

Action plan
as part of the transparency initiative on regulated professions
under Article 59 of Directive 2005/36/EC on the recognition of professional
qualifications

I. Procedures (involvement of competent bodies and interest groups; shaping of opinion and comments from professional bodies and legislative bodies at federal and *Land* level)

In view of its coordinating role with respect to Directive 2005/36/EC on the recognition of professional qualifications, the Federal Ministry of Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie (BMW)*) has taken charge of coordinating implementation of the transparency initiative under Article 59 of the updated Directive.

In October 2013, Unit EB2 of the BMW informed professional associations and authorities at federal and *Land* level with responsibilities in the field of regulated professions about the Commission Communication of 2 October on evaluating national regulations on access to professions. In January 2014, the BMW carried out consultations for the authorities at federal and *Land* level and for the associations concerned, during which the background and objectives of the transparency initiative were set out and explained. In a three-stage process, the federal and *Land* authorities were asked to provide information on the nature and scope of rules and regulations governing professions and to give their views on their appropriateness. On completion of the operative part of the transparency initiative and in the light of the results (both as part of the written procedure and in the context of mutual evaluation), all the bodies involved were asked once again to verify the need and/or scope for change. During the fourth quarter of 2015, the bodies in question addressed the specific question of whether and to what extent consideration would be given to abolishing, relaxing or otherwise amending existing rules.

In addition to the public authorities, certain professional bodies made use of the opportunity to provide the BMW with written opinions. A large number of associations also issued invitations to discussion events, some of which involved representatives of the Commission and of the Federal Government (e.g. events organised by the German Confederation of Skilled Trades (*Zentralverband des Deutschen Handwerks*), the Federation of the Liberal Professions (*Bundesverband der Freien Berufe e.V.*), the Federal Chamber of Dentists (*Bundeszahnärztekammer*) and the Federal Chamber of Architects (*Bundesarchitektenkammer*)).

The transparency initiative was also the subject of a number of opinions from the parliamentary sphere. As early as November 2013, the German *Bundesrat* delivered an opinion (decision of 29 November 2013, *Bundesrat* doc. 717/13) in which it criticised the methodology of the transparency initiative and pointed out that professional qualification requirements served the legitimate purpose of protecting the professions concerned, and that the liberal professions were self-administered.

In an opinion of 25 November 2014 (*Bundestag* doc. 18/3317), the German *Bundestag* stressed the importance of Germany's *Meisterbrief* (master craftsman's certificate) as the foundation of quality in the skilled trades sector as well as for work-linked training in Germany. The *Bundestag* called on the Federal Government:

- 'to strengthen the existing system of skilled trades which are subject to obligatory licensing, as it makes an important contribution towards safeguarding the performance and competitiveness of small and medium-sized businesses in Germany, towards consumer protection, towards the qualifications of young people within the work-linked training system and towards the integration of poorly educated groups into the labour market;
- to convey strongly to the European Commission, as part of the transparency initiative, that:
 - a) the regulation of professions is decided on autonomously by the Member States,

- b) the work-linked system of training can only remain effective if the law stipulates that the managers of the current 'Annex A occupations' are master craftsmen and
- c) the significance of the licensing obligation for skilled trades must be recognised as a central element of risk-prevention in order to ensure a high level of consumer protection.'

In a further opinion of 17 June 2015 (*Bundestag* doc. 18/5217), the *Bundestag* reiterated its position concerning the master craftsman's certificate and expressed its commitment to maintaining high standards of quality both in the skilled trades sector and in the liberal professions as a structural competitive advantage. It called upon the Federal Government 'to seek to ensure, when drawing up the action plan required by the European Commission, that

- a. differing regulatory structures do not pose a barrier *per se* to the liberalisation of the European internal market,
- b. also in the interests of consumer protection, professional and skilled trades services and products continue to be of a high quality, and that the requisite tried and tested and proportionate rules on access to the profession remain in place,
- c. the regulation of professions is decided on autonomously by the Member States'.

