

## Mutual evaluation of regulated professions

### Overview of the regulatory framework in the transport sector by using the example of driving instructors

*Report based on information transmitted by Member States  
and on the meeting of 6 June 2014*

#### 1. CONTEXT AND AIM OF MUTUAL EVALUATION EXERCISE

Already in June 2012, in its Communication on the implementation of the Services Directive, the Commission stressed the importance that the framework for professional services needs to remain fit for purpose. The revised Professional Qualification Directive, adopted in November 2013, addresses certain issues and lays the basis for a new strategy that requires each Member State to **actively perform a review and to modernize its regulations on qualifications governing access to professions or professional titles.**

Following the work plan presented by the Commission in its Communication of 2 October 2013<sup>1</sup> on evaluating national regulations on access to professions, and in particular the idea that Member States should not work in isolation when screening their legislation, but should be able to discuss with other Member States and compare their systems, this report presents an overview of the information communicated to the Commission by Member States, Iceland, Liechtenstein, Norway and Switzerland either through specific reports or through information uploaded in the database for regulated professions as well as of the discussions which took place during the meeting of 6 June 2014 on mutual evaluation dedicated to this sector.<sup>2</sup> This report is established with the aim to facilitate the mutual evaluation exercise and is therefore not a comprehensive report neither on the sector nor on the specific profession.

In this context the Commission 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 Member States, should also have a positive impact on the employment situation, in particular for young people, and enhance economic growth, especially since professional services alone amount to around 9% of the GDP in the Union.

At the end of this exercise Member States should, as foreseen in the Communication of 2 October 2013, be able to present a first set of national action plans by April 2015.

<sup>1</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Evaluating national regulations on access to professions COM(2013)676.

<sup>2</sup> For the purpose of this meeting Member States were organised in 4 different groups of 8 Member States (+ Iceland, Liechtenstein, Norway and Switzerland). Groups were organised as follow: *Group 1:* Austria, Bulgaria Estonia, Hungary, Slovenia, Slovakia, Switzerland and Malta; *Group 2:* Belgium, United Kingdom, Ireland, Finland, Greece, Cyprus, Iceland and Romania; *Group 3:* Croatia, Denmark, Germany, Norway, Luxembourg, the Netherlands, Poland and Portugal; *Group 4:* Czech Republic, France, Italy, Latvia, Lithuania, Sweden, Liechtenstein and Spain. The focus of the discussion differed sometimes depending on the Member States sitting around the table.

## 2. ECONOMIC AND STATISTICAL INFORMATION ABOUT THE TRANSPORT SECTOR

Transport activities are composed of various sub-sectors. The table below shows figures for the aggregate sector. The sector represented as much as 11.9% of total value added produced in Lithuania and close to 8% in Estonia, more than twice the EU average. These two countries also experienced the strongest growth over the last decade together with Spain (7.5 to 8.2% average annual growth) while others experienced no growth at all (Italy) or even a decline (Denmark, Austria and Slovakia and Norway). The share of the sector in terms of employment was again the highest in the Baltic countries (7.5% of total employed in Latvia and 6.7% of total in Lithuania). **On average for the Union, the sector employed 4.2% of all employed.** The level of employment has not much risen on an annual basis in the large majority of countries with the exception of Poland (2.4%) and Lithuania (1.7%).

| Transport activities       | Value added       |   | Total employment  |   |
|----------------------------|-------------------|---|-------------------|---|
|                            | Share (%)<br>2012 | Average annual<br>real growth(%)<br>2002-2012 | Share (%)<br>2012 | Average annual<br>growth (%)<br>2002-2012 |
| <b>EU-28</b>               | 4,4               | 1,4   | 4,2               | 0,6                                       |
| <b>Belgium</b>             | 5,2               | 1,7   | 4,6               | 0,4                                       |
| <b>Bulgaria</b>            | 6,4               | 1,8   | 4,9               | 0,3                                       |
| <b>Czech Republic</b>      | 5,9               | 1,0   | 5,2               | -0,5                                      |
| <b>Denmark</b>             | 5,4               | -0,9  | 4,5               | -0,1                                      |
| <b>Germany</b>             | 3,4               | 3,3   | 3,9               | 0,7                                       |
| <b>Estonia</b>             | 7,9               | 7,5   | :                 | :   |
| <b>Ireland</b>             | 3,6               | :   | 4,0               | 0,4                                       |
| <b>Greece</b>              | 5,9               | 1,5   | 4,2               | -0,8                                      |
| <b>Spain</b>               | :                 | 8,2   | :                 | :   |
| <b>France</b>              | 4,1               | 1,8   | :                 | 0,3                                       |
| <b>Croatia</b>             | :                 | :   | :                 | :   |
| <b>Italy</b>               | 5,3               | 0,0   | 3,8               | 0,6                                       |
| <b>Cyprus</b>              | 4,5               | :   | 4,2               | -0,2                                      |
| <b>Latvia</b>              | :                 | :   | 7,5               | 0,6                                       |
| <b>Lithuania</b>           | 11,9              | 7,6   | 6,7               | 1,7                                       |
| <b>Luxembourg</b>          | 3,1               | :   | 4,9               | :   |
| <b>Hungary</b>             | 5,6               | 0,8   | 5,3               | -0,8                                      |
| <b>Malta</b>               | 5,0               | :   | 3,9               | :   |
| <b>Netherlands</b>         | 3,9               | 1,9   | 3,8               | -0,2                                      |
| <b>Austria</b>             | 4,2               | -0,7  | 4,3               | 0,7                                       |
| <b>Poland</b>              | :                 | 2,8   | 4,7               | 2,4                                       |
| <b>Portugal</b>            | 4,6               | 2,7   | 3,3               | 0,9                                       |
| <b>Romania</b>             | 6,0               | 1,4   | 4,4               | -0,4                                      |
| <b>Slovenia</b>            | 5,4               | 3,7   | 4,3               | 0,2                                       |
| <b>Slovakia</b>            | 5,1               | -0,6  | 5,2               | 0,1                                       |
| <b>Finland</b>             | 4,9               | 0,4   | 5,1               | 0,7                                       |
| <b>Sweden</b>              | 5,9               | 1,1   | :                 | :   |
| <b>United Kingdom</b>      | 3,7               | 0,8   | 3,7               | 0,4                                       |
| <b>Iceland</b>             | 4,9               | :   | :                 | :   |
| <b>Liechtenstein</b>       | :                 | :   | 2,0               | :   |
| <b>Norway</b>              | 2,9               | -3,3  | 5,9               | 0,4                                       |
| <b>Switzerland</b>         | :                 | :   | 3,7               | :   |
| <b>Total economy EU-28</b> |                   | 1,2   |                   | 0,4                                       |

