to exchange experiences and practices in their countries, the exchange of ideas for innovation, reform in these same occupations.

Professional Regulation must be in accordance with major European freedoms, in particular the freedom to provide services, the freedom of movement of these professionals outside their country. Whether such rates or foreign national should not be discriminatory and should be in service of the public interest.

Bibliography

1. Iain Paterson, Marcel Fink, Anthony Ogus et al., *Economic impact of regulation in the field of liberal professions in different Member States* at http://ec.europa.eu/competition/sectors/professional_services/studies/prof_services_ihs_part_1.pdf, last accessed date: 20.11.2014
2. Directive 2006/123/CE, 12 December 2006, on services in the internal market
3. Directive 2005/36/CE, for recognition of professional qualifications

4. Directive 2013/55/UE of 20 November 2013 amending Directive 2005/36/CE on the recognition of professional qualifications and Regulation (UE) nr. 1024/2012 related on administrative cooperation through the Internal Market Information System "regulation IMI"
5. Directorate-General for Enterprise and Industry, SMEs and entrepreneurship and the social economy, Report of the Working Group: *Lines of action in favor of the liberal professions*, Bruxelles, ENTR/D1/-entr.d.1, 31.03.2014.
6. European Economic and Social Committee, INT/687, from the thesis: *The role and future of the professions in the European civil society of 2020*, Bruxelles, 25 March 2014
7. The Resolution of the European Parliament of 13th October 2006 supported the adoption of codes of conduct by professional service providers and added that these should be drawn up with the involvement of all relevant stakeholders.