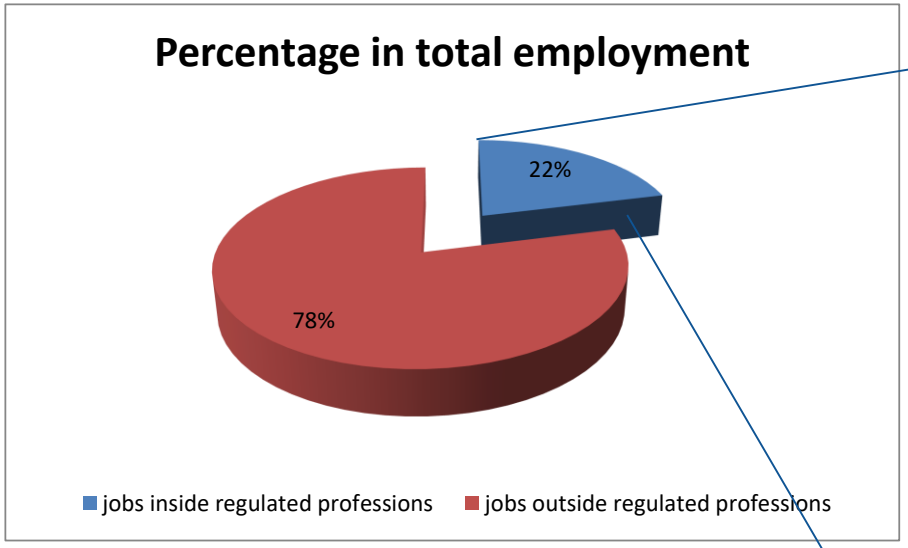
European Commission

Regulated Professions and Recognition of Professional Qualifications

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

Regulated Professions "It's the Economy!"



800+ generic Regulated Professions

5600 differing professional regulations in the EU

47 million professionals, accounting for 22% of EU total employment

Potential job creation: +700,000

4% to 19% extra costs to consumers and a loss of between 3-9% of jobs

Characteristics

National regulations on access and pursuit of professions

Differences between national regulations

Recognition of qualifications obtained in a different country

Overall EU policy

National rules on access and pursuit of a profession

- Mutual evaluation and recommendations
- The Proportionality Test Directive

Recognition of foreign qualifications

- The professional Qualifications Directive
- The Lawyers' Directives

National rules on access and pursuit of a profession

The mutual evaluation exercise

The Proportionality Test Directive

Sunrise Vs Sunset approach

Do Member States look into long-term impact of regulation?

- Do benefits of regulation outweigh the costs?
- Is regulation based solely on public interest objectives?

Sunrise review of regulation

- Public interest objectives
- Impact on the market
- Coherent assessment

Sunset approach for regulation

- Assessment after introducing the measure
- Deregulation
- Enforcement action

Sunrise approach

- *Ex-ante assessment*
- *Made in an independent and objective manner*
- *Gathering all the necessary information and views*
- *Assessing the socio-economic impact of the new provision being proposed*
- *Member States making decisions regarding a new regulation based on public interests rather than special interests*

Mutual Evaluation

The extent of regulated professions (over 5500 profession, 333 professions regulated in less than 5 MS (103 in only 1)