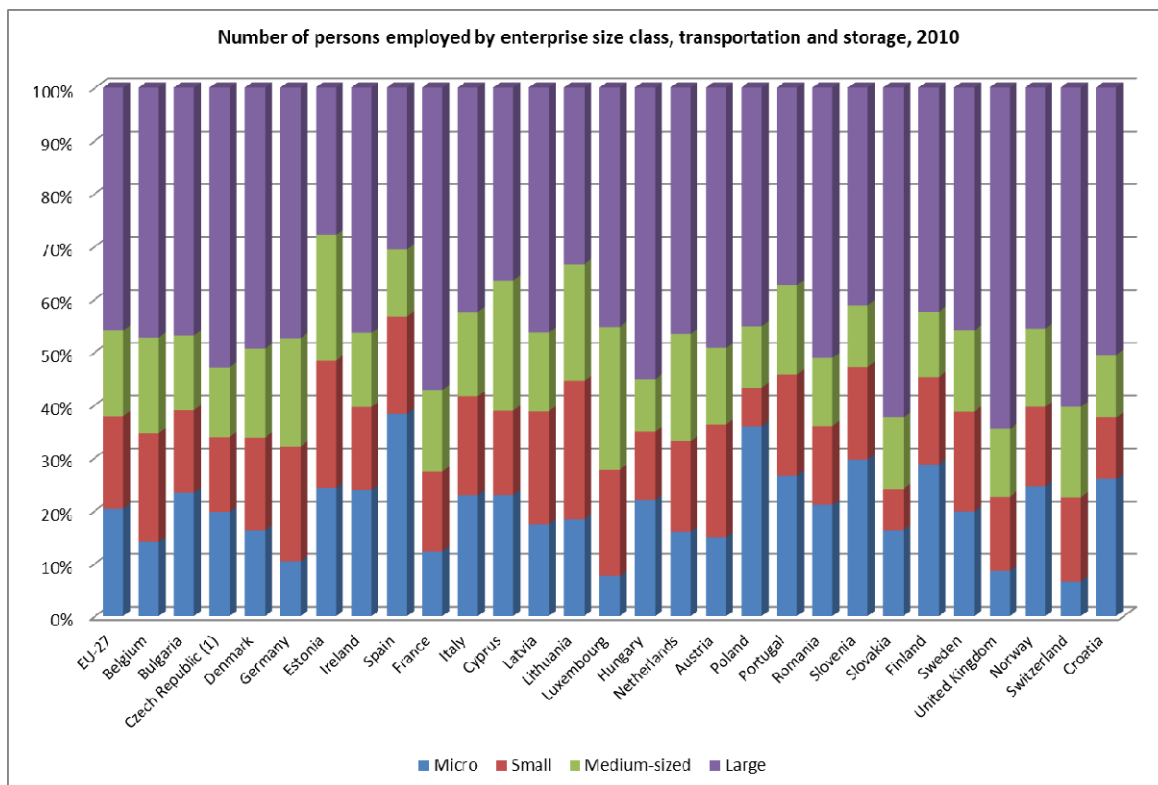
Employment figure for EU corresponds to EU27

Value-added figures for BE, EU, IT, LT, SE: 2011; Employment figures for DK, IT, PL, NO, CH: 2011

LU, CH: Nace H50 and H51 excluded; MT, IS: Nace H51 excluded

Source: Eurostat National Account Statistics for gross value added and total employment (based on persons). Transport cover Nace sections H49 (Land transport and transport via pipelines), H50 (Water transport), H51 (Air transport) and H52 (Warehousing and support activities for transportation)

**Small and medium-sized enterprises** represented in 2010 54% of all companies on average in the EU27. In the UK and Slovakia more than 60% of all companies in the sector were large ones (over 250 employees). At the other end, micro companies accounted for 38% of all companies in Spain and 36% in Poland.



