Proportionality test before adoption of new regulation of professions

2016/0404(COD) - 10/01/2017 - Legislative proposal

PURPOSE: to remove the disproportionate restrictions on access to or pursuit of regulated professions.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: according to a recent survey carried out in April 2015 in all 28 Member States, at least **21% of the labour force in the European Union** (50 million people) can be considered as working in a regulated profession (activities where a specific professional qualification is required). It is up to each Member State to decide whether there is a need to intervene and impose rules and restrictions for the access to or pursuit of a profession, so long as the principles of non-discrimination and proportionality are respected.

Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications established the obligation for Member States to assess the proportionality of their requirements restricting access to or pursuit of regulated professions and to communicate to the Commission the results of the assessment, launching the so-called mutual evaluation process. That process meant that Member States had to carry out a screening of all their legislation on all professions regulated in their territory.

The results of the mutual evaluation process revealed a **lack of clarity as regards the criteria** to be used by national competent authorities when assessing the proportionality of requirements restricting access to or pursuit of regulated professions, as well as uneven scrutiny of such measures at all levels of regulation.

To avoid fragmentation of the internal market and eliminate barriers to taking-up and pursuit of certain employed or self-employed activities, it is therefore necessary to establish a **common approach at Union level**, preventing disproportionate measures from being adopted

In its Communication of 28 October 2015: ‘Upgrading the Single market: more opportunities for people and businesses’, the Commission identified the need to adopt an analytical proportionality framework for Member States to use when reviewing existing regulations of professions or proposing new ones.

IMPACT ASSESSMENT: the preferred option includes: (i) laying down the minimum criteria for conducting proportionality checks, based on and complementing the case-law and by introducing transparency on Member States' assessments through a binding instrument (Directive); (ii) supplementing this approach with further procedural aspects, such as public consultations and periodic review

CONTENT: the proposed Directive aims to create a **legal framework** for conducting proportionality assessments before introducing new or modifying existing legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions.

The main objectives of the action are to introduce more clarity to the applicable criteria, strengthen reliability, transparency and comparability across Member Stares and ensure that rules are applied in an equal manner so as to prevent further burdening and fragmenting the Single Market.

More specifically, the proposal:

- obliges Member States to conduct an **ex-ante proportionality assessment**, substantiated by qualitative and, wherever possible, quantitative evidence;
- lists the justifications on grounds of public interest objectives on the basis of the TFEU or recognised as such by the Court of Justice. Based on settled case-law, grounds of a purely economic nature having essentially protectionist aim or effects, or purely administrative reasons cannot constitute overriding reasons in the public interest;
- lays down a general obligation for Member States **before introducing new or modifying existing provisions** restricting access to or pursuit of regulated professions, to assess whether these provisions are necessary and suitable for securing the attainment of the objective pursued and do not go beyond what is necessary to attain that objective;
- sets out an obligation to inform all interested parties before introducing new measures and give them the possibility to express their views;
- provides for transparency of the proportionality assessments as well as a **periodic review** of the Directive.