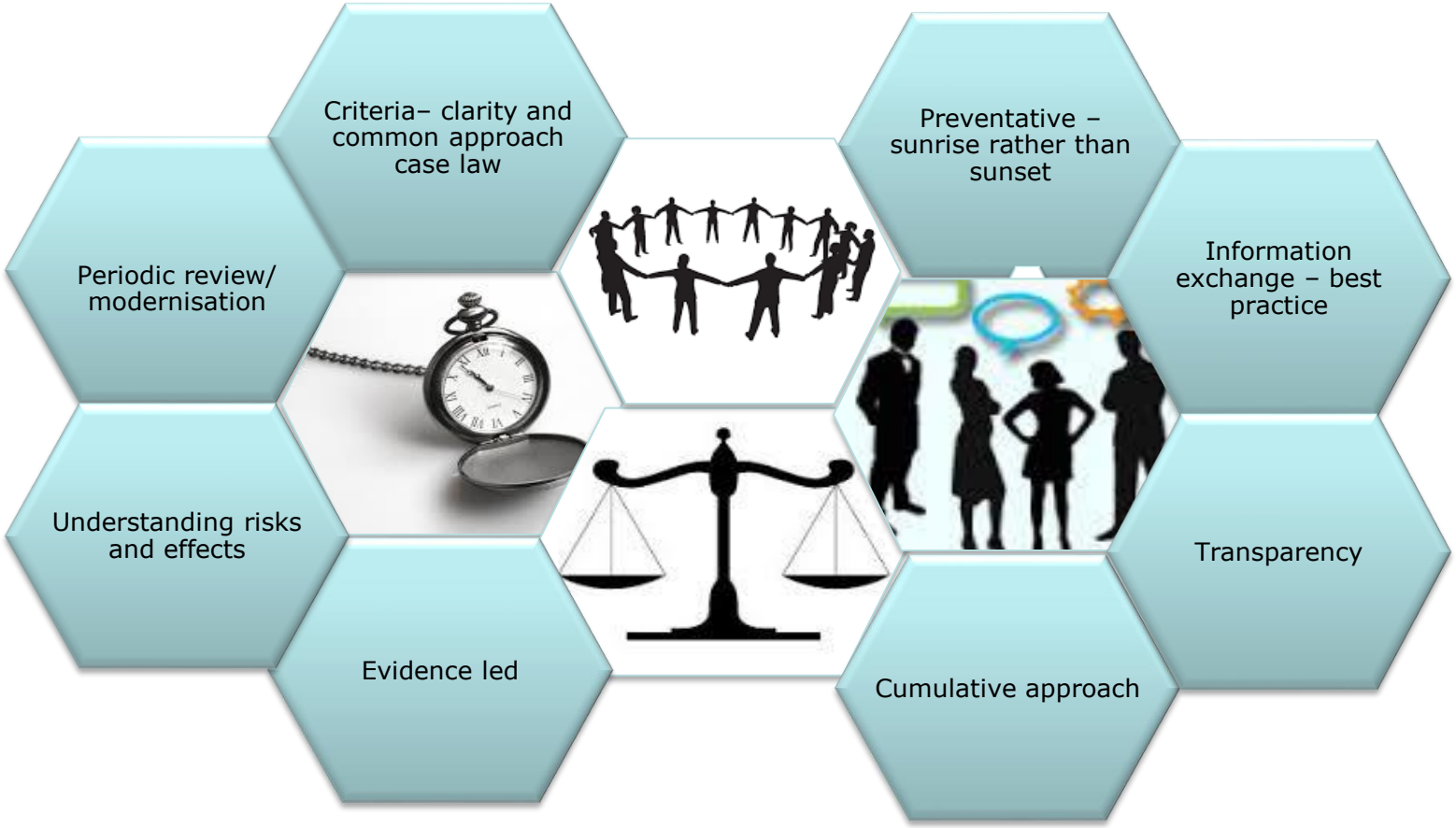
The variety in intensity / approaches taken

The analysis provided as to Proportionality

Mutual Evaluation

- *61% of 3500 analysed identified **no sensible risk***
- *84% **did not evaluate effects**. Those that were given were poor*
- *69% maintained despite **inadequate analysis***
- *This analysis suggests that regulatory decisions are being taken without first ensuring the appropriate questions are being attended to.*

The Proportionality Test Directive



Proportionality Test- Legal Basis

TFEU

- ***Fundamental freedoms***
- ***Principle of proportionality***
- ***Principle of non-discrimination***

Case Law, including:

- ***C-55/94 Gebhard (restriction) …***

Existing Union law, namely:

- ***Professional Qualifications Directive***

Public interest objectives

Public security or public health	Protection of consumers	IP	Artistic heritage
Transport safety	Administration of justice	Fiscal Supervision	Health of Animals
Fair trade transactions	Protection of environment	Combating fraud/ tax evasion	Social/cultural policy objectives

Ex-ante assessment

Criteria always applicable:	
Risks related to public interest objectives;	√ / X
Existing rules insufficient for the attainment of the objective pursued;	√ / X
Suitability of the provisions to obtain the objective pursued;	√ / X
Impact on free movement of persons and services;	√ / X
Possibility of using less restrictive means to achieve public interest objective;	√ / X
The effect of the provision when combined with existing provisions.	√ / X