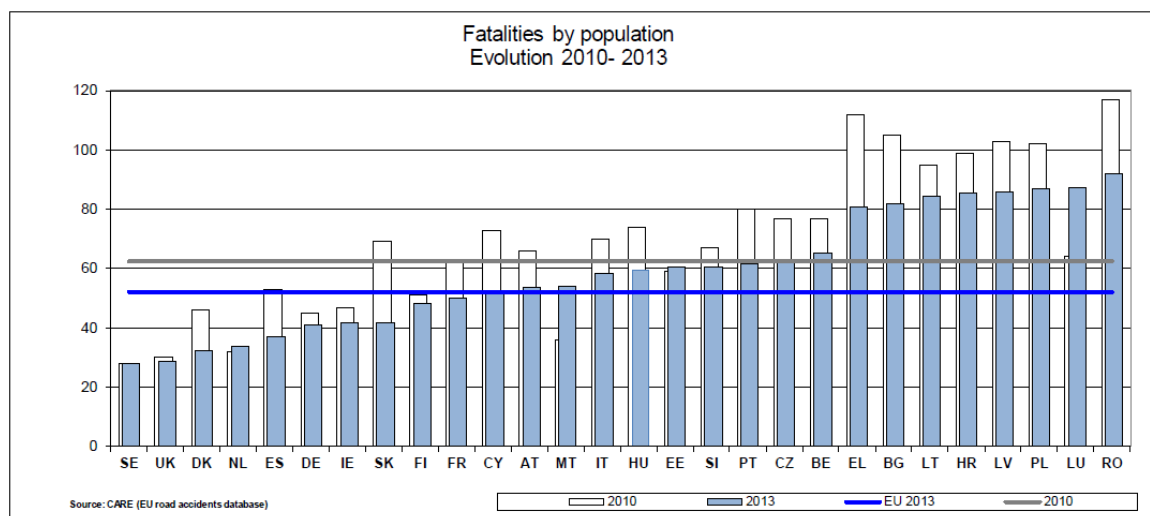
Transportation and storage covers Nace section H -- EL, MT: data not available

(1) CZ: 2009

Source: Eurostat (online data code: sbs\_sc\_1b\_se\_r2)

**Road safety** is the main the reason cited by Member States to regulate the profession of driving instructor in the transport sector. While causal links between the level of fatalities and the level of regulation of driving instructors cannot be established, it is still interesting to recall some figures illustrating the level of road safety among the EU Member States.

**Road safety statistics** (fatalities by million inhabitants)



Source: CARE (EU road accidents database) or national publications; European Commission / Directorate General Energy and Transport, [http://ec.europa.eu/transport/road\\_safety/specialist/statistics/index\\_en.htm](http://ec.europa.eu/transport/road_safety/specialist/statistics/index_en.htm)

### 3. OVERVIEW OF REGULATION IN MEMBER STATES

The profession of '*driving instructor*' is regulated in all 28 Member States as well as in **Iceland, Liechtenstein, Norway and Switzerland**.

**Austria, Finland, Italy, Norway, Poland and Switzerland** have communicated *more than one regulated driving instructor profession*. In **Austria** and **Italy** the difference consists mainly in whether practical and/or theoretical instruction might be given, whereas in **Finland** there is a difference between a driving instructor allowed to teach the basics of safe driving to persons completing their driving licence and a head of instruction at a driving school. In **Poland** there is a driving instructor as well as a driving techniques instructor. The first profession aims at teaching persons applying for a driving licence, the second provides lessons in improving driving techniques amongst established drivers. There is also a profession of a lecturer who can teach the theoretical lessons for applicants applying for a driving license. In addition to the instructor teaching students to obtain their driving licence, **Switzerland** has a complementary driving instructor for those who already have their licence and want to improve their driving skills. **Norway** has three different types of driving instructors, one for the basic teaching and two for more specialized training. Furthermore, **Slovenia** has six different types of driving instructors, namely for safe driving, for new drivers, and for drivers with special needs, but no specific information has been made available concerning the activities which are covered for each of these types of profession, the benefits or the necessity of having those different types of professions.

In addition, 11 Member States have communicated that the profession of '*driving school owner/manager/assistant manager*' is regulated and requiring different qualifications from that of driving instructor (**Austria, Belgium, Czech Republic, Croatia, France, Luxembourg, Portugal, Slovakia, Slovenia, Spain and Norway**). On the other hand, it seems that, for example in **Estonia and Malta**, there are no special requirements for setting up a driving school.

For the sake of completeness, it should be mentioned that a limited number of Member States have also notified the profession of '*driving test examiner*' (**Czech Republic, Estonia, Finland, Malta, Poland, Portugal, Slovenia and Switzerland**) as a separate profession. As far as information has been made available there are no different or additional training requirements for this profession in comparison to the driving instructor. And finally, **Portugal** has specific rules for the profession of '*driving instructor for the transport of dangerous goods*'.

#### 3.1. Scope of reserved activities

The scope of activities reserved to the profession of driving instructor seems to include practical instruction for all Member States. However, as far as theoretical instruction of candidate drivers is concerned, differences in approach have been noticed among Member States. **Austria** and **Italy** have notified two different professions with different training requirements concerning length and content of training; one is allowed to do the practical training only (driving instructor) and the other one is allowed to do both theoretical and practical training (driving school instructor). However, some other Member States also seem to limit the activities reserved to driving instructors of practical training only (e.g. **Latvia**). Moreover, **Finland** intends to apply a similar distinction after reforms foreseen in 2014 when it will become possible to get a basic licence with restricted rights for practical teaching in comparison to the specialist qualification.

