



European Economic and Social Committee

INT/687
The liberal professions

Brussels, 25 March 2014

OPINION

of the

European Economic and Social Committee

on

The role and future of the liberal professions in European civil society 2020

(own-initiative opinion)

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Rapporteur: **Mr Metzler**
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On 14 February 2013, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

The role and future of the liberal professions in European civil society 2020
(own-initiative opinion)¹.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 February 2014.

At its 497th plenary session, held on 25 and 26 March 2014 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 210 votes to 8, with 11 abstentions:

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1. **Conclusions and recommendations**

- 1.1 Provided certain social adjustments are made, the system of liberal professions has a significant contribution to make in the future to providing high-quality "social goods" such as healthcare, delivering public services, safeguarding civil rights and increasing economic prosperity. The liberal professions are a component of any democratic society, and offer significant potential for growth in terms of employment and GDP.
- 1.2 The term "liberal professions" is not used in all Member States, but the concept, and the associated societal problems and solutions, can be found throughout the EU. Criticisms are sometimes raised regarding shortcomings in oversight and quality assurance; these can usually be traced back to enforcement problems rather than to failures in the system.
- 1.3 Both "rules-based regulation" and "principles-based regulation" are capable of achieving optimal regulation for the liberal professions.
- 1.4 Provision of services by the liberal professions is characterised by an asymmetry of information between service providers and their clients. The services relate to existential matters of life and health, legal issues, and vital economic questions, and service providers therefore need to meet particularly stringent professional and ethical requirements.

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In the framework of the elaboration of the opinion, the EESC committed the realization of a study to the Europäischen Zentrum für Freie Berufe der Universität zu Köln (The State of Liberal Professions Concerning their Functions and Relevance to European Civil Society EESC/COMM/05/2013) whose publication is being finalized.

- 1.5 A number of countries have price regulation for certain professions, which can help to protect consumers. Price regulation needs to be properly justified, and should be designed to serve the public interest, not the interests of a particular group.
 - 1.6 In all Member States, professional organisations or associations represent the interests of their profession and play an advisory – or sometimes formative – role in State regulation. Through ongoing active cooperation with the institutions, they safeguard the general interests of the public. Administrative simplification is a priority for members of the liberal professions, who devote both economic and human resources to it without receiving any form of compensation from State coffers.
 - 1.7 EU Member States shape and monitor self-regulation in their own countries. In so doing, they must exclude the possibility of conflicts between regulatory powers and representation of interests, and ensure that consumers' expectations are met regarding the knowledge, ethics and character of service providers.
 - 1.8 The contribution of the liberal professions to the proper functioning of the administrative, political and economic life of a Member State is recognised at national and European level because they contribute to the modernisation and efficiency of public administrations and of services to citizens and consumers.
 - 1.9 The sector is vital because of the employment opportunities it offers young people who choose a future of free enterprise and of investment in their knowledge. Members of the liberal professions who run a professional practice or office must respect legislative provisions and/or collective agreements regarding persons for whom they act as employer and young people for whom they provide in-house vocational or specialist training or apprenticeships.
2. **From the 'artes liberales' to knowledge-based service provider**
- 2.1 The term 'liberal professions' refers back to the term "*artes liberales*", or "liberal arts", used in classical antiquity for occupations such as teaching, law, construction, architecture, engineering and medicine. The "*artes liberales*" were the preserve of free citizens and nobility.
 - 2.2 Since the 19th century, the liberal professions have no longer been defined on the basis of the "free birth" of a practitioner, but according to the activity performed.
 - 2.3 By the early 1800s, certain liberal professions had become very closely connected with the State; this prevented them from operating independently, which resulted in them being held in low esteem by society. Lawyers were particularly affected by this, as the courts were involved in appointing and transferring them, and in some cases also held supervisory and disciplinary authority over them.