Ex-ante assessment

Criteria applicable depending on the content and nature of the provision being introduced or amended:	
Connection between scope of activities / reserves of activity and the professional qualification required;	√ / X
Connection between the complexity of the tasks concerned and the need for specific professional qualifications;	√ / X
Possibility of obtaining the professional qualification by alternative routes;	√ / X
Whether/why reserves of activities can/cannot be shared with other professions;	√ / X
Degree of autonomy in exercising a regulated profession	√ / X
Scientific and technological developments	√ / X

Combined effect of new provision with existing requirements

- Reserves of activities/Protected professional title
- Restriction on joint exercise of profession
- Minimum/maximum tariffs
- Organisation of profession
- CPD
- Membership of Professional organisation
- Language
- Quantitative restrictions
- Legal form requirements
- Advertising requirements
- Territorial restrictions
- Insurance

Transparency before and after new measures are adopted

- *Involvement of **stakeholders***
  - Not just those that are members of the profession concerned
- *Member States encouraged to **exchange information** with other Member States*
- *Reasons why new provisions are **justified and proportionate** to be made publicly available*

Principle of subsidiarity

- *Does not stop Member States from* ***introducing new regulation*** *of professional services****;***
- *Regulation of professional services remain a* ***Member State competence;***
- ***Margin of discretion*** *within the limits of proportionality and non-discrimination.*

Margin of Discretion

- *One margin of discretion*

- *No differential treatment between professions*
  - *Principle of proportionality always applies (inlc health professionals)*

- *Evidence based – lesser restrictive means*
  - *No special form but plausible, not necessary to prove that no other means possible*

Recognition of foreign qualifications

The professional Qualifications Directive

The Lawyers' Directives

General Principles
Professional vs. Academic recognition

- ***Professional recognition***
  purpose: to access and practice a profession
  - Directive 2005/36/EC is applicable unless another specific EU secondary legislation applies
  - If neither 2005/36/EC nor other EU legislation applies=> recognition must be based on TFEU provisions and case-law
    Example: profession not regulated in home MS and professional does not have 1 year of experience out of last 10 (Article 13(2))

- ***Academic recognition***
  purpose: to continue studying / establish qualification levels etc.
  - MS's competence, national procedures
  - ENIC/NARIC centres

Directive 2005/36/EC in a nutshell

- ***Beneficiaries**: EU/EEA nationals wishing to pursue a regulated profession in another (host) MS than where they obtained their qualification*
  - Main focus on MS of qualification (applicant might be a national of the host MS)

    [no recognition of recognition decisions (Recital 12 of PQD) – additional professional experience or training/education (examination, qualification) is required]

- *"**Third country**":*
  - *Qualifications: Article 2(2), 3(3) and 10 (g)*
  - *Nationals: Possible assimilation to EU nationals by other Directives*

Directive 2005/36/EC in a nutshell

- *Fully qualified professionals in the home MS*
- *Employees or self-employed*
- *Recognition / access to practice*
- *Unless other sector-specific EU legislation applies (e.g. lawyers, some transport professions etc.)*
- *<u>2 main regimes</u>: establishment / temporary provision of services*

Regulation of professions

- *National competence, as long as proportionate, justified and non-discriminatory*

- *Different scenarios: home – host MS / regulating – non regulating*

- *Sources to consult: Database of Regulated Professions (non exhaustive) / Assistance Centres*

Temporary provision of services (Title II)

- *Assessment of the **temporary and occasional nature** on a case by case basis (Article 5(2))*
- *Principle of **free and immediate access** to the profession if professional is established in one MS*
- *Use of title: home MS / host in certain cases*
- *Possibility for host MS to request a **prior declaration** and accompanying documents*

  In specific cases (Article 7(4)) also prior check of qualifications

Permanent establishment: 3 regimes (Title III)

- ***Automatic recognition based on harmonised minimum training requirements*** (7 "sectoral professions": doctors, nurses, dentists, vets, pharmacists, midwives, architects - Annex V)
- ***Automatic recognition based on professional experience*** (mainly crafts, industry and commerce - Annex IV)
- ***General system of mutual recognition*** (primary or subsidiary application)

Automatic recognition – Sectoral Professions Basic Principles (1)