**Belgium** has only notified one profession but it seems that five different categories of licenses exist giving different teaching rights according to the training and certificates which have been obtained. In **France** there is also only one profession but specific authorisations exist for instruction of driving with two wheelers or heavy weight vehicles.

### 3.2. Professional qualification required

*Required training hours, type of education required, mandatory traineeship, type of exam, possible annual mandatory training required*

The following Member States have communicated that there are reserved activities for the profession of driving instructor: **Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Italy, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden** and the **United Kingdom** as well as **Iceland, Liechtenstein, Norway** and **Switzerland**.

In addition, **Estonia** informs about the existence of a *voluntary certification system* in the transport sector aiming at providing a label of quality. However, it seems that take up of this system is not as high as hoped. A recent tendency in the sector is therefore towards making certification mandatory.

A *voluntary quality assurance system* also exists in **Germany**. Joining this system may be a precondition for eligibility in a call for tenders (e.g. contract awards from the labour administration to train learner-drivers for busses and lorries).

**Austria** is currently working on guidelines leading to a voluntary *seal of quality* for driving instructors. **Estonia** and **Malta** are also considering the use of voluntary certification schemes for driving instructors.

#### *Level of education required*

Concerning the level of education required and based on the information received by Member States, **Austria** (for driving instructor), **Belgium, Bulgaria, Croatia, Estonia, Malta, Poland, Romania, Slovakia, Sweden** and the **United Kingdom** have indicated a requirement for an *attestation of competence* issued by the competent authority on the basis of either a training course or general primary or secondary education (see article 11 (a) of Directive 2005/36).

Other Member States ask for a certificate attesting the successful completion of a secondary course either general in character or technical or professional in character (see article 11(b) of Directive 2005/36): **Austria** (driving school instructor), **Cyprus, Czech Republic, Denmark, France, Ireland, Italy, Hungary, the Netherlands, Portugal** and **Spain**.

Post-secondary education (see Article 11c of Directive 2005/36) is required in **Finland, Greece, Romania** as well as **Iceland, Norway** and **Switzerland**.

#### *Comparison between different systems*

The following Member States organise *state exams* for the profession: **Austria, Bulgaria, Czech Republic, Cyprus, Denmark, France, Germany, Hungary, Ireland, Italy, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden** as well as **Liechtenstein** and **Iceland**.

It is of particular interest to note that, as far as information has been made available by Member States, the *length of required education* varies from none in the Netherlands, 120 hrs in **Romania**, 145 or 152 hrs in **Italy** (depending whether for the theory or the practical instructor), 160 hrs in **Lithuania**, one month in **Ireland**, 222 to 243 hrs in **Slovakia** depending on the group of driving instructor permission, 280 hrs in **Portugal** (but will shortly be increased to 360 hrs in order to concentrate more on the development of teaching skills and driver psychology), at least 300 hrs of “on-the-job” training in **Belgium**, 345 or 390 hrs in **Austria** (depending on profession), 630 hrs in **France** (although this is not obligatory; those hours can be extend by 210 hrs for two wheelers and 245 hrs for heavy weight vehicles), 10 months in **Germany** to one year in **Denmark** and **Spain**, two years in **Estonia**, **Greece**, **Ireland** and **Sweden** and 3 years in **Luxembourg**.

*Mandatory traineeship* is required in the **Czech Republic** (one week), **Germany**, **Greece**, **Hungary**, **Netherlands**, **Poland** (three months), **Portugal**, **Romania**, **Slovakia**, **Spain**, **Liechtenstein** and **Switzerland**.

On more general terms, **Estonia** informs that the approach for driving instructors is more flexible than for other similar professions in the sector that require specific work-based training before access to the profession.

While there is no restriction concerning the ownership of a driving school, specific management training for heading a driving school is required in **Belgium**, **Cyprus** and **Finland**. **France** and **Portugal** report to have abolished the requirement for a driving school owner to be a qualified driving instructor when implementing Directive 2006/123/EC on services in the internal market.

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In order to guarantee the quality of the service, a number of Member States require participation in *regular continuous training*. At least in **Denmark**, **the Netherlands** and **Slovenia** this participation is linked to the renewal of the authorization to teach. **Belgium**, **Hungary**, **Poland** and **Italy** ask for obligatory participation in an annual training course, **Ireland** asks for a practical test every two years, whereas **Lithuania**, **Liechtenstein**, **the Netherlands**, **Portugal** and **Romania** request the participation in a periodic training course every 5 years. The **Czech Republic** considers the introduction of new rules regarding annual training and assessment once in 5 years of active driving school instructors. This assessment used to be mandatory according to rules valid until 2000 and its removal was said to have 'not had a positive impact' on the quality of the driving school system. The Czech Republic has not provided further information on what this negative effect entailed nor the alternative options considered as counter-measures alongside a tightening of annual training measures.

Other regular checks do not seem to have as their objective to ensure that the professional stays up-to-date with evolving professional knowledge or skills, but rather concern in particular medical and criminal checks. Such safeguards exist in **Belgium**, **Cyprus**, **Greece**, **France** and the **United Kingdom**.

### 3.3. Additional requirements

#### *a) Legal form restriction*

Legal form restrictions have been communicated by **Austria** where a licence for a driving instructor can only be obtained by natural persons, also by **Cyprus** and by **Portugal**. Further justifications as to the specific restriction have not been forthcoming.