The parliaments of 11 *Länder* have adopted resolutions to promote the retention of the requirement for skilled tradesmen and those involved in the work-linked training system to hold a master craftsman's certificate:

- Bavaria (docs 16/17129, 17/843 and 17/845),
- Baden-Württemberg (docs 15/4687, 15/7176, 15/4833),
- Free and Hanseatic City of Hamburg (doc. 20/14201),
- Mecklenburg-Western Pomerania (docs 6/2830 and 6/3501),
- Lower Saxony (doc. 17/1388),
- North Rhine-Westphalia (doc. 16/4574)
- Rhineland-Palatinate (docs 16/4740/4979/5082),
- Saxony (doc. 6/1778),
- Saxony-Anhalt (doc. 6/3526),
- Schleswig-Holstein (doc. 18/2075),
- Thuringia (doc. 5/7819).

II. Possible amendment of professional regulations

The results of the relevant surveys are indicated below without differentiating between the remits of the federal government and/or the *Länder*.

1. Economically orientated professions/liberal professions

Amendments to the regulations of the following liberal professions are being considered: lawyers and patent attorneys, tax advisers, chartered accountants and — in one *Land* — architects. In all cases, the planned changes relate to the way in which the profession is practised and seek to make it easier for the profession to be pursued by abolishing or relaxing particular requirements.

- Lawyers and patent attorneys

In the case of lawyers and patent attorneys, the following regulations are to be examined:

- a) the requirement that lawyers and patent attorneys own shares and exercise voting rights in law firms and patent law firms which have the legal form of a limited liability company

(*Gesellschaft mit beschränkter Haftung (GmbH)*) or a joint-stock company (*Aktiengesellschaft (AG)*).

b) restrictions on the freedom of lawyers or patent attorneys to work in partnership with members of other professions.

Regarding a)

It is currently the case that, for law firms and patent law firms which take the form of a limited liability company (GmbH) or a joint-stock company (AG), the majority of capital shares and voting rights must be held and/or exercised by the profession which gives its name to the firm. The main purpose of the regulations is to protect the firm's independence, safeguard qualification requirements and ensure that the profession which gives its name to the firm retains primary influence.

According to a decision of the Federal Constitutional Court (ruling of 14 January 2014, 1 BvR 2998/11, 1 BvR 236/12), these requirements infringe occupational freedom as provided for in Article 12 of the Basic Law insofar as they concern firms of lawyers and patent attorneys.

The restrictions will be abolished where the Federal Constitutional Court has found them to be unconstitutional. Steps are currently being taken to check what practical conclusions should be drawn from the decision regarding relevant restrictions which affect law firms and patent law firms composed of lawyers and patent attorneys with tax advisers and chartered accountants.

Regarding b)

The professional collaboration of lawyers with other professionals is currently restricted to interprofessional associations with patent attorneys, tax advisers and chartered accountants. The same applies to patent attorneys. The purpose of the restriction is to ensure that the laws of the legal profession are adhered to (in particular independence, discretion and the ban on representing conflicting interests). The obligations on the above-mentioned professions, which can form professional partnerships, are the same as those applying to lawyers. Like lawyers, they have the right to refuse to give evidence and are not permitted to confiscate evidence.

The Federal Supreme Court referred to the Federal Constitutional Court the question of whether the ban on professional partnerships between lawyers and doctors and pharmacists was compatible with the Basic Law (ruling of 16 May 2013, II ZB 7/11). The decision of the Federal Constitutional Court, which is expected in 2016, is to be taken into account during the planned reforms of the regulations on pursuit of the profession.

- **Tax advisers**

With regard to the professional regulations for tax advisers, there are plans to amend the relevant fees regulation. Steps will also be taken to check what action is to be taken with respect to the Tax Advice Act in response to the judgment of the European Court of Justice of 17 December 2015 in *X-Steuerberatungsgesellschaft* (Case C-342/14) with regard to the provision of professional assistance in tax matters by a foreign tax advisory firm.

In the regulation on fees for tax advisers (*Steuerberatervergütungsverordnung (StBVV)*), an opening is to be allowed for fees regulations which differ from the StBVV. The scope of the

StBVV is to be restricted to tax advisers established in Germany with respect to work conducted in Germany.

The rule on the application of a minimum fee of EUR 10 in the StBVV is to be abolished.

In extra-judicial matters, it will be possible for a lower fee to be agreed than that stipulated by law.

Action is needed with regard to the binding minimum fee for services provided by tax advisers. For amendments to the statutory rules, provision is made for the procedure for adopting regulations to amend various tax regulations. The cabinet decision for the framework regulation is scheduled for March 2016.

