Proportionality test before adoption of new regulation of professions

2016/0404(COD) - 08/12/2017 - Committee report tabled for plenary, 1st reading/single reading

The Committee on the Internal Market and Consumer Protection adopted the report by Andreas SCHWAB (EPP, DE) on the proposal for a directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Subject matter: the Directive shall lay down rules on a common framework for conducting proportionality assessments before introducing new, or amending existing, legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, with a view to ensuring the proper functioning of the internal market, while guaranteeing a high quality of professional services provided, and a high level of consumer protection.

This Directive shall not affect Member States' competence, in the absence of harmonisation, to regulate a profession within the limits of the principles of non-discrimination and proportionality.

Ex ante evaluation of new measures and monitoring: the extent of the assessment shall be **proportionate to the nature, the content and the impact of the provision being introduced, in the light of the specific rules, governing the profession concerned**.

Member States shall take the necessary measures to ensure that the assessment is carried out in an objective and independent manner.

Specific status of health services: Members believe that it is important to protect the health sector and the quality of healthcare services without hindering the functioning of the internal market. Given the specific nature of healthcare professions, recognised by the European legislator and the case-law of the Court of Justice, Members proposed to create a separate status for health professions, in order to guarantee their protection in respect of the principle of proportionality.

With regard to the regulation of the health professions, Member States shall have a **sufficient margin of appreciation** to ensure a high level of protection of human health.

Non-discrimination: according to the case-law of the Court of Justice, Members proposed that when introducing new or amending existing legislative, regulatory or administrative provisions restricting access to or pursuit of regulated professions, Member States shall ensure that those provisions are neither directly nor indirectly discriminatory on the basis of nationality or residence.

Overriding reasons of general interest: Members proposed to complete the list of justifications on grounds of public interest objectives on the basis of the TFEU or recognised as such by the Court of Justice. This shall include: the effectiveness of fiscal supervision; transport safety; guaranteeing the quality of craft work; the promotion of research and development.

Member States shall have a **reasonable margin of appreciation** to determine the level of protection, which they wish to afford to public interest objectives, within the limits of proportionality.

Freedom to provide services: Member States shall also ensure compliance with the principle of proportionality of specific requirements relating to the cross-border provision of services.

Taking into account the temporary or occasional nature of the service, requirements such as automatic temporary registration or pro forma membership of a professional organisation, professional identity cards, prior declarations and document requirements, any form of business premises, including an office, as well as the payment of a fee or any charges, shall be proportionate and **not lead to a disproportionate burden** on service providers.

Information and stakeholder involvement: before introducing any provisions restricting access to or exercise of regulated professions, Member States shall carry out **public consultations** with all stakeholders, including social partners, and given them the opportunity to make views known.

Judicial review: national courts shall be able to assess the proportionality of provisions falling within the scope of this Directive, in order to ensure for each natural or legal person the right to an effective judicial remedy against restrictions to the freedom to choose an occupation, to exercise the right of establishment and to provide services.

Exchange of information and transparency: Member States shall take the necessary measures to encourage the sharing of adequate and regularly updated information with other Member States on the regulation of professions, as well as on the effects of such regulation. The Commission shall facilitate that exchange of best practices among Member States.

In addition, the reasons that Member States submit for considering that provisions are non-discriminatory, justified and proportionate should be easily accessible in the database of regulated professions to allow other Member States to submit their observations to the Commission. These observations should be duly taken into account by the Commission in its summary report.