#### *b) Insurance*

The only Member State asking for professional indemnity insurance is **Greece**.

#### *c) Mandatory registration in professional bodies*

Mandatory registration in a professional body is required in **Romania**, **Spain** and the **United Kingdom**.

#### *d) Territorial restrictions*

Territorial restrictions have been reported by **Cyprus** and the **United Kingdom**. Conversely, **Italy** informed that territorial restrictions and quotas were abolished in 2007.

#### *e) Licence with limited validity*

Licenses issued in **Denmark**, **France**, **Luxembourg**, **the Netherlands**, **Portugal**, **Slovakia** and in **Romania** are valid for 5 years only and therefore have to be renewed every 5 years. Whereas in **Slovakia** an exam of renewed course for driving instructors has to be passed, psychological testing completed and possible road accidents and traffic violations are checked, in **France**, no new exam has to be passed nor are the professional qualifications verified. The authorities verify the criminal records, the validity of the driving licence as well as the medical fitness of the instructor.

**Slovenia** also indicated that a driving instructor license is issued for a period of 5 years which can be extended if the holder participates in regular annual training courses.

**Croatia** has obligatory checks of qualifications every four years and recommends continuous professional training during that period. In the **United Kingdom** registration with the Government agency has to be renewed every 4 years.

#### *h) Establishment requirement*

In **Belgium**, a driving school must have a unit established on Belgian territory, since it is judged that to operate in the Belgian market one must be close to the people interested.

Further, **Cyprus** requests having a permanent establishment of a driving school in the country and **France** requires that teaching take place only in authorized establishments which equally seems to indicate that there needs to be an establishment on the French territory.

#### 4. RESULTS OF TRANSPARENCY / SCREENING EXERCISE BY MEMBER STATES

**Article 59 of the revised Directive** foresees that “*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.”*

##### 4.1. Non discrimination

Member States should ensure that professionals can access regulated professions without being a national or without having to reside in their national territory. This means that it should be examined whether the requirements under the national legal system are directly or indirectly discriminatory on the basis of nationality or residence.

Those Member States which communicated information to the Commission on this aspect confirmed that there is no discrimination based on nationality or residence.

##### 4.2. Justification

Member States were asked to identify the specific overriding reason(s) of general interest, which justify(ies) the regulatory framework. Member States should also check whether this justification is still valid today.

- *Road safety* has been named by the following Member States: **Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Greece, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden, United Kingdom, Iceland, Liechtenstein, Switzerland** and Norway.
- *Protection of consumers and/or of recipients of services* has been identified by **Austria, France, Greece, Portugal, Sweden, United Kingdom** and Norway.

The following overriding reasons were also brought forward although less frequently:

- *Ensure quality of training/Quality control*: **Austria, Belgium**
- *Prevention of fraud*: **Greece, United Kingdom**
- *Safeguarding the sound administration of justice*: **Austria**
- *Protection of the environment*: **Austria, Germany**
- *Public security, public health*: **Iceland, Switzerland, Norway**



### Main arguments used to justify regulation in order to maintain and improve road safety

No Member State has provided information or data demonstrating a causal effect between regulating the profession of driving instructor and the number of road accidents. Explanations given on the link between qualification requirements for driving instructors and road safety refer generally to an expectation that well-trained driving instructors will be able to teach in a way that new drivers will be equipped to drive carefully. E.g., **Portugal** explained: “*although the impact of driving training on road safety, in terms of reducing the fatalities in the first 5 years of solo driving, is still to be proved, there is an accepted general tendency to consider that formal training is the best way to provide knowledge and develop skills for driving*”.

A few Member States (e.g. the **Netherlands, Spain**) emphasise that instruction is taking place in real life situations requiring particular diligence from the driving instructor who has to take into account the traffic.

During the discussions some Member States have questioned the concrete link between accident rates and the content or regulation of the training for driving instructors.<sup>3</sup>

### Main arguments used to justify regulation in order to provide for consumer protection

Member States bringing forward this overriding reason of general interest aim to ensure a minimum standard of knowledge and skills of the driving instructor which is expected to have a positive effect on consumers (**Portugal, Greece**).

It is also put forward that by regulating the profession, it is easier to give consumers access to better and more reliable information (**Portugal**) so that they can make an informed choice. New legislation provides for more information for consumers by foreseeing the publication of information about driving schools results and the instructors working in driving schools. Similar information is published already in **the Netherlands**.

**France** indicates that beside professional qualification requirements, it is important for the protection of the consumer to ensure that a vehicle is properly insured; that the teaching facilities are appropriate and do not present a danger to the students or; that the teacher has a valid driving licence, is physically fit to teach and has no criminal record.

### Arguments in favour of ensure quality of good training and quality control

In the view of **Austria**, restrictions to the access and exercise of the activity are necessary to ensure a high quality of training. In order to achieve this aim, the content of training is prescribed by law.

**Belgium** underlines that driving instructors need to meet minimal standards in order to guarantee the quality of training.

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<sup>3</sup> Some Member States mentioned that research in the field was not necessarily able to establish a causal link between formalised driving instruction and accident rates. In this context the **Netherlands** informed about a study from 2013 comparing the Dutch driver training system with the systems in Germany, Belgium and the United Kingdom. One of the conclusion was that while there are major differences between the driver trainings in the four countries, Germany having many regulations, whereas the United Kingdom, on the other hand, having very few, the ‘safety value’ of the driver training systems does not seem to differ much.

