Basic information

2016/0404(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Proportionality test before adoption of new regulation of professions **Subject** 2.40 Free movement of services, freedom to provide 4.15.06 Professional qualifications, recognition of qualifications	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
IMCO Internal Market and Consumer Protection	SCHWAB Andreas (PPE)	25/01/2017
	Shadow rapporteur COFFERATI Sergio Gaetano (S&D) SULÍK Richard (ECR) SELIMOVIC Jasenko (ALDE) MAŠTÁLKA Jiří (GUE/NGL) REDA Felix (Verts/ALE) ZULLO Marco (EFDD)	

Committee for opinion	Rapporteur for opinion	Appointed
EMPL Employment and Social Affairs	The committee decided not to give an opinion.	
ENVI Environment, Public Health and Food Safety	GROSSETÊTE Françoise (PPE)	05/04/2017
CULT Culture and Education	The committee decided not to give an opinion.	
JURI Legal Affairs	The committee decided not to give an opinion.	
PETI Petitions	The committee decided not to give an opinion.	

Council of the European Union	

Council configuration	Meetings	Date
Employment, Social Policy, Health and Consumer Affairs	3625	2018-06-21
Competitiveness (Internal Market, Industry, Research and Space)	3544	2017-05-30

European Commission	

Commission DG	Commissioner
Internal Market, Industry, Entrepreneurship and SMEs	BIEŃKOWSKA Elżbieta

European Economic and Social Committee

Key events

Date	Event	Reference	Summary
10/01/2017	Legislative proposal published	COM(2016)0822	Summary
01/02/2017	Committee referral announced in Parliament, 1st reading		
04/12/2017	Vote in committee, 1st reading		
04/12/2017	Committee decision to open interinstitutional negotiations with report adopted in committee		
08/12/2017	Committee report tabled for plenary, 1st reading	A8-0395/2017	Summary
11/12/2017	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
13/12/2017	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72)		
24/04/2018	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE640.013 GEDA/A/(2019)006635	
13/06/2018	Debate in Parliament		
14/06/2018	Decision by Parliament, 1st reading	T8-0263/2018	Summary
14/06/2018	Results of vote in Parliament		
21/06/2018	Act adopted by Council after Parliament's 1st reading		
28/06/2018	Final act signed		
04/07/2018	End of procedure in Parliament		
09/07/2018	Final act published in Official Journal		

Technical information

Procedure reference	2016/0404(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive

Legal basis	Treaty on the Functioning of the European Union TFEU 053-p1 Treaty on the Functioning of the European Union TFEU 046 Treaty on the Functioning of the European Union TFEU 062
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	IMCO/8/09034

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE601.007	23/06/2017	
Amendments tabled in committee		PE610.571	12/09/2017	
Committee opinion	ENVI	PE604.870	10/11/2017	
Committee report tabled for plenary, 1st reading/single reading		A8-0395/2017	08/12/2017	Summary
Text agreed during interinstitutional negotiations		PE640.013	20/04/2018	
Text adopted by Parliament, 1st reading/single reading		T8-0263/2018	14/06/2018	Summary

Council of the EU

Document type	Reference	Date	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2019)006635	20/04/2018	
Draft final act	00019/2018/LEX	28/06/2018	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2016)0822	10/01/2017	Summary
Document attached to the procedure	SWD(2016)0462	11/01/2017	
Document attached to the procedure	SWD(2016)0463	11/01/2017	
Commission response to text adopted in plenary	SP(2018)458	11/07/2018	
Follow-up document	COM(2024)0533	15/11/2024	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary

Contribution	PT_PARLIAMENT	COM(2016)0822	15/03/2017	
Contribution	RO_SENATE	COM(2016)0822	23/03/2017	
Contribution	ES_PARLIAMENT	COM(2016)0822	24/03/2017	
Reasoned opinion	FR_SENATE	PE602.782	29/03/2017	
Reasoned opinion	DE_BUNDESRAT	PE602.796	30/03/2017	
Reasoned opinion	DE_BUNDESTAG	PE602.783	31/03/2017	
Reasoned opinion	AT_BUNDESRAT	PE602.795	03/04/2017	
Reasoned opinion	FR_ASSEMBLY	PE601.202	04/04/2017	
Contribution	DE_BUNDESRAT	COM(2016)0822	13/04/2017	
Contribution	DE_BUNDESTAG	COM(2016)0822	30/05/2017	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0729/2017	31/05/2017	
CofR	Committee of the Regions: opinion	CDR1195/2017	11/10/2017	
CofR	Committee of the Regions: opinion	CDR0150/2020	02/07/2020	

Additional information

Source	Document	Date
European Parliament	Briefing	
European Commission	EUR-Lex	

Final act

Directive 2018/0958
OJ L 173 09.07.2018, p. 0025 Summary

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:

- 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.

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.

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.

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.