

Brussels, 24.2.2023
C(2023) 1202 final

COMMISSION IMPLEMENTING DECISION (EU) .../...

of 24.2.2023

on a pilot project to implement the administrative cooperation provisions relating to regulated professions set out in Directives 2005/36/EC and (EU) 2018/958 of the European Parliament and of the Council by means of the Internal Market Information System and to integrate the database of regulated professions into that system

(Text with EEA relevance)

COMMISSION IMPLEMENTING DECISION (EU) .../...

of 24.2.2023

on a pilot project to implement the administrative cooperation provisions relating to regulated professions set out in Directives 2005/36/EC and (EU) 2018/958 of the European Parliament and of the Council by means of the Internal Market Information System and to integrate the database of regulated professions into that system

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation')¹, and in particular Article 4(1) thereof,

Whereas:

- (1) The Internal Market Information System ('IMI') established by Regulation (EU) No 1024/2012 is an online software application developed by the Commission, in cooperation with the Member States, to help Member States comply with information exchange requirements in Union acts by providing a centralised communication mechanism to facilitate the cross-border exchange of information and mutual assistance.
- (2) Regulation (EU) No 1024/2012 allows the Commission to carry out pilot projects to assess whether IMI would be an effective tool to implement provisions on administrative cooperation laid down in Union acts not listed in the Annex to that Regulation.
- (3) Directive 2005/36/EC of the European Parliament and of the Council² provides for the automatic recognition of professional qualifications of a limited number of professions based on harmonised minimum training conditions, and the automatic recognition of professional qualifications of a limited number of professions in crafts, trade and industry on the basis of professional experience, and a general system for the recognition of professional qualifications. It also lays down rules for the free temporary and occasional provision of services. In accordance with Article 59(1) of Directive 2005/36/EC, the Commission is to set up and maintain a publicly available database of regulated professions, including a general description of activities covered by each regulated profession.
- (4) Article 59(1) of Directive 2005/36/EC provides that Member States were to notify to the Commission a list of existing regulated professions, specifying the activities covered by each profession; a list of regulated education and training; and training

¹ OJ L 316, 14.11.2012, p. 1.

² Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

with a special structure, in the territory of that Member State by 18 January 2016. Member States are also to notify any change to those lists without undue delay.

- (5) Article 59(2) of Directive 2005/36/EC provides that Member States were to notify to the Commission by 18 January 2016 the list of professions for which prior checks of qualifications are necessary in accordance with Article 7(4) of that Directive.
- (6) Pursuant to Article 59(3) and (5) of Directive 2005/36/EC, Member States are required to examine whether their existing requirements for regulated professions are compatible with the principles of non-discrimination and proportionality, and by 18 January 2016 Member States were to provide the Commission with information on those requirements and the reasons for considering that those requirements were non-discriminatory and proportionate. Within 6 months from the adoption of a measure that subsequently introduces a new requirement or makes changes to existing ones Member States are also required to provide information on the requirements and the reasons for considering that those requirements are non-discriminatory and proportionate.
- (7) Article 59(6) provides that Member States are to report to the Commission every 2 years on the requirements that have been removed or made less stringent. Article 59(7), first sentence, provides that Member States are to submit their observations on the reports of the other Member States within 6 months from receipt thereof from the Commission.
- (8) Directive (EU) 2018/958 of the European Parliament and of the Council³ establishes rules for the conduct of proportionality assessments by Member States before introducing new or amending existing rules restricting access to, or the pursuit of, regulated professions. Article 11(1) of Directive (EU) 2018/958 provides that Member States are to communicate to the Commission, pursuant to Article 59(5) of Directive 2005/36/EC, the provisions as referred to in Article 4(1) of Directive (EU) 2018/958, and their reasons for considering that those provisions are justified and proportionate. Those communications are to be recorded by Member States in the database of regulated professions referred to in Article 59(1) of Directive 2005/36/EC and made publicly available by the Commission.
- (9) Article 10 of Directive (EU) 2018/958 requires Member States to take measures to encourage the exchange of information on matters covered by that Directive, and on the particular way they regulate professions, and on the effects of such regulation. The Commission is to facilitate such exchanges of information.
- (10) Article 60(1) of Directive 2005/36/EC requires Member States to send reports to the Commission on the application of that Directive, including general observations, a statistical summary of recognition decisions taken and a description of the main problems arising from the application of that Directive.
- (11) If technically and legally possible, for reasons of efficiency it is appropriate to integrate different Commission IT systems into one. IMI already supports administrative cooperation in the area of recognition of professional qualifications for the information request for mutual assistance pursuant to Article 56(2a) of Directive 2005/36/EC and sending of alerts pursuant to Article 56a of that Directive, as well as the European Professional Card procedure set out in Articles 4a to 4e of Directive

³ Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions (OJ L 173, 9.7.2018, p. 25).

