

Proportionality test for new national regulations for professions

In the European Union, the right to choose an occupation and to exercise a regulated profession is a fundamental right. While professions are regulated either at Union or at Member State level, the EU principles of proportionality and non-discrimination should be respected. The Parliament and the Council reached agreement in trilogue negotiations on the European Commission's proposal concerning a proportionality test before adoption of new measures for the regulation of professions. The agreement reached in March 2018 is scheduled to be voted by the Parliament at first reading during the June plenary session.

Background

A number of professions, such as doctor, nurse and architect are regulated at EU level. When the regulation of professional services is not harmonised, it remains a competence of the Member States. They are permitted to decide on their own rules, provided that the [principles of proportionality and non-discrimination](#) are respected. Directives [2005/36/EC](#), last amended by Directive [2013/55/EU](#), ensures at present that Member States assess the proportionality of their requirements restricting access to, or pursuit of, regulated professions, and they communicate the results of their assessment to the Commission. Surveys and public consultations, however, have revealed inconsistent application of the principle of proportionality and a lack of transparency.

European Commission proposal

On 10 January 2017, the European Commission adopted a [proposal](#) for a directive on a proportionality test before the adoption of new measures for regulation of professions. 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 are to facilitate free movement of professionals across the EU and to avoid the introduction of unjustified and disproportionate rules hindering access to professions.

European Parliament position

The European Parliament's Committee on the Internal Market and Consumer Protection (IMCO) adopted its [report](#) on the proposal on 8 December 2017. It proposed several changes: specific status for healthcare services; explicitly addressing gold-plating practices (unnecessary national requirements); removing the obligation to consult an independent scrutiny body, clarifying the reasons for the introduction of additional requirements which might be suitable to attain public interest objectives; as well as informing all interested parties equally and, in addition, introducing the possibility of wider public consultations. The [Council](#) wanted to enhance the competence of Member States to regulate professions and for limiting obligations on the transparency of the national regulatory process. On 20 March 2018, a compromise text was agreed in a trilogue meeting. This was endorsed in the Council on 11 April, approved in the IMCO meeting on 24 April, and now needs to be voted during the June plenary session.

First-reading report: [2016/404\(COD\)](#) Committee responsible: IMCO; Rapporteur: Andreas Schwab (EPP, Germany). For further information see our 'EU Legislation in progress' [briefing](#).

