



Committee on the Environment, Public Health and Food Safety

2016/0404(COD)

29.5.2017

DRAFT OPINION

of the Committee on the Environment, Public Health and Food Safety

for the Committee on the Internal Market and Consumer Protection

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
(COM(2016)0822 – C8-0012/2017 – 2016/0404(COD))

Rapporteur: Françoise Grossetête

SHORT JUSTIFICATION

The Commission plans to introduce a structured procedure for a proportionality test to be applied to the new provisions adopted by the Member States for managing their regulated professions.

Given the public service nature of the work done by healthcare professionals, the specific nature of which, in the rapporteur's view, is not sufficiently taken into account in the draft directive, the draft decision proposes excluding such professions from the scope of this text.

The rapporteur acknowledges the Commission's objective and the fact that the proportionality requirement set out in Article 59 of Directive 2005/36/EC on the recognition of professional qualifications also applies to measures regarding healthcare professionals. However, she considers the provisions of the directive to be inadequate and that they should not be made more complicated by introducing a systematic, ex-ante proportionality test.

She is aware of the problems experienced by some Member States with implementing the proportionality principle and understands the Commission's wish to clarify the rules. In this case, however, and with regard to healthcare professionals and the need to protect public health, she considers that the Commission's proposals would be too complex to implement and would involve too much red tape. It would be wrong to adopt such restrictive horizontal legislation to resolve specific problems.

AMENDMENTS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) There is a need to ensure that the Member States fulfil to the letter their responsibilities, as set out in Article 168 of the Treaty on Functioning of the European Union, regarding the details of their health policies and how they organise the provision of healthcare services and medical care by dedicated regulated professions. In order to achieve this, such regulated professions should be excluded from the scope of this directive.

Amendment 2

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) Where the taking-up and pursuit of certain employed or self-employed activities are conditional on complying with certain provisions relating to specific professional qualifications, laid down directly or indirectly by the Member States, it is necessary to ensure that such provisions are justified by public interest objectives, such as those within the meaning of the Treaty, namely public policy, public security and public health or by overriding reasons of general interest, recognised as such in the case-law of the Court of Justice. It is important to ensure that public interest objectives are adequately identified in order to determine the intensity of the regulation. For example, in order to ensure a high level of protection of public health, Member States should *enjoy* a margin of discretion to decide on the degree of protection which they wish to afford to public health and on the way in which that protection is to be achieved. It is also necessary to clarify that among the overriding reasons of general interest, recognised by the Court of Justice, are preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; the safeguarding of the proper administration of justice; fairness of trade transactions; combating fraud and prevention of tax evasion and avoidance; road safety; the protection of the environment and the urban environment; the health of animals; intellectual property; the safeguarding and conservation of the

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national historic and artistic heritage, social policy objectives and cultural policy objectives. According to settled case-law, purely economic reasons, having essentially protectionist aims, as well as purely administrative reasons, such as carrying out controls or gathering statistics cannot constitute an overriding reason of general interest.

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Amendment 3

Proposal for a directive Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) Without prejudice to the application of Directive 2005/36/EC, the present directive does not apply to professions providing healthcare services, whether or not these are provided via healthcare facilities and regardless of the way in which they are organised and financed at national level, or whether they are public or private.

Or. fr