Proportionality test before adoption of new regulation of professions

2016/0404(COD) - 14/06/2018 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 519 votes to 112 with 8 abstentions a legislative resolution 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.

Parliament's position adopted at first reading under the ordinary legislative procedure amends the proposal as follows:

Purpose: the Directive aims to establish rules for **proportionality assessments** to be conducted by Member States before the introduction of new, or the amendment of existing, professional regulations, in order to ensure the proper functioning of the internal market, while guaranteeing transparency and a high level of consumer protection.

It does not affect the **Member States' competence**, in the absence of harmonisation, and margin of discretion to decide whether and how to regulate a profession within the limits of the principles of non-discrimination and proportionality.

Member States will remain free to define the organisation and the content of their systems of education and professional training, and in particular as regards the possibility for them to delegate to professional organisations the power to organise or supervise professional education and training.

Ex ante assessment of new measures and monitoring: Member States shall undertake an assessment of proportionality before introducing new, or amending existing, legislative, regulatory or administrative provisions restricting access to regulated professions.

The extent of the assessment shall be **proportionate to the nature, the content and the impact of the provision** and shall be accompanied by an explanation which is sufficiently detailed to make it possible to appraise compliance with the principle of proportionality.

The assessment must be carried out in an **objective and independent manner**.

Member States shall monitor the compliance of new or amended legislative, regulatory or administrative provisions restricting access to regulated professions, **after adoption**, with the principle of proportionality.

Parliament specified that **justifications motivated by public interest objectives** should include the protection of consumers, the recipients of services, including by guaranteeing the quality of work, and of workers, ensuring the fairness of trade transactions, safeguarding the effectiveness of fiscal supervision and transport safety.

Non-discrimination: as confirmed by settled case-law, any unjustified restriction resulting from national law restricting the freedom of establishment or the freedom to provide services is prohibited, including any discrimination on grounds of nationality or residence.

Proportionality: before introducing new provisions restricting access to or the exercise of regulated professions or modifying existing provisions, Member States should take into account elements such as:

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- whether existing rules of a specific or more general nature, such as those contained in product safety law or consumer protection law, are insufficient for the attainment of the objective pursued;
- the impact on the free movement of persons and services within the Union, on consumer choice and on the quality of the service provided;
- the possibility of using less restrictive means to achieve the public interest objective.

Member States should take account of the objective of **ensuring a high level of human health protection** when assessing requirements for healthcare professions, such as reserved activities, protected professional title, continuous professional development or rules relating to the organisation of the profession, professional ethics and supervision, while respecting the minimum training conditions, laid down in Directive 2005/36/EC on the recognition of professional qualifications.

Lastly, Member States shall appropriately involve all parties concerned and shall give them the opportunity to make their views known.