2005/36/EC. The integration of the database of regulated professions into IMI should therefore be subject to a pilot project.

- (12) IMI could potentially be an effective tool for the integration of the database of regulated professions, to facilitate information provision and reporting by Member States concerning regulated professions and to implement Member States' transparency obligations laid down in Article 59(1), (2), (5) and (6), Article 59(7), first sentence, and Article 60(1) of Directive 2005/36/EC, as well as the transparency obligations set out in Article 11(1) of Directive (EU) 2018/958. Those provisions should therefore be subject to a pilot project pursuant to Article 4(1) of Regulation (EU) No 1024/2012.
- (13) To ensure they fulfil their transparency obligations under Directives 2005/36/EC and (EU) 2018/958, Member States should designate one or more competent authorities responsible for notifying the information referred to in Article 59(1), (2), (5) and (6), Article 59(7), first sentence, and Article 60(1) of Directive 2005/36/EC, and Article 11(1) of Directive (EU) 2018/958. This does not preclude Member States from designating for that purpose the authorities referred to in Article 3(1), point (d), and Article 56(3) of Directive 2005/36/EC, and the assistance centres referred to in Article 57b of that Directive.
- (14) Notifications in IMI are two-step procedures. First, competent authorities initiate a notification and submit it to their coordinator in their Member State. Second, coordinators in Member States are to approve notifications before submitting them to the Commission. For that reason, Member States should nominate coordinators in IMI. To ensure the necessary flexibility, it should be possible for competent authorities to also be assigned the tasks of coordinators.
- (15) The regulation of professions by Member States needs to be in line with applicable Union law, and up-to-date information on regulated professions needs to be available both publicly and in IMI to facilitate recognition of professional qualifications. At the same time, Member States need to be able to fulfil their notification obligations by electronic means using IMI, which should provide all the necessary technical functionality for that purpose.
- (16) To improve transparency and to facilitate the recognition of professional qualifications, IMI should provide technical functionality for transmitting information on regulated professions to the public website dedicated to regulated professions, including the result of the proportionality test; contact details of contact persons, competent authorities and assistance centres; and statistics and reports.
- (17) To facilitate communication on regulated professions, IMI should provide technical functionality for recording personal data of contact persons of competent authorities responsible for regulated professions in Member States. The contact persons should first consent to the processing of their personal data by means of a consent form. IMI actors should record in IMI the contact details as well as the consent form signed by the contact persons.
- (18) Pursuant to Regulation (EU) No 1024/2012, the Commission is to submit an evaluation of the outcome of the pilot project to the European Parliament and the Council. It is appropriate to specify the date by which that evaluation is to be submitted. The dates by which the next reports under Article 60(2) of Directive 2005/36/EC and Article 12 of Directive (EU) 2018/958 are to be submitted would be too early to evaluate the outcome of the pilot project. It is therefore appropriate to set

31 December 2025 as the deadline for the evaluation report on the outcome of the pilot project.

- (19) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council⁴, and delivered an opinion on 12 December 2022.
- (20) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 24(1) of Regulation (EU) No 1024/2012,

HAS ADOPTED THIS DECISION:

Article 1

The pilot project

- 1. A pilot project shall be carried out to assess whether the Internal Market Information System ('IMI') would be an effective tool to implement the notification obligations set out in Article 59(1), (2), (5) and (6), Article 59(7), first sentence, and Article 60(1) of Directive 2005/36/EC, and in Article 11(1) of Directive (EU) 2018/958, and to integrate the database of regulated professions referred to in Article 59(1) of Directive 2005/36/EC into IMI.
- 2. For the purposes of this Decision, reporting, communication, recording and provision of information pursuant to Article 59(1), (5) and (6), Article 59(7), first sentence, and Article 60(1) of Directive 2005/36/EC, and Article 11(1) of Directive (EU) 2018/958 shall be referred to as 'notifications'.