In this context, it should be mentioned that **Bulgaria** asks the Commission to speed up elaborating the Directive on the content of instructors' training and requirements and, as the **United Kingdom**, refers to EU Directive 2006/126/EC setting out the competences that must be tested for a learner driver to obtain a driving licence. Based on this Directive the training context should be essentially the same in all Member States. It should be noted however, with regard to the purpose of this exercise, that this Directive is outcome based rather than process prescriptive.

#### Information why regulation can prevent fraud

**Greece** considers that regulation is necessary in order to avoid fraudulent activity, e.g. concerning medical certifications or traffic accidents. In order to achieve this aim, criminal records of candidate driving instructors are checked.

#### Link between regulating the profession and safeguarding the sound administration of justice

According to **Austria** safeguarding the sound administration of justice is guaranteed by diligent execution of official tasks that are entrusted to the driving school. Educative obligations and duties are precisely defined and supervised by the competent authority. Driving schools cooperate with authorities issuing driving licences and contribute to transparency in respect to obtaining a driving licence.

#### Protection of environment through teaching of eco-friendly driving

**Austria** considers that driving school owners contribute to the protection of the environment by teaching their students an economical and fuel-efficient way of driving.

Without mentioning the protection of the environment as an overriding reason of general interest, some Member States also argue that well qualified instructors are important to teach candidate drivers the basics of eco-friendly driving (**Germany, Sweden, Switzerland**).

### **Points for further consideration concerning the justification of national regulations**

Information provided by Member States as well as the discussion held during the mutual evaluation meeting gave an overview of the current situation as regards the regulation of the driving instructor profession across the EU as well as about ongoing reflexions and reforms. On a more general level and going beyond this profession which has been chosen for discussion in order to illustrate questions and issues that might arise in the transport sector, it has been noticed that Member States have different regulatory approaches while pursuing mainly the same overriding reason(s) of public interest. At the same time, reaction from national regulators to different developments, which might be economic, technical or scientific have been different and it could be observed that on the basis of similar information certain Member States decide to deregulate whereas other go the opposite way and decide to tighten their regulation.

### *Assessment of the necessity and proportionality of regulation*

Overriding reasons of public interest can only be invoked if they are the reason for regulating a profession. The mere fact that requirements for the access to or for the exercise of a specific profession have positive impacts on other objectives of public interest is not enough to justify a limited access to or exercise of a profession. In this respect Member States are invited to consider carefully which public policy interests are to be pursued through a specific regulation and how a direct relationship between the two may, or may not, be established. At the current state of the exercise it has been observed in a number of cases that there was lack of evidence why a regulation was needed and that the link between the objective pursued and the qualification requirement was not always clear.

### *Assessment of the cumulative effect of different rules with which a professional has to comply*

The contributions received as well as the discussion during the mutual evaluation meeting indicate that Member States have in general not reviewed the cumulative effect of all different measures applying to a professional before beginning practice. It is however important to examine the safeguards offered through different rules applicable to services in order to determine whether there is a risk of duplication and to understand where any added value may lie. Regulation on access to a profession by means of a specific qualification should only be maintained if other existing safeguards are shown to be insufficient.

As a positive and illustrative example it should be mentioned that **France** indicated that as a result of the implementation of Directive 2006/123/EC on services in the internal market a former requirement for a driving school owner to be a qualified driving instructor has been removed. Further, they suggest that this may have contributed, beside other initiatives taken by the French government, to the sharp increase of companies in the sector since 2011.

### **4.3. Proportionality**

Equally, it is important that Member States analyse the proportionality of their measures with reference to their suitability for securing the objectives they pursue. In this respect, measures should be scrutinized to ensure that they do not go beyond what is necessary in order to attain those objectives or which could be achieved by other means having a less restrictive impact.

**Spain** and **Poland** recognize that regulating the profession has a *limiting effect on the access to the profession* and as such a follow-on impact on employment. Both attempt to counterbalance this, for example by ensuring that entry courses are held with frequency.

Member States find it in general difficult to *assess the concrete effect of measures taken in order to regulate the profession on the general interest objective pursued*. This is mainly due to the fact that either no data is available or that it is difficult to establish a causal link between the available data (e.g. on road accidents, road user competence, risky or environmental behaviour) and the regulation of the profession. For some

Member States reforms have only taken place recently and it is too early to assess the effects of the new regulation. **Denmark** refers to the EU MERIT project from June 2005 aiming at elaborating minimum European requirements for instructor training and testing, as a basis for an EU directive and a national study from 1997 which concluded that driving instructors were to get better specific professional education. Recommendations from both reports were used before launching the latest reform which entered into force in April 2014.

Another reason justifying that certain activities be exclusively performed by professionals possessing a specific professional qualification might be the *degree of complexity or the nature of the activities which are reserved*.

This argument is being used by the **Netherlands** which remark that driving instructors have to ensure safe driving during the lessons and at the same time instruct and coach the aspiring driver who is taking the lessons. This requires several skills in particular the ability to recognise the level of control necessary to ensure safe driving while leaving as much hands on experience as possible to the aspiring driver.