- 2.4 In the 19th century, under the influence of liberalism, the liberal professions in a number of EU countries developed a consciousness of their status and established professional organisations independent of the State. For example, the legal profession managed to free itself from State influence, and the academic medical profession likewise achieved a degree of freedom from State regulation and monitoring.
- 2.5 Activities surrounding authorisation to practise, codes of conduct and professional supervision were often taken over by professional organisations. Later on, regulatory power was transferred to the self-governance organisations/professional associations.
- 2.6 The current concept of the liberal professions is a sociological description.
- 2.7 A liberal profession is characterised by: provision of a valuable intangible service that is distinctly intellectual in nature, based on advanced (academic) training; a service that is in the public interest; substantive and economic independence in executing tasks; provision of services in a personal capacity, on the provider's own responsibility and in a professionally independent manner; a particular relationship of trust between the client and the service provider; a focus on providing the best possible service rather than on maximising profit; and compliance with precise, strict professional regulations and codes of professional ethics.
- 2.8 An activity may also be regarded as a liberal profession in the absence of some of these elements, provided the principal characteristics are met: for example, in many countries an activity undertaken as an employee may be regarded as a liberal profession if substantive independence is maintained. The EESC notes that the liberal professions and the organisations which regulate such activity in Europe have branched out. The new liberal professions, such as psychologists, social workers, tax advisors, bankruptcy advisors, surveyors and mediators, which are not classified as liberal professions in all countries, require an inclusive approach.
- 2.9 There are significant differences between Member States in the definition of the term "liberal profession", and some do not use the term at all. In some countries, only a small group of occupations are regarded as liberal professions: medicine, advisory professions such as law, tax consultancy and auditing, employment consultancy and engineering and architecture. In other Member States artistic activities are also counted as liberal professions.
- 2.10 One objective that is common to all Member States is to ensure that the defining characteristic of the liberal professions – the asymmetry of information between service providers and their clients – is not abused. The services provided by the liberal professions are complex and require a high degree of expertise, which means that service recipients do not have enough information, specialist knowledge or experience to judge the quality of the service, either when choosing a provider or after the service has been provided.

2.11 Liberal professions are therefore based on trust. The asymmetry of information means that service recipients must be able to trust providers not to exploit this information deficit for their own benefit, but rather to provide the best possible service, tailored to the client's needs. Service recipients are thus making a leap of faith when they engage a service provider. Minimum professional standards and compliance with codes of professional ethics are appropriate ways of protecting service recipients' trust.

3. **Regulation and its objectives**

3.1 The Member States essentially use two different approaches to regulating the liberal professions: what is known as "principles-based regulation", and a more proscriptive and prescriptive approach referred to as "rules-based regulation".

3.2 Regulation of the liberal professions summarises the moral conditions for practising the profession, and standards of professional ethics; it is an expression of the liberal professions' social responsibility. Standards of professional ethics as a whole may be referred to as deontology.

3.3 Principles-based regulation involves drafting abstract principles of professional law, which then need to be fleshed out in individual cases ("outcomes-based regulation"). It is left to the discretion of those subject to the rules to decide how to achieve those goals in specific cases. In contrast, rules-based regulation is case-based.

3.4 Each approach has its advantages and disadvantages, but both fulfil the fundamental principle of meeting society's concern to ensure people receive independent advice and support. The particular issues and solutions may change over time, requiring changes to the rules or the creation of new ones.

3.5 The regular reviews of the rules carried out by the EU are useful in this connection, and should also be established at national level. This would allow older liberal professions to be "freed up" (e.g. in construction) and rules to be introduced, where appropriate, to cover new liberal professions (e.g. in intelligence gathering or banking).

4. **Economic aspects**

4.1 The liberal professions play a significant role in establishing and maintaining key social infrastructure. Approximately one in six self-employed people work in sectors dominated by liberal professions, and that figure is rising. The same is true of one in six employees.

4.2 The number and percentage of self-employed women working in sectors dominated by liberal professions increased over the reference period 2008-2012; the percentage of self-employed women in these sectors now stands at 45%, significantly higher than the percentage in the economy as a whole (31.1%).

4.3 More than one euro in 10 of gross value added comes from sectors dominated by liberal professions. The decline in value added during the crisis of 2009 was less marked in the liberal professions than in the economy as a whole. Figures for the EU are as follows: 600 000 undertakings in each of "management consultancy" and "engineering activities"; 550 000 undertakings in "legal consultancy" and "auditing"; 315 000 in "architectural activities"; and 270 000 in "marketing and market research".

4.4 In view of the sector's growth potential and the proportion of jobs that it provides – largely stable, highly qualified jobs – the entrepreneurial aspect of the liberal professions must be acknowledged and supported. The Committee is pleased that the Commission recognises members of the liberal professions as fully-fledged entrepreneurs and seeks to support the sector by including them in programmes to boost SME development and competitiveness. This approach entails examining and improving the conditions of the entire liberal professions system, as in fact required by the directive on services in the internal market. The liberal professions cannot develop solely by means of single-member companies or through individual action. They must distance themselves from the problem of false self-employment.

5. Ethics and the pursuit of profit

5.1 In all Member States, the public interest is integral to the liberal professions. The medical, psychological and social professions maintain infrastructure to protect the health of the whole population.

In a democratic state under the rule of law, the work of legal and tax advisors constitutes an element of civil liberties; together with auditors, they also ensure that economic processes run smoothly. This means that these professions are also directly related to fundamental rights.