The framework regulation is to be tabled in the *Bundesrat* in May 2016.

The Federal Government is investigating what action should be taken with respect to the Tax Advice Act in response to the judgment of the European Court of Justice of 17 December 2015 in *X-Steuerberatungsgesellschaft* (Case C-342/14) with regard to the provision of professional assistance in tax matters by a foreign tax advisory firm.

N.B.: The European Court of Justice ruled in its judgment that tax advisory firms established in another Member State could, without the persons acting on the firm's behalf having to travel to the client's Member State, rely on freedom to provide services within the EU if they wished to provide clients in Germany with advice on tax matters. The Services Directive (2006/123/EC) and the Directive on the Recognition of Professional Qualifications (2005/36/EC) are not, however, applicable here. Although it is lawful for Germany to require tax advisers to have special professional qualifications, in the case of tax advisory firms from other EU Member States the authorities must take into account whether the service provider has comparable qualifications. Whether this is the case in the legal dispute in question now needs to be checked by the Federal Fiscal Court, which has referred the matter to the Court of Justice for a preliminary ruling.

The Federal Government welcomes the decision of the Court of Justice. Given that the requirements for access to a profession have not been harmonised, the Member States are permitted to demand special qualifications in this unharmonised area in order to safeguard consumer protection and ensure that tax procedures are conducted properly.

- **Chartered accountants**

The regulations for the profession of chartered accountant in Germany are based on the requirements of Directive 2006/43/EC on statutory audits.

The Chartered Accountants Order (*Wirtschaftsprüferordnung (WPO)*) is currently being amended (the Auditors' Supervision Reform Act (APAReG) adopted by the *Bundestag* has not yet been promulgated; it is due to enter into force on 17 June 2016) in order to transpose into German law the provisions concerning supervisory powers and professional regulations laid down in Directive 2014/56/EU on statutory audits of annual accounts and consolidated accounts and to implement the directly applicable Regulation (EU) No 537/2014. In addition to the transposal of the Directives, further amendments will be made to the WPO, such as the reintroduction of a shortened examination for sworn accountants.

The following amendments to the professional regulations of chartered accountants are of particular note:

- registration and resultant admission of EU auditing firms to Germany's auditing market (§ 131 WPO, as amended);
- abolition of the restriction with regard to the use of foreign legal forms for German chartered accountancy firms, thus opening up EU legal forms for all auditing firms (§ 27(1) WPO, as amended);
- recognition of auditing work by EU auditors and EU auditing firms as an examination requirement (clarification in § 9(5) WPO, as amended);
- expansion of the list of original professional profiles under § 43a(1) WPO, as amended.

N.B.: The purpose of this measure, which goes beyond mere transposition of a directive, is to take account of the fact that the professional profile of the chartered accountant has been expanded considerably in recent decades. The list of original professional profiles is therefore to be expanded to include activities which were only classified as permitted activities under the existing § 43a(2). The inclusion of these activities in the list of original professional profiles means that a chartered accountant who pursues this activity will in future no longer be obliged to register his or her own practice in the professional register and provide evidence of corresponding insurance protection.

- **Architects, landscape architects, interior designers, town planners**

Some *Länder* are beginning to consider making the requirements for holding company shares and for exercising voting rights more uniform across Germany than has been the case hitherto. For this purpose, particularly strict requirements for joint stock companies which have the protected professional titles of architect, landscape architect, interior designers or town planner in their company name could be relaxed in certain *Länder*. The *Länder* are responsible for these matters, but the federal authorities are not.

2. **Skilled trades**

- There are currently no plans to make changes to access to skilled trades or to the pursuit of such occupations. However, efforts are under way to make it easier for service providers from other EU Member States to operate on a casual and temporary basis. To this end, the fee for notifying an intention to provide cross-border services is to be waived. The necessary fee adjustments will be made at local level by the chambers of trades, which are largely autonomous.

