Proportionality test before adoption of new regulation of professions

2016/0404(COD) - 28/06/2018 - Final act

PURPOSE: adopt new measures to simplify access to regulated professions.

LEGISLATIVE ACT: Directive (EU) 2018/958 of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions.

CONTENT: the Directive establishes rules that require **Member States to carry out a proportionality test** before establishing new regulations for professions or amending existing regulations, in order to ensure the proper functioning of the internal market while guaranteeing the protection of consumers.

The aim of the Directive is to improve transparency in the way certain professions are regulated in Member States and to **ensure that national measures are proportionate**, and that they do not unduly restrict access to professional activities or create unjustified burdens in the internal market. In the absence of specific EU provisions harmonising rules on access to a regulated profession, **Member States remain competent**, to decide whether and how to regulate a profession within the limits of the principles of non-discrimination and proportionality.

Ex ante assessment of new measures and monitoring: according to the Directive, Member States will have to **carry out a proportionality check before setting new requirements** for certain professions. They will have to prove that the requirements are justified and proportionate and carry out the proportionality tests in an objective and independent manner. In addition, they must ensure that those provisions are **neither directly nor indirectly discriminatory** on the basis of nationality or residence.

Member States shall monitor the compliance of new or amended provisions restricting access to, or the pursuit of, regulated professions, after adoption, having due regard to any developments that have occurred since the provisions concerned were adopted.

Justification on grounds of public interest objectives: when regulating professions, Member States will have to assess whether new or amended rules are justified:

- **by public interest objectives**, such as public policy, public security or public health;
- **or by overriding reasons in the public interest**, recognised as such in the case-law of the Court of Justice. It is also necessary to clarify that the following are among the overriding reasons in the public interest, recognised by the Court of Justice, such as: preserving the financial equilibrium of the social security system; the protection of consumers; the combating of fraud and the prevention of tax evasion and avoidance, and the safeguarding of the effectiveness of fiscal supervision; transport safety; the protection of the environment; the health of animals; intellectual property; the safeguarding and conservation of the national historic and artistic heritage.

Healthcare professions: Member States should duly take account of the objective of ensuring a high level of human health protection when assessing requirements for healthcare professions, and in particular, ensure that the regulation of healthcare professions is proportionate and contributes to the **guaranteeing of access to healthcare**, recognised as a fundamental right in the Charter, as well as to safe, high quality and efficient healthcare for citizens on their territory.

Information and remedy: Member States will have to:

- inform citizens, service recipients and relevant stakeholders before introducing new provisions restricting access to regulated professions and **involving all parties concerned** by giving them the opportunity to make their views known;
- ensure that an **effective remedy** is available with regard to the matters covered by the Directive;
- encourage the **exchange of information** among Member States on matters covered by the Directive.

By 18 January 2024 and every five years thereafter, the Commission shall submit a report on the implementation and performance of the Directive. The reports shall be accompanied by relevant proposals.

ENTRY INTO FORCE: 29.7.2018.

TRANSPOSITION: by 30.7.2020.