- ***Minimum*** *harmonisation*
- *The qualifications are listed in Annex V and they must correspond to* ***all*** *the minimum training requirements*
- *Updates of Annex V: by delegated acts*
- *MS shall only deliver qualifications complying with the training requirements of the Directive (except architects)*

Automatic recognition – Sectoral Professions Basic principles (2)

- *Automatic recognition, without any additional conditions (Article 21(1))*
  - Based on **Annex V** qualifications, or
  - Based on **certificate of conformity** (Article 23(6) or point 2 of Annex VII), or
  - Based on **acquired rights**
- *No further examination of training conditions or refusal possible – justified doubts (Article 50(2))*
- *Shortened deadlines (Article 51)*

Doctors – basic medical training (Art. 24)

	Dir. 2005/36/EC
Entry requirements:	Qualification providing access to university training
Duration and minimum training requirements:	➢ Min. **5** years of study **<u>and</u>** 5500 hours of theoretical and practical training (university, or under supervision of university), ➢ which may in addition be expressed with equivalent **ECTS credits** *Cumulative requirements: trainings have to be aligned with them*
Knowledge and skills:	Minimum list of specific knowledge and skills listed in Article 24 (3)

Doctors – medical specialists' training (Art.25-27)

	Dir. 2005/36/EC
	54 specialties (listed in Annex V, 5.1.3) - not compulsory for MS - application of general system if no automatic recognition Commission may adopt **delegated acts** to include new specialties in Annex V, point 5.1.3 (2/5th MSs)
Admission requirements	Completion and validation of basic medical studies (in line with Article 24)
Duration	Minimum training duration harmonised in terms of number of 'years' • Commission may adopt **delegated acts** to amend the minimum periods of training in Annex V, point 5.1.3 • Concept of partial exemptions (new Art.25(3a))

Doctors – specific training of general medical practitioners(Articles 28-30)

	Dir. 2005/36/EC
	Specific training regime, titles listed in Annex V, 5.1.4
Admission requirements:	Completion and validation of basic medical studies (in line with Article 24)
Minimum training and duration:	- Different routes: length of training differs - Training shall be more practical than theoretical - Compulsory elements of the training
Other:	Specific acquired rights (Art.30)

Dental practitioners (Articles 34-37): basic dental training

	Dir. 2005/36/EC
Entry requirements:	Qualification providing access to university training
Duration and minimum training requirements:	• Full-time, min. **5** years of study **<u>and</u>** **<u>5000 hours</u>** of theoretical and practical training (university, or equivalent), which may in addition be expressed with equivalent **ECTS credits** - *<u>Cumulative requirements</u>: trainings have to be aligned with them* - comprising minimum training programme (Annex V, point 5.3.1) • Commission may adopt **delegated acts** to amend the list of subjects in Annex V, point 5.3.1
Knowledge and skills:	Minimum list of specific knowledge and skills listed in Article 34 (3)

Dental practitioners (Article 35): specialist training

	Dir. 2005/36/EC
Entry requirements:	Basic dental qualification
Duration and minimum training requirements:	- Full-time, min. 3 years of theoretical/practical training (in university center, or approved institution) - 2 specialisations in Annex V, 5.3.3.: oral surgery, orthodontics • Commission may adopt **delegated acts** to amend the minimum training periods, or • to include new specialties in Annex V, 5.3.3 (2/5th of MSs)

Nurses responsible for general care I (Art.31-33a)

	Dir. 2005/36/EC
Entry requirements:	**Two-tire system:** - 12 years of general education, giving access to universities; or - 10 years of general education, giving access to a vocational school/training programme for nursing
Duration and minimum training requirements:	• 3 years **and** 4600 training hours, which may in addition be expressed with equivalent **ECTS credits** *Cumulative requirements: trainings have to be aligned with them* • Commission may adopt **delegated acts** to amend the list of subjects in Annex V, point 5.2.1

Nurses responsible for general care II (Articles 31-33a)

	Dir. 2005/36/EC
Knowledge and skills	Minimum list of specific knowledge and skills listed in Article 31 (6)
Competences	• **New minimum list of competences** (Article 31(7) - *to be implemented into national laws and study programs* - *MSs must guarantee that that new competences are gained, but have a discretion to choose the means (exam/mandatory participation in study subjects, etc.).*
Specific acquired rights (Art. 33 and 33a)	**Polish** nurses trained before accession **Romanian** nurses of post-secondary education