5.2 In addition, this public interest basis means that the liberal professions have a particular ethical responsibility. Legal and tax advisors and auditors help uphold the rule of law, as well as protecting the financial interests of their clients. Social workers and psychologists provide Europeans with an inclusive and safer environment as regards relationship, psychological and social matters. Architects and engineers protect the community from risks arising from structures and technical equipment, and promote society's capacity to innovate and people's quality of life by developing infrastructure and technical equipment and inventing new technologies. Artistic professions maintain and create culture. These circumstances, along with the asymmetry of information referred to above, necessitate advanced training and particularly stringent ethical requirements.

5.3 The particular public interest of the liberal professions, and the associated requirements for the services they provide, need to be safeguarded through binding professional regulations and a raft of generally recognised standards of ethical behaviour for each profession. All the Member States therefore already have a minimum level of regulation. The EESC recommends

that all liberal profession organisations and associations should have codes of conduct and ethical standards as well as commissions of ethics within the profession.

- 5.4 Professional representative bodies should draft codes of professional ethics, where they do not currently exist, as non-binding professional guidelines for their respective Member States. In addition, the professional organisations and associations should draw up European codes of ethics highlighting and guaranteeing the rigorous requirements incumbent on the liberal professions throughout Europe. The drafting of codes of conduct is encouraged in Article 37 of the Services Directive². The fact that the services provided by the liberal professions are so important to their clients, together with the level of trust that these clients need to put in the service providers, means that it is essential for such services to be provided in a personal capacity.
- 5.5 The relationship of personal trust between the provider and recipient of services, and the highly personal nature of the legal interests involved, mean that it is indispensable for professionals and their colleagues to have statutory protection of their professional secrecy and a statutory right to refuse to testify, and to be prohibited from giving evidence. These are characteristics of a free state under the rule of law.
- 5.6 The services of liberal professions that relate to key elements of the public interest – such as medical care, psychological and social services, pharmaceutical services and legal advice – must be provided across the board, even in rural areas.
- 5.7 The requirements presuppose that members of the liberal professions will always give preference to service quality over the maximisation of profit, in accordance with the ethics by which they are bound.
- 5.8 Further development of the law pertaining to the liberal professions therefore cannot focus solely on economic considerations: each and every regulation must aim to ensure comprehensive and highly skilled services that meet the highest quality requirements. It will, in each case, be necessary to look into whether existing regulations can achieve those aims or whether, in reality, they serve other interests.

6. **Present and future requirements for the liberal professions and their profile**

- 6.1 A common EU-wide definition of "liberal profession" should be developed, which simply sets out the general features of liberal professions and lists the categories of occupations covered. Any such definition must not prevent the creation of new liberal professions. The draft charter for the liberal professions drawn up by the various European professional organisations, led by the Council of European Dentists (CED), could be used as a model for this purpose.

²

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, p. 36).

- 6.2 Alongside national joint professional organisations and European joint professional representative bodies, a professional organisation should be established in each Member State for each liberal profession, to compile, publish and further develop principles of professional ethics – where existing professional organisations do not already do so. These organisations should also be responsible for ensuring that the profession complies with these principles.
- 6.3 The stringent ethical requirements on the liberal professions will, in future, also need to be guaranteed through practical guidelines and clearly defined ethical principles. This could involve both standardised and enforceable professional regulations and codes of ethical professional conduct. This will increase consumer confidence.
- 6.4 As well as enforcing technical and ethical requirements for the provision of professional services, it is also necessary to maintain and strengthen the competitiveness of the liberal professions and their ability to innovate. The challenge they currently face is that of being able to deal with different national standards and to compete with colleagues from other EU countries in an increasingly integrated single market.
- 6.5 Professional regulations must be compatible with Europe's fundamental freedoms, in particular with freedom to provide services, freedom of establishment and freedom of movement. They must therefore be non-discriminatory, proportionate, and serve an imperative requirement in the general interest, and also be compatible with national law. This should tie certain activities to specific qualifications.
- 6.6 Activities in the liberal professions often involve a particular risk to highly personal legal interests of the client, and it is therefore necessary to regulate access to the professions and to impose strict requirements for authorisation to practise. As well as training, this involves other personal characteristics such as reputation, health checks, and undertaking not to carry out conflicting activities simultaneously. At EU level, this requirement is adequately covered by the Professional Qualifications Directive³ and by specific regulations such as the directives for doctors and dentists and Services Directive for lawyers⁴ or the Statutory Audit Directive⁵.
- 6.7 In almost all Member States, professionals are required to undertake regular continuing professional development (CPD). There are differences regarding verification of CPD activities and the consequences for failure to undertake CPD. Given the increasingly complex knowledge requirements, ongoing developments in technical processes in medicine and

³ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, p. 22).

