

Regulation of professional services in the real estate sector

CEPI calls for clear and consistent regulation of the real estate professions

1. Introduction

The real estate professions are regulated in a number of European countries with differences in the level of national regulation where it exists, in certain countries there is self-regulation, and in others nothing at all. CEPI recognises the differences in markets and national practices and legal systems that are reflected in the varying regimes in different countries but calls for clear and consistent national regulation of the real estate professions based on common minimum standards in different countries in the interests of the development of the professions and protection of consumers. CEPI members operate in countries that have different regulatory models and practices, but they share common ideas and are in agreement about vital issues such as education and standards and recognise the importance of ensuring clarity for consumers and guarantees as to the quality of services in the real estate sector. For the better functioning of the real estate market, it is time now to incorporate these shared values into clear and consistent regulation of the real estate professions at national level.

2. Reasons for regulation

Professional regulation in the real estate sector exists in a number of countries and this is generally for reasons of public interest such as the protection of consumers or avoidance of fraud. For example, regulation was introduced in Ireland in 2012 with the establishment of the Property Services Regulatory Authority (PSRA). The regulation has been well accepted by professionals and is regarded as positive for both professionals and consumers alike. All real estate professionals (excluding valuers) in Ireland are now required to obtain a licence from the PSRA for which they are entitled to apply based on a specified minimum standard of education and/or experience.

In 2018 the European Commission published a “Consumer market study on the functioning of real estate services for consumers in the European Union”¹. After an extensive examination of real estate services, it recommends action to be taken concerning aspects of the real estate market most likely to be problematic for consumers to foster consumer awareness and consumer protection including policy measures such as the establishment of a minimum set of qualitative standard requirements, to improve the quality of real estate services. CEPI welcomes these comments and feels that such minimum requirements should be incorporated into national legislation and asks that further consideration be given now to further research and investigation of such policy measures which we support for the reasons set out below.

2.1. Protection of consumers

For the consumer, the need for a high-quality service is paramount. Consumers need certainty and clarity on the enforcement of rules. The risks linked to poor quality service in the real estate sector are high with the

¹ https://ec.europa.eu/info/files/consumer-market-study-functioning-real-estate-services-consumers-european-union-final-report-en_en

acquisition of property being for many consumers the most important financial transaction of their lives. Taking into account also the different levels of knowledge and access to information available it becomes readily apparent that there is a need to ensure that the increasingly technical and complex services being provided are and remain of a high level. Modern technology and the provision of information via the internet may well help better inform consumers but good quality service and advice is still necessary in order to make investment decisions. Easy access to information does not mean that everyone is able to use it effectively – proper use of its content is much more sophisticated. Consumers need professional guidance to take the right decisions.

Accordingly, there is a general feeling within the sector that frames are necessary within which to provide services for professional activities in order to provide for an element of certainty for both professionals and consumers. In countries where that frame is provided by regulation that system is seen overall as working well. In others, those frames are provided by self-regulation or co-regulation (co-operation between state and private regulators including professional associations). However self-regulation and the use of standards have their limitations due to variations in terms of quality and function as well as their voluntary nature. Also, whilst there are some large corporations in the sector, the real estate professions are exercised mainly by self-employed professionals, giving regulation of the professions an important role in the guarantee of quality services. Without clear and consistent regulation there is perceived to be a real problem with ensuring quality services and consumer protection.

2.2. Greater transparency including for the cross-border provision of services

In addition to greater transparency and legal clarity for consumers, regulation introduces an element of certainty that may make it easier for professionals to work cross-border. The right of Member States to maintain regulation in different countries should be respected and some will choose to maintain regulation at a higher level. It is also important to recognise that the legal and commercial environment for the provision of professional services differs throughout the EU. Whilst respecting these differences common minimum rules defined by regulation in different countries could make it easier for professionals to understand the requirements and respect the needs of different markets.

There is an important element of cross-border services in the real estate sector, particular for the provision of temporary and occasional services. We recognise the regime that has been put in place for the recognition of professional qualifications, but gaps and difficulties remain in its enforcement. In fact, estate agents are amongst the first five professions to benefit from the European Professional Card (EPC), with the operation of which they now have some practical experience. At present the uptake of the EPC amongst the real estate professions is limited, no doubt due in part to the fact that the professions are regulated only in roughly half of EU Member States. There are no harmonised minimum training conditions for real estate services such as there are for other professions including doctors and architects under the Professional Qualifications Directive, and so still no automatic recognition of qualifications. There are concerns about the acceptance of EPCs issued for professionals from unregulated countries. The EPC itself is not linked to professional requirements or common minimum standards and so is of less effectiveness. Accordingly, the system of recognition could benefit from the greater clarity that would be offered by the establishment of regulation imposing clear minimum rules that would make it easier to compare and understand differences between countries.

2.3. Assistance to national authorities in ensuring compliance with requirements

Requirements concerning the provision of real estate services are easier to enforce when there is regulation. The real estate professions are becoming increasingly technical in the content and nature of their tasks and require skills and knowledge in fields such as law, economics, taxation, insurance, mortgage credit, town and country planning etc. In part, this is to do with the requirements being imposed in legislation originating from the EU. Whilst the real estate market and professional services remain matters of national competence,

decisions made at EU level are having more and more influence on national policy. This is particularly the case in respect of issues relating to energy, anti-money laundering (AML), structural and investment funds, state aid and the Internal Market. The fact that the tasks involved are more and more complex increases the need for there to be a supporting regulatory framework.

Probably the best example of the importance of ensuring compliance with requirements concerns AML legislation. Estate agents are obliged entities under the AML Directive as the sector represents a significant/high risk of money laundering and terrorist financing. CEPI supports the fight against these issues in the real estate sector. It is clearly easier to ensure that due diligence requirements are met in those countries in which the real estate professions are regulated, and for the national authorities and Financial Intelligence Units to maintain contact with professionals in such countries where the requirements are clearly defined.

3. Importance of common minimum rules

Therefore, the importance of common minimum rules in the real estate sector is clear. It needs to be confirmed what are the most important elements to be included in those minimum common rules. As already mentioned, CEPI sees education and standards as being of fundamental importance. At a minimum national regulation should ensure adequate educational requirements (including lifelong learning), ethics and the guarantee of liability insurance together with compensation funds for consumer protection.

4. Conclusion

The regulation of real estate services continues to be a matter of debate in several countries across the EU. There is a clear trend towards increased regulation at national level with the recent introduction in the Czech Republic of legislation and proposals in Romania, Bulgaria, Spain and Portugal. The United Kingdom also plans to introduce regulation within the near future. It is time to examine the reasons behind this trend and drive for greater professionalism.

The importance of real estate to the EU economy is clear and this needs to be reflected in the establishment of common minimum rules across the EU to ensure the security of transactions and protection of consumers. To promote these, CEPI asks for a better understanding of the sector and the role of real estate professionals with recognition of the need for clear and consistent national regulation. Ensuring the respect of minimum common rules by regulation will lead to greater professionalism and enhancement of standards in the sector. This will enable professional regulation to develop to meet not only the modern needs of professionals and consumers but also the completion of the Single Market.

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Connecting European Real Estate Professionals Across Europe

The mission of CEPI, the European Association of Real Estate Professions, is to support the European real estate market and cross-border transactions by enhancing and strengthening the work and activities of real estate professionals. We represent twenty-seven national professional organisations of estate agents and property managers based in eighteen EU and EFTA countries. Their individual members are active in all sectors of the residential real estate market on a daily basis involving both sales transactions and long-term management. Transparency Register ID number: 1094652600-90.