Midwives I (Articles 40-43a)

	Dir. 2005/36/EC
Duration and minimum training requirements: **2 training routes**	**Route I –** sui generis midwifery training **Route II**: based on a diploma of nurse responsible for general care • comprising minimum training programme (Annex V, point 5.5.1) • Commission may adopt **delegated acts** to amend the list of subjects in Annex V, point 5.5.1
Entry requirements:	**Route I:** min. **12 years** of general education giving access to midwifery school **Route II:** qualification as a nurse responsible for general care
Conditions for automatic recognition:	**Route I**: min. **3 years and 4600h,** including **1/3 of training for clinical part** **Route II:** 2 years **and** 3600h of midwife training after qualification as a nurse, or - 1.5 years **and** 3000 hours of midwife training after qualification as a nurse + 1 year of practice

Midwives II

	Dir. 2005/36/EC
Knowledge and skills:	Training shall ensure that midwives acquire a minimum list of specific knowledge and skills set out in Article 40(3)
The minimum professional activities:	MSs shall give access to a minimum list of professional activities set out in Article 42(2)
Specific acquired rights (Art.43):	2/5 years, when conditions for automatic recognition are not met Special provisions for nurses from former German Democratic Republic; Polish midwives; Romanian midwives

Pharmacists I (Articles 44-45)

	Dir. 2005/36/EC
Entry requirements:	Diploma/certificate, giving access to studies in question at universities or equivalent
Duration and minimum training requirements:	Min. **5 years**, including: - **4 years full-time** theoretical and practical training at university or equivalent; and - **6 months traineeship** in community pharmacy or hospital (under supervision of pharmaceutical department) • Traineeship can take **"during or at the end of the theoretical and practical training"** • Duration may in addition be expressed with equivalent **ECTS credits** • comprising minimum training programme (Annex V, point 5.6.1) • Commission may adopt **delegated acts** to amend the list of subjects in Annex V, point 5.6.1

Pharmacists II

	Dir. 2005/36/EC
Knowledge and skills:	Training shall ensure that pharmacists acquire a minimum list of specific knowledge and skills set out in Article 44(3)
The minimum professional activities:	MSs shall give access to a minimum list of professional activities set out in Article 45(2)
Other:	Art.21(4) - MSs may refuse recognition for setting up new pharmacies. • Derogation relevant only for countries that do not have territorial restrictions • Cannot be applied to pharmacist whose qualifications were otherwise recognised and who have 3 years of experience

Veterinary surgeons (Articles 38-39)

	Dir. 2005/36/EC
Entry requirements:	Diploma/certificate, giving access to studies in question at universities or equivalent
Duration and minimum training requirements:	Full-time, min. **5 years** of theoretical and practical study at university or equivalent; • comprising minimum training programme (Annex V, point 5.4.1) • Commission may adopt **delegated acts** to amend the list of subjects in Annex V, point 5.4.1 • Duration may in addition be expressed with equivalent **ECTS credits**
Knowledge and skills:	Training shall ensure that veterinary surgeons acquire a minimum list of specific knowledge and skills set out in Article 38(3)
Special acquired rights:	Pre-accession **Estonian** veterinary surgeons (5/7 years)

Architects (Articles 46-49)

	Dir. 2005/36/EC
2 routes	A) Minimum **five** years full time university study (with an end exam) Or B) Minimum **four** years full time university study (with an end exam) + 2 years professional **traineeship** (can take place only after the completion of the first three years of study + other specific requirements for the traineeship – new paragraph (4) of Article 46)
Knowledge/ skills / competences	Listed in Article 46 (2)
Special acquired rights:	Article 49 and Annex VI (training began before the reference academic years)

Sectoral Professions - Acquired rights

- ***"General" acquired rights*** *- Art 23(1) if legally and effectively exercised the profession during "3 years during the last 5 years" in any MS*
- ***Country specific*** *acquired rights (Article 23(2)-(5))*
- ***Profession/country specific*** *acquired rights (in various articles of Section 2)*
  - E.g. Romanian/Polish nurses (Articles 33-33a)
  - General practitioners (Article 30) – for doctors who were established before the reference date