According to **Germany** it already became apparent towards the end of the 60s that for the sake of educating safety-prone new drivers it was necessary to teach situation-related, sensible, defensive driving skills and not only technical driving skills. The overall concept of an anticipating, defensive and environmentally-friendly driving style became prominent as well as training around young driver risks like over-estimating one's own abilities, thrill and sensation-seeking or being affected by emotions. In the face of broadened contents and teaching goals driving instructors, Germany concludes, need profound didactical and methodical skills and this has been reflected in the German regulation.

In this respect it is interesting to note that **Sweden**, which also puts a particular focus on road safety provides for two possibilities to be trained to obtain a driving licence: either by a lay instructor or by a professional driving instructor. The system has been initially introduced for persons living in remote areas, but also to give driving students a chance to get more practical training without high costs. In order to guarantee the objective of general interest, Sweden applies certain rules also for lay instructors, i.e. they have to undertake an obligatory course in order to be permitted to become lay instructor. Sweden reports that 90% of the students use this double system which does not seem to put at risk the aim pursued as Sweden is one of the best performers when it comes to road safety.

In order to ensure that the measures taken *protect the general public interest pursued*, Member States use different possibilities: While some Member States favour a restrictive access to the profession, in general by foreseeing regulation by law and requiring mandatory certification or licences, other Member States focus on continuous and further training of the professionals (**Belgium, Italy, Lithuania, the Netherlands, Poland and Romania**) in some cases even associated with a limited validity of the licence and the necessity to pass an exam for renewal (**Denmark, Slovakia and Slovenia**).

Other Member States, like **Germany**, seem to blend approaches by keeping the requirements high for accessing the profession in combination with obligatory further training, regular inspection of driving schools as well as quality assessment and ex-post control checks. In **Poland**, regulatory framework of driving instruction is supplemented with information obligations of district governors (who supervise driving instructors and driving schools): publication of data on share of customers of each driving school, who received driving licences; information on number of justified complaints on each driving

school. The availability of this information should allow the consumer to make an informed choice.

In this respect, measures reported by the **United Kingdom** appear to be concerned more with the actual professional conduct of the driving instructor than his professional qualifications and are linked to the fact that many learner car drivers are young adults, sometimes even children as the age of learning to drive a car in the United Kingdom is 17 and that there is a duty to ensure the safety of those persons especially as they can be in a one to one situation with the instructor. The United Kingdom considers that this also ensures road safety by keeping instructors delivering bad or dangerous tuition off the roads and in addition also ensures that consumers receive good quality of service.

No feedback was given from Member States on the *cumulative effect of different measures* concerning the professional activity of the driving instructor.

Concerning the *use of alternative mechanisms to achieve the general objective(s)*, the **Netherlands** reports about reflections to introduce a voluntary certification system in order to reduce the necessity of formal legislation, which have been abandoned due to the low level of organization of the sector making it impossible to ensure the same level of quality of driving instructors.

### **Preliminary remarks concerning the proportionality of national regulations**

#### *Same objective – different ways of achieving it*

It emerged in particular from the discussion between Member States that while e.g. the level of road safety may be comparable in Member States according to available statistics, the regulatory approach for driving instructors' qualification requirements, i.e. the form and level of regulation, can vary significantly. It has also been observed that it is not necessarily the Member State with the highest level of regulation that has the best road safety statistics. For example, while it is certainly necessary to take into account other factors than professional knowledge of the teacher, e.g. the state of the road network, the average age of vehicles or weather conditions, it is interesting to note that **the Netherlands** which only require a certification but do not prescribe any particular form of education have one of the best road safety statistics and in any case not worse than Member States with a highly regulated profession.

It has also been noted that certain Member States have decided to revise the regulatory framework without compromising the desired objective, e.g. by introducing different levels within the same profession allowing in particular young persons to access the profession more easily. At the same time, depending on the complexity of the tasks reserved to the profession, there is the possibility for the professional to further develop and to acquire more knowledge and professional competences allowing him to carry out the more complex parts of the activities.

#### *Impact on consumers/service recipients*

A proportionality analysis should also look at the impact of the regulation of the profession on the users of the service. Whereas the protection of the consumers is often brought forward to justify the regulation of a profession, Member States are aware that there are also economic considerations, such as prices to be taken into account.

During the mutual evaluation discussion, it became apparent that only a few Member States prescribe mandatory lessons with professional driving instructors (**Bulgaria, Greece, Hungary and Romania**) whereas a significant number of Member States also allow the possibility to have driving lessons with lay instructors. It seems that most of those Member States impose some conditions on the lay instructor concerning experience in driving and age and in some cases they have to follow a short training before starting giving practical training. For some Member States lay instruction has to be combined with professional driving instruction. While it could be argued that allowing lay instruction contradicts or weakens certain of the arguments being brought forward for justifying the regulation of the driving instructor profession, it could be viewed that lay instruction is mainly accepted for economic reasons, allowing the consumer to obtain a driving licence, which might be necessary for the young adults in the labour market, at a lower price. Additionally, the increase in opportunities to receive instruction, may ultimately contribute positively to the eventual skills of the learner driver and thus to overall road safety.

#### *Continuous professional development*

Another way to ensure that the objective and purpose of the regulation is pursued in an efficient way is through continuous training for professionals. Given continuous developments in the transport sector, e.g. new technology, new scientific studies, there is certainly a need for professionals to adapt to these developments. Regulations concerning the conditions for access to and the exercise of the profession might not be considered the best way to adapt quickly to new situations. In this respect it is interesting to note that a number of Member States ask the professional to keep up to date and to follow regular training. In certain cases the licence is not renewed or can be withdrawn if the professional does not fulfil this obligation.