3. **Health professions**

- **Doctors/specialists**

The 115th Annual Convention of Doctors in 2012, as the main decision-making body of the Federal Chamber of Doctors, gave its managers the task of preparing an amendment to the Model Further Training Order (*Muster-Weiterbildungsordnung (MWBO)*) in order that further training be focussed on skills. In collaboration with the chambers of doctors at *Land* level and with the participation of specialist bodies, professional associations, umbrella associations and other medical organisations, the Federal Chamber of Doctors is developing a skills-based MWBO of this kind in order to further develop the MWBO so that it takes into account the various requirements of the fields concerned and so that further training reflects scientific progress and the realities of medical care, which are in constant flux.

Now that proposals have been received from the participating medical organisations regarding the further development of the various components of further training, the process of amending the MWBO has reached an intensive discussion phase between the Federal Chamber of Doctors and the chambers of doctors at *Land* level. The process is ongoing.

- **Psychotherapists**

As part of the implementation of the coalition agreement, there are plans during the current legislative period to reform the training of psychotherapists and the requirements for access to training.

Instead of the existing post-graduate training courses, there is in future to be a 'direct training' course for the psychotherapist profession immediately following a school leaving qualification granting entry to higher education. In a similar way as for doctors, specialist training courses are to be provided following on from the direct training course which will allow participants to obtain further qualifications for specific forms of psychotherapy.

The existing split in the psychotherapy profession between psychological psychotherapists, on the one hand, and child and youth psychotherapists on the other, is to be abandoned. The ultimate goal is to have a uniform profile of the profession. The content which has hitherto been the characteristic feature of training under the Psychotherapists' Act, and of the accompanying regulations on training and examination, will be updated and incorporated into the new training structure. In particular, training will no longer concentrate on one scientifically recognised psychotherapeutic procedure but will span several procedures. Specialisation in one procedure can then take place during further training. The high qualification level which has existed hitherto will be maintained during direct training in future.

The profession will continue to be regulated in order to protect consumers and service recipients (patients).

- **General nurses, occupational health nurses and paediatric nurses, geriatric nurses**

A joint draft bill from the Federal Ministry of Health and the Federal Ministry of the Family, the Elderly, Women and Youth makes provision for a reform of the existing three types of training for care of the elderly, occupational health care and nursing as well as occupational health care and paediatric nursing. The three-way split of the nursing profession is to be abolished and the different types of training are to be amalgamated to form a uniform professional profile. In addition, federal legislation will be adopted in order to introduce primary nursing training at university level to supplement the different specialist strands of nursing training. The new system of training will prepare those in the profession for deployment in all the general fields of nursing, to make it easier for them to switch between individual areas of nursing and to open up further areas of deployment and prospects for promotion.

- **Veterinarians**

A careful examination of the professional rules took place during the last peer review concerning Directive 2006/123/EC in the years from 2012 to 2015.

In the subsequent pilot procedure of 27 April 2015 (ref. 7203/14/MARK) against Germany, the Commission raised the question of the legal form of veterinarians. After this question was examined and discussed by the federal and *Land* authorities and after corresponding adjustments had been made to the professional regulations in a number of *Länder*, Germany

was able to inform the Commission that it was now possible for veterinary practices to also take the form of legal entities in all the *Länder*. The last *Land* which still prohibited veterinary practices taking the form of legal entities abolished this rule on 1 June 2015.

Moreover, the professional rules were carefully examined once again in the context of Article 59 of Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications. The conclusion of this examination was that the existing system should be retained. It was also made clear that adjustments would be made if rules as such, or in their present form, were no longer essential in order to achieve the above-mentioned objectives which the existing system of rules seeks to pursue.

The Federal Ministry of Food and Agriculture and the *Länder* have agreed that there will be regular meetings between the federal and *Land* authorities in future. These meetings should lead to the regular exchange of experience on the application of professional rules. In view of the fact that there are 16 pieces of legislation on professional bodies or on nursing professions and 17 orders governing particular professions, the meetings between the federal and *Land* authorities should promote the creation of rules which are as uniform as possible throughout Germany and help to ensure that rules on the professions are enforced in as uniform a way as possible throughout the country.

4. Social professions

- State registered educators

The authorities in Saxony-Anhalt are considering amending the Regulation on Vocational Schools (*Verordnung über berufsbildende Schulen (BbS-VO)*):

Under that Regulation, aptitude tests will in future take into account the prior results of external examinations.

Where refresher courses are necessary (which has not been the case hitherto owing to the low numbers), consideration will be given to issuing an appropriate decree.