Automatic recognition based on professional experience – Annex IV

- *The activity must be listed in Annex IV and certain conditions under Chapter II of PQD must be met*
- *Professional experience requirements are defined based on type (self-employed, employee, etc) and duration (number of years and date on which the experience ended)*
- *In certain cases a proof of prior training is also required*
- *If conditions under Directive are not met, general system applies*

General system of recognition (1)

- ***Comparison*** *possible*
  - qualifications (professional experience/LLL)
- *5 levels of qualifications used (Article 11) – refusal is only justified under specific circumstances*
- *In case of substantial differences:* ***compensatory measures*** *(adaptation period or aptitude test)*
  - Professional's **choice** of the type of compensatory measure, in principle
  - **Exemptions**: derogation (Article 14(2)), exemptions (Article 14 (3))

General system of recognition (2)

- *1 year of professional experience required (out of last 10) if profession not regulated in home MS – Article 13(2)*
  - *By any means (Code of Conduct)*
- *All decisions have to be duly justified*
- *Strict deadlines for MS (Article 51)*

Establishment – Document requirements (Article 50(1) and Annex VII)

- *Maximum list of documents provided by in Annex VII*
- *Validity of documents (e.g. certificate of good conduct): "not older than 3 months by the date on which they were submitted" / special case of the certificate of acquired rights*
- *Code of conduct on best and acceptable practices*

Pursuit of the profession (Title IV) - language knowledge (Article 53)

Safeguards for the authorities and service recipients

- *Professionals shall have the necessary knowledge of languages*
- *Control in case of serious and concrete doubt*
- *Systematic control possible for professions with patient safety implications*
- *Control does not mean systematic language tests*
- *Case C-317/14*

Pursuit of the profession (Title IV) - language knowledge (Article 53)

Safeguards for the professional

- *Only one official or administrative language of the MS but MS can encourage learning a 2nd language; role of the employer*
- *Check only after the recognition of a qualification*
- *Proportionality and possibility of appeal*

Partial access (Article 4f)

- Derives from ECJ case-law (C-330/03) and health professions are not per se excluded (C-575/11)
- Professions are regulated differently in MSs (scope of activities/competence differs)

Conditions:

- *Professional must be fully qualified in home MS for the activity he seeks access to in host MS;* ***AND***
- *Regulatory differences between home and host MSs are so large that compensation measures would amount to requiring completion of full study programme required in host MS;* ***AND***
- *The professional activity in question can objectively be separated from other activities (question of autonomy).*

Partial access (Article 4f)

- *Exercise of activity under the professional title of home MS*
- *Obligation of* clear indication of scope of activities *to service recipients*
- *Not possible for professionals benefiting from automatic recognition (no need as they have access to all activities), but sectoral professions as such are not excluded*
- *Partial access can be rejected if such decision is justified by overriding reasons and proportionate (case–by-case)*
- *Practical application*

IMI and PQD (Title V)

- ***Bilateral administrative cooperation***: *between competent authorities*

- ***Proactive alert mechanism***: *between competent authorities*

- ***European Professional Card***: *between citizens and competent authorities and between competent authorities*

- *EPC* ***Repository***
- *Annex V* ***notifications:*** *between competent authorities and the European Commission/competent authorities*

Bilateral cooperation
Article 50(3b) and Article 56

Compulsory use of IMI between competent authorities concerning:

- *Issues on documentation and formalities (Article 50);*
- *Disciplinary sanctions, criminal sanctions or any other circumstances which are likely to have consequences on the pursuit of the profession (bilateral basis); and*
- *General cooperation and mutual assistance*

Alert mechanism – to protect patients and consumers

- *A **quick** warning to **all** Member States through the IMI-system*
- *On professionals exercising a **health**- or **child-related profession***
- *Restriction or prohibition, fake diplomas*
- *Strong data protection safeguards*
- *Launched in January 2016*

European Professional Card (EPC)

Facilitates and speeds-up Professional Mobility

European Professional Card (EPC)

Streamlined, electronic recognition procedure *(via the Internal Market Information System):*

- Shortened deadlines, less administrative burden
- Based on an enhanced cooperation between competent authorities
- Strengthened mutual trust between Member States

Electronic certificate *(not a plastic card)*

EPC - Legal principles

What is the EPC?