## **5. CONCLUSION BY MEMBER STATES ON THEIR SCREENING EXERCISE**

The following Member States have communicated their intention to maintain the current system either because it has been considered satisfactory or because it has been recently changed: **Austria, Denmark, Estonia, Germany, Portugal, Romania, United Kingdom and Iceland.**

Other Member States have announced that the current system is under review. This concerns **Cyprus**, which is the process of drafting new legislation and has announced considering opening the access to the profession, **Greece** and **Spain** which currently considers raising the level of the qualification requirements. Spain also reports that citizens are seeking to secure their qualifications in other Member States where entry requirements are less stringent; following this they are evaluating the possibilities for increasing compensatory measures. **Malta** wants to improve its current system and has decided, after consultation with the sector, to introduce an accreditation scheme for motoring schools and driving instructors in 2014. **France** intends to undertake reforms aiming at improving the education of driving instructors and at promoting new pedagogical practices according to the "Goals for Driver Education Matrix". **Sweden** is discussing the scope of the current rules.

A third group of Member States have recently undertaken reforms. It is interesting to mention the reasons and analysis of those Member States. At first sight, two tendencies can be distinguished:

a) On the one hand, those Member States which, mainly for reasons of opening up the profession for young people and/or unemployed persons decide to introduce a kind of partial access to the profession by organising the professional qualifications required in different steps. This is the case for **Poland** which abolished the requirement to have a secondary school education and requires that the candidate driving instructor holds a driving licence for 2 years instead of previously 3 years<sup>4</sup>. It is however still too early for an assessment of the effects of the reform. The situation is quite similar in **Finland**, where new rules will enter into force in autumn 2014. Access to the profession will become easier by offering different options to obtain a qualification, e.g. notably the possibility to only do two instead of previously 4 obligatory exams which will allow to become a driving instructor with more limited competences (e.g. only for driving licence “B”). Finland explained that the recent reform aims to facilitate access to the profession in particular for young people. In this context, it is interesting to note that **Greece** indicated a decrease in the number of applicants for driving instructors which it is assumed to be due to the economic crisis and a drop in the number of cars. At the same time Greece intends to reform the profession, making the conditions to access the profession even stricter.

**Belgium** also has a similar system allowing a professional to progress and acquire additional competencies in order to gain more rights for exercising the profession. Unlike other Member States, Belgium e.g. does not ask for a specific certificate or test for a driving school instructor, but anybody having practiced the profession of driving instructor for 3 years might open a driving school.

Reforms in the **Netherlands** in the past years also aimed at simplifying legislation. Among the most important changes there was the introduction of a competency test for new driving instructors who lacked the required formal diplomas, the introduction of an exam focusing on instructors’ teaching skills, the introduction of a mandatory internship as well as the introduction of mandatory supplementary training and a reintegration program. The number of driving instructors in the Netherlands has increased from 9.000 in 2010 up to approximately 15.000 in 2014. One reason of growth was the promotion of the profession of driving instructor as an employment opportunity by Dutch social security, including a reintegration budget, which has led not only to jobs but also to more competition on the market.

b) On the other hand there are Member States, for example **Denmark**, which after consultation with stakeholders decided to make rules stricter and to add additional requirements in order to become a driving instructor. For instance, contrary to a lot of other Member States, Denmark decided to raise the minimum age for driving instructors and to extend the exams and qualifications necessary in order to obtain a licence (applicants are required to obtain driving licences for a number of categories before enrolling in the general education program for driving instructors). This, they say, will expand the general horizon of the driving instructor and make him familiar with more

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<sup>4</sup> During the discussion, Poland also presented the regulatory framework of other professions in the transport sector, such as taxi drivers. It is interesting to observe that as of January 2014, the profession of taxi driver is no longer regulated in districts with less than 100000 residents, while for the others it will be up to the municipal authorities to decide whether qualification requirements should be maintained.

aspects of driving. There is also an increased focus on the pedagogical aspect of the education of driving instructors. Denmark's impetus for these changes is stated as consumer dissatisfaction with the service as well as their intention to improve overall road safety.

Recent reforms in **Hungary** over the past two years also increased the requirement for becoming a driving instructor as the possibility to become a theoretical or a practical instructor have been abolished and an obligation to have obtained the driving licenses of several categories for at least two years was introduced. In addition an exam has to be passed every year.

The situation seems comparable in **Lithuania** where new rules were approved in April 2014. These foresee at least higher college education and the completion of special training (160 hours) in order to access the profession. In addition, driving instructors will have to improve their skills by following additional training every five years for which they will receive a special certificate attesting the attendance and the nature of the training followed. Furthermore, driving instructors need to pass an exam on traffic rules and road safety every 5 years.

Reform in **Germany** was based on the assumption that the profession of driving instructor has evolved over the years to require an increasing number of professional tasks and that driving schools had progressed from being "facilities for merely training legal traffic aspects and practical driving aspects to being training centres with stringent pedagogical requirements". Germany considers that training needs to go far beyond simply passing a driving test and that the principal aim of driving instruction is to be trained to "become a safe, responsible and environmentally-conscious road-user" (including the social behaviour of the students in traffic). In this context, Germany introduced a mandatory training in a driving school and put a stronger focus on the pedagogical content of the professional training. In general, Germany considers that it is not possible to have low education requirements for professionals in areas where the risk is high.