⁴ Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, p. 17), and Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L 77, p. 36).

⁵ Directive 2006/43/EC of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, p. 87).

technologies, and the constant expansion of national and international legal standards, it is the responsibility of the liberal professions to ensure that all professionals undertake proper CPD.

6.8 In most Member States, members of the liberal professions have practically no restrictions on cooperation with members of other professions. In some Member States, however, the group of partners or shareholders is restricted to specific liberal professions, certain majority requirements are imposed in respect of partners/shareholders, voting rights or managers, and third parties are prohibited from owning part of the business. Such provisions are one possible way of ensuring that the practice of a liberal profession is not guided purely by economic imperatives.

6.9 Professional cooperation with members of other professions may lead to conflicts regarding professional secrecy and the right to refuse to testify. It must be ensured that any professional cooperation engaged in does not compromise the protection of clients or patients. Such friction can be effectively avoided by restricting the group of permitted partners/shareholders.

7. **Consumer protection and self-regulation**

7.1 All Member States regulate the liberal professions, through State or professional organisations or associations. In many Member States, the concept of self-regulation as an organisational principle is inextricably linked with the concept of a liberal profession.

7.2 The Member States take two different approaches to self-regulation. In one approach, professional organisations and associations represent the interests of their profession as a voluntary grouping, and play an advisory role in the (State) regulation of the profession. They also translate their members' views on standards of professional practice into codes of ethics. In the other approach, professional associations also undertake official duties such as authorisation to practise and professional supervision, as an indirect part of the public administration. Self-regulation does not stand in opposition to State regulation; rather, they both serve a common function.

7.3 Self-regulation of the liberal professions mediates between professionals' right to freedom from State interference in their activities and the State's right to lay down rules. Self-regulation by members of the liberal professions implements their right to freedom from State interference while at the same time safeguarding the general interest, and thus benefits service recipients and consumers.

7.4 Self-regulation of the liberal professions is in line with the subsidiarity principle, according to which a matter should always be handled by the body closest to it. Professionals are characterised by their particular subject knowledge, and are therefore the body in the best position to administer and regulate the liberal professions. This uses the principle of peer review.

- 7.5 Self-regulation does, for its part, restrict the activities of the members of professional associations. The regulations adopted are acts of indirect State administration, and require the transfer of State competences. All regulations adopted as part of self-regulation of the liberal professions are themselves subject to the fundamental freedoms, national law and European and national competition law.
- 7.6 For self-regulation to work, membership of professional associations must be compulsory in those countries where this is possible under current legislation. This restriction on the right to pursue a professional activity is justified by an overwhelming public interest.
- 7.7 The rules requiring membership of the professional associations must be designed to ensure that they do not prejudice freedom to provide services or freedom of establishment. Appropriate ways of doing this include recognising registration in another EU Member State, or registration (free of charge) for members of associations in another Member State.
- 7.8 It is safe to assume that, in 2020, there will still be tension between State and individual interests, and a need for independent advice and support. Therefore, the liberal professions are likely to remain viable as an institution, provided they are modernised in a timely manner, such that their essential nature, comparative edge in terms of knowledge, independence/transparency, and resulting trustworthiness, are not compromised.

Brussels, 25 March 2014

The President
of the European Economic and Social Committee

Henri Malosse

N.B.: Appendix overleaf.

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APPENDIX
to the
OPINION
of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate (Rule 39(2) of the Rules of Procedure):

a) Point 1.1

Amend as follows:

1.1 Provided certain social adjustments are made, the system of liberal professions has a significant contribution to make in the future to providing high-quality "social goods" such as healthcare, psychological and social services, delivering public services, safeguarding civil rights and freedoms and increasing economic prosperity. The liberal professions are a component of any democratic society, and offer significant potential for growth in terms of employment and GDP and the capacity to keep adapting to Europeans' needs.

Reason

To be given orally.

Voting

For:	56
Against:	128
Abstentions:	30

b) Point 6.9

Amend as follows:

Professional cooperation with members of other professions may lead to conflicts regarding professional secrecy and the right to refuse to testify. It must be ensured that any professional cooperation engaged in does not compromise the protection of clients or patients. Confidentiality, as an ethical value, must be a priority for all liberal professions. Such friction can be effectively avoided by keeping to ethical values ~~restricting the group of permitted partners/shareholders~~.

Reason

To be given orally.

Voting

For:	80	
Against:		116
Abstentions:	27	