- For two different **purposes**:
  - Establishment
  - Temporary and occasional service provision
- Streamlined **electronic procedure**
- Effects of deadlines
  - ***concept of tacit recognition***
- New **communication channels**

Implementation of the EPC

Focus on the most mobile professions

- Nurses (responsible for general care)
- Pharmacists
- Physiotherapists
- Mountain guides
- Real estate agents

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Last checked : 07/12/2018

European Professional Card - EPC

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Advantages of the European Professional Card

Check if you can apply with the EPC

Choose a situation

Procedure and deadlines

Check the EPC formalities in your country

Let your employers check the validity of your EPC

If your profession is regulated and you need to apply for the recognition of your professional qualifications, you may apply for recognition using the European Professional Card (EPC). The EPC is **an electronic procedure** you can use to have your regulated profession recognised in another EU country.

For the moment, you can use the EPC procedure only if you are:

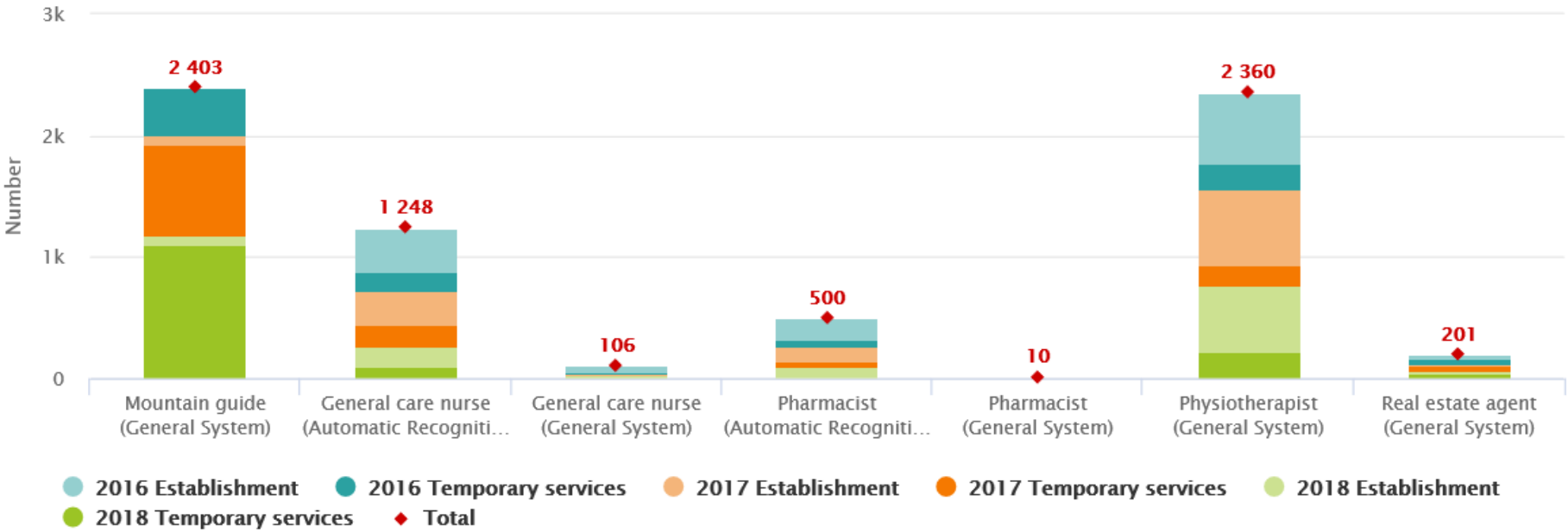
- a nurse responsible for general care
- a pharmacist
- a physiotherapist
- a mountain guide
- a real estate agent

Advantages of the European Professional Card

Your home country authorities will assist you with your application and check that it is correct and complete. They will