Article 2

Competent authorities

- 1. Member States shall designate one or more competent authorities responsible for notifying the information referred to in Article 59(1), (2), (5), and (6), Article 59(7), first sentence, and Article 60(1) of Directive 2005/36/EC, and Article 11(1) of Directive (EU) 2018/958.
- 2. The authorities designated pursuant to paragraph 1 of this Article shall be considered competent authorities within the meaning of Article 5, second paragraph, point (f), of Regulation (EU) No 1024/2012.

Article 3

Coordinators

- 1. Each Member State shall assign the task of coordinating notifications to one or more competent authorities ('coordinators').
- 2. The coordinators shall ensure that notifications are approved and sent to the Commission without undue delay.
- 3. A competent authority referred to in Article 2 may also be designated as a coordinator.

⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 4
Administrative cooperation

For the purposes of Article 59(1), (2), (5) and (6), Article 59(7), first sentence, and Article 60(1) of Directive 2005/36/EC, and Article 11(1) of Directive (EU) 2018/958, IMI shall provide at least the following technical functionalities:

- (a) notifying information on regulated professions, including the activities covered by each profession, regulated education and training, and training with a special structure, and any change to that information;
- (b) notifying existing requirements restricting access to or pursuit of regulated professions and the reasons for considering that those requirements comply with Article 59(3) of Directive 2005/36/EC, and any change to those requirements;
- (c) notifying new or amended requirements restricting access to or pursuit of a regulated profession, together with the provisions introducing or amending the requirements, which shall be assessed in accordance with Directive (EU) 2018/958, the reasons for considering that such provisions are justified and proportionate, and any change to those requirements;
- (d) reporting on requirements that have been removed or made less stringent pursuant to Article 59(6) of Directive 2005/36/EC;
- (e) commenting on the notifications referred to in points (a) to (d);
- (f) approving the notifications referred to in points (a) to (d) by the coordinator in the Member State and sending them to the Commission;
- (g) facilitating the evaluation of and taking of procedural actions by the Commission regarding the notifications referred to in points (a) to (d);
- (h) providing a response by the notifying Member State to the Commission's procedural actions referred to in point (g);
- (i) recording different versions of notifications set out in points (a) to (d);
- (j) recording statistical data based on Member States' recognition decisions on professionals seeking to be established abroad or to provide services on a temporary and occasional basis, to facilitate the preparation of the reports referred to in Article 60(1) of Directive 2005/36/EC;
- (k) providing a consent form for the contact person whose personal data will be recorded in IMI and transmitted to the public website;
- (l) keeping the notifications up to date;
- (m) providing a repository for the notified information on regulated professions to ensure that all designated competent authorities registered in IMI for modules concerning recognition of professional qualifications can check the requirements for regulated professions directly in IMI;
- (n) providing a repository for notified information on competent authorities, assistance centres and reports as referred to in Article 59(2), (5) and (6), and Article 60(1) of Directive 2005/36/EC;
- (o) transmitting the following to the public website:
 - (i) information on regulated professions, including the results of proportionality assessments;

- (ii) contact details of contact persons, competent authorities and assistance centres;
- (iii) data for statistics on recognition decisions concerning professionals seeking to establish themselves abroad or to provide services on a temporary and occasional basis;
- (iv) reports referred to in Article 59(2), (5) and (6) and Article 60(1) of Directive 2005/36/EC.

Article 5

Data protection

1. Any information containing personal data recorded in or exchanged through IMI shall be processed in IMI in accordance with Articles 14 to 17 of Regulation (EU) No 1024/2012.
2. In accordance with Article 6(1), point (e), of Regulation (EU) 2016/679 of the European Parliament and of the Council⁵, Member States may, in the performance of a task carried out in the public interest, decide to provide contact details containing the personal data of a contact person for the purpose of the technical functionality referred to in Article 4, point (o), of this Decision,

Where Member States decide to provide personal data of the contact person the following information shall be recorded and transmitted to the public website dedicated to regulated professions:

- (i) first name;
 - (ii) last name;
 - (iii) email address;
 - (iv) phone number;
 - (v) name of the competent authority the person works for;
 - (vi) languages spoken.
3. The contact persons whose personal data is recorded and transmitted pursuant to this Article shall provide explicit consent for the processing of their personal data by means of the consent form, which shall be uploaded in IMI.

Article 6

Evaluation

The Commission shall submit the evaluation of the outcome of the pilot project to the European Parliament and the Council as required by Article 4(2) of Regulation (EU) No 1024/2012 by 31 December 2025.

⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

Article 7
Entry into force

This Decision shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 24.2.2023

For the Commission
The President
Ursula VON DER LEYEN