Applications for EPC

2016 - 30th September 2018

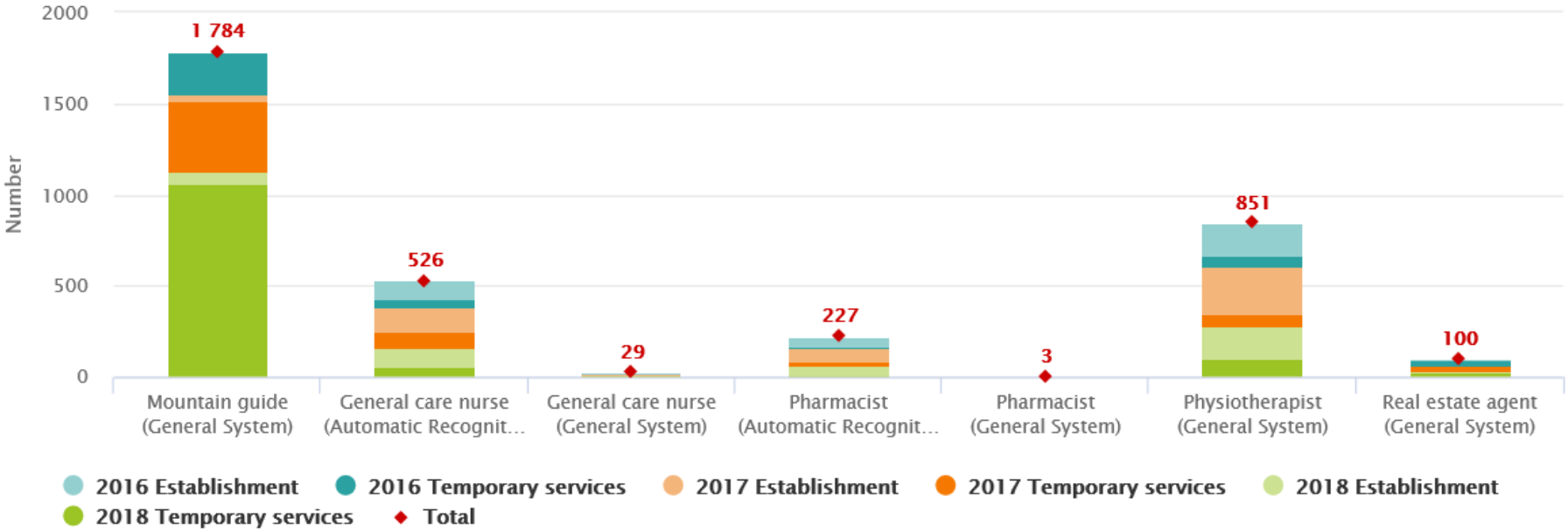


Total number of applications for EPCs: 6828

Includes withdrawn, ongoing, refused EPC applications, in particular a large number of applications closed due to missing documents (incompleteness)

Issued EPCs

2016 - 30th September 2018



Total number of issued EPCs: 3520

Usage of the EPC procedure continues to increase

The specific case of lawyers

Free movement of lawyers: the two Lawyers' Directives

In addition to the Professional Qualifications Directive, lawyers benefit from two specific directives:

- **Lawyers Services Directive 77/249/EEC**
- **Lawyers Establishment Directive 98/5/EC**

The Lawyers' Services Directive
(Directive 77/249/EEC)

A lawyer can provide services temporarily or occasionally in any other Member State:

- under his home professional title
- without registering with the host Member State Bar
- practising the activities of a lawyer: giving legal advice and representing clients in legal proceedings before administrative authorities and courts (in the latter case together with a local lawyer, if the host MS so requires)

The Lawyers' Establishment Directive
(Directive 98/5/EC)

Right to establish under the home-country professional title *to practise the same activities as a host Member State lawyer, namely:*

- to give advice (even in host country law) and
- to represent clients before administrative authorities and courts (accompanied by a local lawyer, if required in the host MS)

Facilited access to the host Member State professional title

- through an exemption from an aptitude test, under certain conditions (3 years of activity in host MS law)

The Lawyers' Establishment Directive
(Directive 98/5/EC)

Establishment includes possibility for joint practice:

- in a branch or agency of the home grouping
- with lawyers from other M.S. and local ones
- What about restrictions on practice with other professions or non-lawyer ownership of law firms in the host Member State? May they be maintained – proportionality?

The Lawyers' Establishment Directive
(Directive 98/5/EC)

Additional important aspects:

- conflict rules on the application of home and host professional conduct provisions,
- rules on disciplinary proceedings;
- cooperation between the authorities of the host and the home M.S.

The Lawyers' Establishment Directive
(Directive 98/5/EC)

***Additional important aspects continued**:*

- Negative decisions: statement of reasons and judicial remedies
- Rules on salaried practice
- Training - Not covered by the Directives but need to consider the *"Morgenbesser"* case (C-313/01 of 13.11.03) on access to remunerated professional training

Thank you !